



**A. INSURING AGREEMENTS**

**PROFESSIONAL LIABILITY DECLARATIONS**

     No  
Accepted

Item 1. Professional Services:

Item 2. Limit of Liability:                   \$                   Per Claim   \$                   Aggregate

Item 3. Deductible:                         \$                   Per Claim   \$                   Supplemental

Item 4. **COVERAGE PROVIDED BY THIS INSURANCE DOES NOT APPLY TO ACTS, ERRORS OR OMISSIONS WHICH TAKE PLACE BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.**

Date:

Item 5. Forms and Endorsements Attached: See Declarations Supplement A

**B. INSURING AGREEMENTS**

**EXECUTIVE LIABILITY DECLARATIONS**

     No           Coverage A.   **DIRECTORS AND OFFICERS**  
Accepted

     No           Coverage B.   **PENSION TRUST AND EMPLOYEE BENEFIT PLAN**  
Accepted

     No           Coverage C.   **EMPLOYMENT PRACTICES LIABILITY**  
Accepted

Item 1. Limit of Liability:                   \$

Item 2. Deductible:                         \$

Item 3. **COVERAGE PROVIDED BY THIS INSURANCE DOES NOT APPLY TO ACTS, ERRORS OR OMISSIONS WHICH TAKE PLACE BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.**

Date:

ISSUE DATE:

By: \_\_\_\_\_  
Authorized Representative

# ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY INSURANCE

## This is a Claims Made Policy

### A. INSURING AGREEMENTS

#### I. COVERAGE

The Company shall pay on behalf of the Insured those Damages in excess of the deductible and up to the limit of liability that the Insured becomes legally obligated to pay anywhere in the world:

- A. if such Damages result from an error or omission of the Insured, or those architectural, engineering or surveying consultants in privity of contract with the Insured, in performing Professional Services anywhere in the world; and
- B. if the Insured, or those architectural, engineering or surveying consultants in privity of contract with the Insured, performed or failed to perform such Professional Services subsequent to the retroactive date specified in Item 4 of the Professional Liability Declarations; and
- C. if Claim for such Damages is first made against the Insured during this Policy Period; and
- D. if such Claim is reported in writing to the Company and such reporting is received by the Company no later than sixty (60) days immediately subsequent to the end of this Policy Period; and
- E. if on the effective date of this policy, the Insured had no basis to reasonably anticipate such Claim; and
- F. if no other insurance affords Coverage for such Claim, including any deductible provision thereof, including Professional Liability Project Specific Insurance.

The Company shall have both the right and duty to provide for the defense of the Insured with respect to a Claim made for which this insurance applies even though the allegations of such Claim may be groundless, false or fraudulent. The Company shall consult with the Insured regarding the selection of legal counsel. Regardless of agreement or disagreement between the Insured and the Company, the Company shall have the exclusive right to investigate such Claim to which this insurance applies, to designate and appoint all legal counsel to defend the Insured in the event of such Claim and to otherwise control the defense.

Notwithstanding the foregoing or anything in this policy to the contrary, the Company's duty to provide for the defense of the Insured or pay on behalf of the Insured will terminate at such time as the limit of liability of this policy may become exhausted by payment of Damages, Claims Expense or any combination thereof.

Notwithstanding the foregoing or anything in this policy to the contrary, if the Purchasing Group Member fails to pay any Deductible due under the policy within 30 days after receipt of written notice from the Company, the Insured will void the Coverage hereunder, including the Company's duty to provide for the defense of the Insured or pay Damages on behalf of the Insured.

## **II. LIMIT OF LIABILITY**

Notwithstanding anything contained in the policy to the contrary and regardless of the number of Insureds, Claims or claimants, the Company's obligation to pay Damages or Claims Expense for any Claim during the Policy Period shall not exceed the per claim amount specified in Item 2 of the Professional Liability Declarations and the Company's obligations to pay Damages and Claim Expense for all Claims shall not exceed the aggregate amount specified in Item 2 of the Professional Liability Declarations.

All amounts paid hereunder by the Company as Damages, Claims Expense or any combination thereof shall serve to reduce the per claim and aggregate limits of liability specified in Item 2 of the Professional Liability Declarations and Item 1 of the Executive Liability Declarations.

## **III. DEDUCTIBLE**

Notwithstanding anything contained in this policy to the contrary, the per claim deductible specified in Item 3 of the Professional Liability Declarations is the obligation of the Purchasing Group Member to pay and applies to each Claim made irrespective of the number of Claims made; the supplemental deductible specified in Item 3 of the Professional Liability Declarations is the obligation of the Purchasing Group Member to pay and applies, in addition to the per claim deductible, to each and every claim made until the supplemental deductible amount specified on the Professional Liability Declarations is fully paid; the Company's obligation hereunder to pay Damages, Claims Expense or any combination thereof set forth in A and B INSURING AGREEMENTS with respect to any Claim shall only apply if the deductible obligation(s) has been fully paid by the Purchasing Group Member.

## **IV. AWARENESS**

The Purchasing Group Member shall have the right to provide the Company, c/o C. R. Vince & Associates, 3100 Dundee Road, Ste. 501, Northbrook, IL 60062 or as otherwise may be specified by endorsement to this policy, written notice describing a Specific Circumstance, of which the Insured first became aware during this Policy Period. Such notice must be received by the Company during this Policy Period. If the foregoing conditions are met, a Claim is made against the Insured at any time thereafter arising from the Specific Circumstance so reported, and no prior Claim or Specific Circumstance has been reported emanating from the same project, such Claim shall be considered a Claim first made against the Insured during this Policy Period with Coverage therefore subject to all provisions of this policy. In the event that a prior Claim or Specific Circumstance has been reported to the Company emanating from the same project, this Claim and all subsequent Claims and Specific Circumstances emanating from the same project, shall be considered as a single Claim first made during the Policy Period in which the earliest Claim or Specific Circumstance emanating from the same project was reported with Coverage therefore subject to all provisions of that policy.

The Company may elect, but is not required, to investigate or provide the Insured a defense for such Specific Circumstance other than a Claim. Should the Company undertake an investigation or defense, the obligation of the Insured and Company under the policy shall be identical to the obligations the parties would otherwise have, had a Claim been made.

## **V. DEFINITIONS**

The following shall apply wherever used in this policy, including any endorsement attached hereto.

- A. The term **Claim** shall mean the Insured's receipt of a written demand arising out of the performance of Professional Services, including the service of process and a demand for arbitration, seeking Damages involving money or services.

In the event that a prior Claim or Specific Circumstance has been reported emanating from the same project, all Claims and Specific Circumstances reported to the Company emanating from the same project, whenever made, shall be treated as a single Claim first made during the Policy Period in which the earliest Claim or Specific Circumstance emanating from the same project was reported, with Coverage limited to that policy and subject to all provisions of that policy, whether the Claims and Specific Circumstances arise from the performance of Professional Services under a single contract or multiple contracts, irrespective of the number of claimants provided that the Claims and Specific Circumstances are received while the Insured remains a continuous and uninterrupted member of the AEIC Purchasing Group. If the earliest Claim or Specific Circumstance was made under a prior policy, Coverage is afforded under that policy only and this policy shall not afford Coverage.

The word Claim shall not include a demand:

1. by a person, firm or organization, (or its subrogee, assignee, contractor, subcontractor, subsidiary, affiliate or division) who at the time of the Claim wholly or partly owns, operates, manages or otherwise controls any Insured, whether directly or indirectly, or that is wholly or partly owned, operated, managed or otherwise controlled by any Insured, whether directly or indirectly; or
  2. by a firm or organization (or its subrogee, assignee, contractor, subcontractor, subsidiary, affiliate or division) of which any principal, partner, director, officer or stockholder of any Insured, who at the time of the Claim directly or indirectly maintains ownership, or who directly or indirectly operates, manages or otherwise controls such firm or organization; or
  3. by a principal, partner, director, officer, stockholder, employee or prospective employee of any Insured (or any subrogee or assignee of such person); or
  4. received by the Insured subsequent to the end of the Insured's Coverage as a member in the AEIC Purchasing Group and /or received by the Company later than sixty days immediately subsequent to the end of the Insured's Coverage as a member of the AEIC Purchasing Group, unless such demand arises from a Specific Circumstance reported under and meeting the condition of A. INSURING AGREEMENT IV. AWARENESS.
- B. The term **Claims Expense** shall mean all costs, charges and expenses generated by an attorney designated by the Company to represent the Insured and costs, charges and expenses resulting from the investigation, defense, settlement, arbitration or appeal of any Claim if such costs, charges and expenses are incurred by the Company, an attorney designated by the Company or by the Purchasing Group Member with the written consent of the Company; except that it shall not include the costs of investigating or administering any Claim by employees of the Company, or such costs incurred by any firm engaged by the Company to perform the investigation or administration of such Claim, or loss of earnings incurred by the Insured in investigating, defending, settling, arbitrating, or appealing any Claim at the Company's direction.
- C. The term **Coverage** shall mean the Company's duty to pay Damages and the Company's right and duty and/or right to provide for the defense of the Insured, as set forth in A. INSURING AGREEMENTS I. COVERAGE.
- D. The term **Damages** shall mean:
1. A judgment, award or settlement monetarily compensating a claimant, except as follows:

- a. Damages do not include return of fees, fines or penalties, sanctions, punitive or exemplary damages or the penalty portion of any treble damage award, taxes, or any matter which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
- b. Damages do not include a judgment, award or settlement monetarily compensating a claimant for Bodily Injury and/or Property Damage arising from any actual, potential, alleged or threatened presence of any diseases, bacteria, virus, mold, mildew, fungi, spores or otherwise harmful chemical agents of any kind whatsoever;
- c. Damages do not include a judgment, award or settlement monetarily compensating a claimant for all actual or threatened loss or damage to persons or property, whether tangible or intangible (including all consequential loss or damage of any type) arising through any means whatsoever from any preparations for, attempt at or any actual action intended to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political, social, ideological or religious objectives;
- d. Damages do not include a judgment, award or settlement monetarily compensating a claimant for Bodily Injury or Property Damage arising from an Occurrence related to Construction Activities, unless:
  - 1. no other insurance affords Coverage for such Claim; and
  - 2. the judgment, award or settlement arises from the performance of Professional Services by the Insured.

#### Additional Definitions

- a. The term **Bodily Injury** shall mean any harm to a person(s) including, sickness, disease, mental anguish or shock sustained by any person(s), including death resulting therefrom.
  - b. The term **Property Damage** shall mean:
    - 1. Physical injury to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
    - 2. Loss of use of tangible property that has not been physically injured or destroyed. All such loss of use shall be deemed to occur at the time of the Occurrence that caused it.
  - c. The term **Occurrence shall** mean an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
  - d. The term **Construction Activities** shall mean the performance of any work by or on behalf of any Insured or any other person or entity for which the Insured is responsible or alleged to be responsible.
- E.** The term **Product** shall mean goods designed and manufactured for replication and intended to be put into service or put into service, including design of means to adopt such goods for specific use.
- F.** The term **Purchasing Group Member** shall mean the proprietor, firm or organization specified in Item 3 of the General Declarations.
- G.** The term **Insured** shall mean:
- 1. The Purchasing Group Member; and

2. A principal, partner, director, officer or stockholder of The Purchasing Group Member, but only while acting in his respective capacity as such; and
3. A salaried employee of The Purchasing Group Member, but only with respect to Professional Services performed or failed to have been performed on behalf of The Purchasing Group Member in his capacity as such; and
4. A former principal, partner, director, officer or salaried employee of The Purchasing Group Member, but only with respect to Professional Services performed or failed to have been performed on behalf of The Purchasing Group Member prior to the termination of his respective capacity; and
5. A joint venture undertaken by any Purchasing Group Member, but only if the Company is notified of such joint venture, and such joint venture is endorsed to this policy, prior to the delivery of any plans and specifications and/or commencement of the work.

**H.** The term **Policy Period** shall mean the period of time specified in Item 2 of the General Declarations or ending at an earlier termination or cancellation date, if any.

**I.** The term **Professional Services** shall mean the rendering of or failure to render the services specified in Item 1 of the Professional Liability Declarations.

Professional Services do not include:

1. An assumption of liability under any contract or agreement, whether written or oral, including but not limited to any indemnification agreement, purchase order, penalty clause, certification, guarantee or warranty, exempting the responsibility to perform Professional Services under contract in accordance with the standard of care; and
2. Defamatory, dishonest, fraudulent, malicious or criminal act or omission, including the willful or negligent infringement of any copyright or any other act of a knowingly wrongful nature, including acts committed intentionally or at the direction of the Insured;
3. Discrimination on the basis of race, creed, sex, disability or age; and
4. Advice with respect to any bond, suretyship or insurance requirement; and
5. Any service or operation not considered as customary or usual to the Professional Services cited in Item 1 of the Professional Liability Declarations; and
6. The performance of any work, including but not limited to, any construction demolition, erection, excavation or the assembly or installation of components or equipment; and
7. The supplying or licensing of any components, Product(s), or processes incorporated in the work or the management thereof; and
8. Design of any Product(s) or manufactured goods unless Coverage for such Product or manufactured good is specifically endorsed herein.

**J.** The term **Specific Circumstance** shall mean a written notice describing a circumstance other than a Claim, that could reasonably be expected to give rise to a Claim, and specifies the actual or anticipated error or omission and the Damages that the Insured anticipates resulting therefrom.

## VI. CONDITIONS

### 1. NOTICE OF CLAIM

In the event of a Claim, whether or not the demand falls under or in excess of the deductible, the Purchasing Group Member shall have the duty to immediately provide written notice to the Company, c/o C. R. Vince and Associates, 3100 Dundee Road, Suite 501, Northbrook, IL 60062-2449 or as otherwise may be specified by endorsement to this policy. Such written notice must contain complete details including but not limited to, the exact date the Claim was made, location, circumstances giving rise to such Claim, all claimants and a full description of the nature and scope of the allegations. The Purchasing Group Member must forward to the Company every demand, notice, summons or other process immediately. The duty imposed upon the Purchasing Group Member hereunder shall not be delegable.

### 2. SETTLEMENT

The Company shall have the right to negotiate the settlement of any Claim, as it deems expedient, whether under or in excess of the deductible, but the Company shall not commit the Purchasing Group Member to any settlement without the Purchasing Group Member's consent. If, however, the Purchasing Group Member refuses to consent to a settlement recommended by the Company and elects to contest such Claim or continue legal proceedings in connection with such Claim, the Company's liability hereunder shall be limited to the amount for which the Claim could have been settled and all Claims Expense incurred up to the time of such refusal.

### 3. COOPERATION AND ASSISTANCE OF THE INSURED

The Insured shall have the duty to fully cooperate with and assist the Company with respect to the investigation, defense, settlement, arbitration or appeal of any Claim at its own cost. The Insured will not be compensated hereunder for any expenses or loss of earnings incurred in such cooperation or assistance, nor will any such expense or loss of earnings apply toward the satisfaction of the deductible. However, the Company will pay reasonable costs incurred in obtaining the cooperation of former principals, officers or employees in the defense of a Claim under this policy, but only if that cooperation is expressly requested by the Company.

### 4. ADMISSION OF LIABILITY

In the event of a Claim, the Insured shall not, without the prior written consent of the Company, incur any expenses, including, but not limited to, forgiving or reducing any compensation due or alleged to be due the Insured, make any payment, assume any obligation or admit or in any way acknowledge liability for such Claim. With the written consent of the Company, the Insured may attempt or make settlement within the deductible.

### 5. NO ACTION AGAINST COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the provisions of this policy, or until the amount of the Insured's obligation to pay has been finally determined either by written agreement of the Insured, the claimant and the Company or by final judgment against the Insured after the actual trial of the issues and the time to appeal therefrom has expired without an appeal having been taken or, if an appeal has been taken, then until after such appeal has been determined. In no event shall any action be commenced against the Company by the Insured, unless brought within twelve (12) months after his right of action accrues.

**6. SUBROGATION**

If the Company pays an amount hereunder as Damages, Claims Expense or any combination thereof, it shall be subrogated to all the Insured's rights of recovery against any person, firm or organization. The Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall not waive or prejudice such rights either prior to or subsequent to any Claim.

**7. CHANGES**

Notwithstanding anything to the contrary, no provision of this policy may be amended, waived or otherwise changed except by endorsement hereto signed by the Company's managing underwriter.

**8. PURCHASING GROUP MEMBER AS AGENT**

The Purchasing Group Member initially specified in Item 3 of the General Declarations shall be considered the agent of the Insured with respect to all matters involving this policy and shall be responsible for the payment of all premiums and the deductible.

**9. ASSIGNMENT**

The interest of the Insured hereunder shall not be assignable to any person, firm or organization.

**10. CANCELLATION**

**The Purchasing Group Member may cancel this policy** by mailing to the Company, c/o its administrative address as specified herein or as otherwise may be specified by endorsement to this policy, written notice stating when thereafter such cancellation shall be effective. The Company must receive the notice before the requested date of cancellation for the cancellation to take effect.

If the Purchasing Group Member invokes cancellation of the policy, the earned premium due to the Company by The Purchasing Group Member shall be computed in accordance with the customary short rate table with one hundred percent (100%) of any policy issuance fee being fully earned at inception. However, notwithstanding the aforementioned, if any Claim(s) or circumstances(s) which may give rise to a Claim under this policy is (are) reported to the Company during the Policy Period prior to cancellation, then no premium will be returned to the Purchasing Group Member as all premium will be considered earned at the time of such notification.

**The Company may cancel this policy** by mailing to the Purchasing Group Member, specified in Item 3 of the General Declarations, written notice stating when the cancellation is to take effect, which cannot be less than sixty (60) days nor more than one hundred and twenty (120) days from the date the written notice is sent to the Purchasing Group Member, except for non-payment of premium. In the case of non-payment of premium, not less than ten (10) days advance notice of cancellation shall be given. The mailing of notice as aforesaid shall be sufficient notice of the intent to cancel. The effective date of cancellation specified in such notice shall terminate this Policy Period.

The Company can initiate the cancellation process for any reason within sixty (60) days of the policy effectuating. After the policy has been in effect for more than sixty (60) days, reasons for the Company to cancel the policy, other than nonpayment of premium as described above, include the following:

- i) A material misrepresentation or nondisclosure of fact to the Company at the time the risk was accepted;

- ii) An increased hazard or material change in the risk assumed that could not have been reasonably contemplated by the parties at the time the risk was accepted;
- iii) A substantial breach of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
- iv) A fraudulent act against the Company by the Purchasing Group Member or its representative that materially affect the nature of the risk;
- v) A lack of cooperation from the Purchasing Group Member on loss control matters affecting the nature of the risk;
- vi) A change in statutory or case law after the issuance of the policy materially affecting the insurability of the risk.

If the Company invokes cancellation of the policy, the earned premium due to the Company by the Purchasing Group Member shall be computed pro rata with one hundred percent (100%) of any policy issuance fee being fully earned at inception. Notwithstanding the aforementioned, if any Claim(s) or circumstances(s) which may give rise to a Claim under this policy is (are) reported to the Company during the Policy Period prior to cancellation, then no premium will be returned to the Purchasing Group Member as all premium will be considered earned at the time of such notification.

In the event the Purchasing Group Member ceases to be a shareholder of Architects & Engineers Insurance Company, A Risk Retention Group, for any reason whatsoever, the Company shall cancel the policy in accordance with the aforementioned cancellation procedure.

## **11. EXTENDED REPORTING PERIOD**

In the event of cancellation or nonrenewal of this policy, the Purchasing Group Member shall then have the right, in consideration of an additional premium equal to one hundred percent (100%) of the full premium charged hereunder, to an extension of the Coverage granted by this policy, subject to its terms, Insuring Agreements, Definitions, Exclusions and Conditions, in respect of any Claim first made against the Purchasing Group Member and reported in writing to the Company during the period of twelve (12) months after the cancellation or expiration date of this policy but only when such Claim arises as a result of Professional Services rendered on or after the retroactive date and prior to the cancellation of this policy, or the expiration date as set forth in Item 2 of the General Declarations, whichever date is earlier.

To exercise this right, the Purchasing Group Member must give notice in writing within thirty (30) days of the cancellation or expiration date of this policy to the Company and remit full payment of the premium for this Extended Reporting Period to the Company within thirty (30) days of such notice. In the event or failure by the Purchasing Group Member to give such notice and remit such premium prior to such date, it shall not at a later date be able to invoke this extension. The mailing by the Purchasing Group Member by registered or certified mail of notice to the Company shall be sufficient proof of notice. In the event of the purchase of the Extended Reporting Period, the entire premium shall be deemed earned at its commencement and the Company shall not be liable to return any portion of the premium paid for the Extended Reporting Period.

The quotation by the Company of a different premium, Limit of Liability, Deductible or changes in policy Coverage for the purpose of renewal shall not constitute a refusal to renew by the Company.

The purchase of the Extended Reporting Period shall not reinstate or increase the per claim or aggregate limit of liability as stated in Item 2 of the Professional Liability Declarations.

## **12. AUDIT**

The Company shall have the right to examine or audit the Purchasing Group Member's records during this Policy Period and within three (3) years subsequent to the end of this Policy Period or any future Policy Period specified in a future contract.

**13. PREMIUM**

The premium for this policy shall be the amount specified in Item 4 of the General Declarations, provided that if during this Policy Period there is a change in the Coverage afforded hereunder, the Company shall have the right to adjust such premium as of the date of such change in accordance with the Company's prevailing rules and rates.

**14. ACCEPTANCE**

By acceptance of this policy, the Purchasing Group Member agrees that all provisions of this policy, including all endorsements attached hereto, embody all agreements existing between the Purchasing Group Member and the Company and supersede any prior agreements, whether expressed or implied.

**15. CONFORMITY TO STATUTE**

Terms of this policy which are not protected by The Liability Risk Retention Act and which are in conflict with any statute of the state wherein this policy is issued are hereby amended to conform to such statutes.

**IN WITNESS WHEREOF**, the Company has caused A. Insuring Agreements to be executed and attested, but this Coverage shall not be valid unless executed on the General Declarations by the Company's underwriting manager and by the Company below.

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Treasurer**

# **ARCHITECTS AND ENGINEERS EXECUTIVE LIABILITY INSURANCE**

## **This is a Claims Made Policy**

### **B. INSURING AGREEMENTS**

#### **I. COVERAGES**

##### **A. DIRECTORS AND OFFICERS**

The Company shall reimburse the Directors and Officers for Damages not exceeding the limit of liability specified in Item 1 of the Executive Liability Declarations in excess of the applicable deductible set forth in Item 2 of the Executive Liability Declarations sustained by such Directors and Officers, resulting from a Claim first made during the Policy Period against any of them for a Wrongful Act, except for such Damages which the Insured actually pays to the Directors and Officers as indemnification, and except for such Damages which the Insured is required or permitted by law to indemnify the Directors and Officers, unless and to the extent that the Insured is unable to make actual indemnification solely by reason of its financial insolvency; and

The Company shall reimburse the Insured for Damages not exceeding the amount specified in Item 1 of the Executive Liability Declarations in excess of the applicable deductible set forth in Item 2 of the Executive Liability Declarations for which the Insured shall have lawfully indemnified or is required or permitted by law to indemnify the Directors and Officers, resulting from any Claim first made during the Policy Period against any of them for a Wrongful Act.

##### **B. PENSION TRUST AND EMPLOYEE BENEFIT PLAN**

The Company shall pay on behalf of the Insured Damages not exceeding the amount specified in Item 1 of the Executive Liability Declarations in excess of the applicable deductible set forth in Item 2 of the Executive Liability Declarations which the Insured shall become legally obligated to pay as a result of a Claim first made against the Insured during the Policy Period by reason of liability arising out of any negligent act, error or omission in rendering or failing to render "professional services" of:

Administering pension trust or employee benefit plans, including managing real or personal property, acting as a custodian, giving of financial, economic or investment advice, or the rendering of investment advisory or management service to any employee, pensioner or beneficiary of the pension trust or employee benefit plan whether committed or alleged to have been committed by the Insured or by others for whom the Insured is legally responsible.

##### **C. EMPLOYMENT PRACTICES LIABILITY**

The Company shall pay, on behalf of the Insured, Damages not exceeding the amount specified in Item 1 of the Executive Liability Declarations in excess of the applicable deductible as set forth in Item 2 of the Executive Liability Declarations which the Insured shall be legally obligated to pay by reason of a Claim arising from Wrongful Employment Practices, where such Claim is first made against the Insured during the Policy Period and is reported in writing to the Company as soon as possible during the Policy Period.

**Coverage is afforded under B. Insuring Agreements, I. Coverage A, B and C provided always that:**

1. At or prior to the inception of the Policy Period the Insured had no knowledge of any event that could reasonably be expected to give rise to a Claim covered by any of the Insuring Agreements above; and
2. Such fact or circumstance that could give rise to a Claim, or actual Claim, occurred on or after the retroactive date indicated in Item 3 of the Executive Liability Declarations of this policy; and
3. The Purchasing Group Member elected to accept I. Coverages A and/or B and/or C of B. Insuring Agreements. Coverage is afforded only for the Executive Liability Coverage part(s) accepted.

## **II. LIMIT OF LIABILITY**

Notwithstanding anything contained in the policy to the contrary and regardless of the number of Insureds, Claims or claimants, the Company's limit of liability to pay Damages, arising out of wrongful or negligent acts, errors and omissions, including Defense, Supplemental Payments for any and all Claims during the Policy Period shall not exceed the amount stated in Item 1 of the Executive Liability Declarations.

All amounts paid hereunder by the Company as Damages and Defense, Supplemental Payments or any combination thereof shall serve to reduce the limit of liability specified in Item 1 of the Executive Liability Declarations and the per claim and aggregate limits of liability specified in Item 2 of the Professional Liability Declarations.

## **III. DEDUCTIBLE**

Notwithstanding anything contained in this policy to the contrary, the deductible specified in Item 2 of the Executive Liability Declarations is the obligation of the Insured to pay and applies to each Claim made irrespective of the number of Claims made; the Company's obligation hereunder to pay Damages, Defense, Supplemental Payments or any combination thereof set forth in A and B INSURING AGREEMENTS with respect to any Claim shall only apply if the deductible obligation(s) has been fully paid by the Insured.

## **IV. AWARENESS**

The Purchasing Group Member shall have the right to provide the Company written notice describing a specific circumstance other than a Claim, of which the Insured first became aware during this Policy Period that could reasonably be expected to give rise to a Claim. Such notice must be received by the Company during this Policy Period and must specify the action of the Insured that could give rise to Claim and the Damages that the Insured anticipates resulting therefrom. If the foregoing conditions are met and a Claim is made against the Insured at any time thereafter arising from the specific circumstance so reported, such Claim shall be considered a Claim first made against the Insured during the Policy Period with Coverage therefore subject to all provisions of this policy.

The Company may elect, but is not required, to investigate or provide the Insured a defense for such specific circumstance other than a Claim. The obligation of the Insured under the policy shall be identical to the obligations the Insured would otherwise have, had a Claim been made.

## V. DEFINITIONS

- A.** The term **Purchasing Group Member** shall mean the proprietor, firm or organization specified in Item 3 of the General Declarations.
- B.** The term **Policy Period** shall mean the period of time specified in Item 2 of the General Declarations or ending at an earlier termination or cancellation date, if any.
- C.** The term **Insured** shall mean:
1. The Purchasing Group Member; and
  2. Any Supervisory Employee of the Insured, including Directors and Officers, while acting within the scope of his/her duties as such; and
  3. Any heir, executor, administrator, assignee, or legal representative of any Insured as defined in 1 or 2 above in the event of the Insured's death, incapacity, or bankruptcy.
- D.** The term **Claim** shall mean any written demand or notice received by an Insured from a person advising that it is the intention of such person to hold the Insured responsible for any of the activities set forth in B. Insuring Agreements I. Coverages A, B or C of this policy, shown as accepted in the Executive Liability Declarations. The term Claim includes any demand received by Insured for Damages and/or the service of suit.

Except as otherwise provided in IV. Awareness, a Claim shall be deemed to have been first made on the date an Insured first received a written demand or notice as described in the preceding paragraph.

- E.** The term **Defense, Supplementary Payments** shall mean all costs, charges and expenses, generated by an attorney designated by the Company to represent the Insured and costs, charges and expenses resulting from the investigation, defense, settlement, arbitration or appeal of any Claim if such costs, charges and expenses are incurred by the Company, an attorney designated by the Company or by a Purchasing Group Member with the written consent of the Company; except that it shall not include the cost of investigating or administering any Claim by employees of the Company, or such costs incurred by any firm engaged by the Company to perform the investigation or administration of such Claim, or loss of earnings or expense incurred by the Insured in assisting in and/or investigating, defending, settling, arbitrating, or appealing any Claim at the Company's direction. Defense, Supplementary Payments also includes premiums on appeal bonds required in any suit and premiums on bonds to release attachments. However, the Company shall not be obligated to furnish any such bond.
- F.** The term **Damages** shall mean loss, settlements, judgments and Defense, Supplementary Payments; provided always that Damages shall not include fines or penalties, whether civil or criminal, imposed by law or other matters which may be deemed uninsurable under the law pursuant to which the policy shall be construed.
- G.** The term **Supervisory Employee** shall mean an employee of the Insured who has the authority to, or ability to effectively recommend with regard to hire, fire, promote, discipline, terminate, review, grant salary increases for other employees of the Insured.
- H.** The term **Wrongful Act** for purposes of the Directors and Officers Coverage shall mean any actual or alleged error, misstatement, misleading statement, act or omission or neglect or breach of duty by the Directors and Officers in discharge of their duties solely in their capacity as Directors and Officers of the entity.

**I.** The term **Wrongful Employment Practices** shall mean:

1. The liability imposed upon the Insured for the failure to prevent, investigate, correct, or otherwise take remedial measures concerning any unwelcome sexual advances, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature when:
  - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
  - b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
  - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.
2. Actual or alleged wrongful termination by an Insured of an employee of the Insured.
3. Actual or alleged discrimination by an Insured against an employee of the Insured or an applicant for employment with the Insured.
4. Actual or alleged violation of any federal, state or municipal statute, law or regulation, protecting the rights of employees.

**J.** The term **Directors and Officers** shall mean any person or persons, who were, now are, or shall be, Directors or Officers of the Insured, including their estates, heirs, legal representatives or assignees in the event of their death, incapacity, or bankruptcy.

## **VI. EXCLUSIONS**

**B.** Insuring Agreements will not apply to liability arising from:

- A.** Any Wrongful Employment Practice committed by the Insured or at the Insured's direction with dishonest, fraudulent, criminal or malicious purpose or intent if such purpose or intent is established in fact. The applicability of this exclusion to any Insured under this policy shall not be imputed to any other Insured of the Insured.
- B.** Any act for which an Insured has assumed another's liability pursuant to a contract or an agreement. This exclusion shall not apply to liability which the Insured would have otherwise incurred notwithstanding the contract or agreement.
- C.** Any direct or indirect costs, including any attorney's fees or other expenses incurred by the Insured, or by any party other than the Insured, arising from or related to any Claim for relief other than money Damages, including but not limited to, injunctive relief, declaratory relief, job reinstatement, or other equitable remedies, or any kind of criminal proceeding irrespective of the relief sought.
- D.** Any employment termination where such termination results from the Insured:
  1. Entering into bankruptcy, receivership, liquidation, or reorganization or,
  2. Closing one or more places of business operation(s) or,

3. Merging or being acquired by any other business entity.
- E.** Any employment termination seeking Damages pursuant to the Workers Adjustment and Retraining Notification Act or any similar federal, state, or local law.
- F.** The mechanical or electronic malfunction of business machines or systems.
- G.** Non-pecuniary relief.
- H.** An actual, alleged or threatened discharge, dispersal, escape, release or saturation (whether sudden or gradual or whether by accident or by intention) of any Pollutant into the atmosphere or any course or body of water or on, onto, upon, in or into the surface or subsurface of land. For the purpose of this exclusion, the term Pollutant shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.
- I.** Any Claim brought by or on behalf of any Director or Officer except and to the extent that such Claim is in the form of a cross-claim, third-party Claim or otherwise for contribution or indemnity which is part of, and results directly from, a Claim which is not otherwise excluded by the terms of this policy.
- J.** Any Directors and Officers gaining any personal profit or advantage to which they were not legally entitled.
- K.** The return by the Directors and Officers of any remuneration paid to them without the previous approval of the stockholders of the Company, which payment without such previous approval shall be held by the Court to be in violation of the law.
- L.** Any Claim brought by a person, firm or organization (or its contractor, subcontractor, past or present subsidiary, affiliate, division or licensee) that wholly or partly owns, operates, manages or otherwise controls the Insured whether directly or indirectly, or that is wholly or partly owned, operated, managed or otherwise controlled by the Insured, whether directly or indirectly, or that is wholly or partly owned, operated, managed or otherwise controlled by the Insured, whether directly or indirectly.
- M.** Any Claim brought by a firm or organization (or its contractor, subcontractor, past or present subsidiary, affiliate, division or licensee) of which any principal, partner, director, officer or stockholder of the Insured directly or indirectly maintains ownership, or who, directly or indirectly, operates, manages or otherwise controls such firm or organization.
- N.** Any Claim based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any Wrongful Act actually or allegedly committed pursuant to a Corporate Takeover.
- O.** Any Claim based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any offer to purchase or purchase of securities of the Company at a premium over their then-current market value, made by the Company or by the Directors or Officers, except:
1. Where such offer or purchase extends to all security holders of the Company, or
  2. Where an independent legal counsel provided its prior written opinion that such contemplated offer to purchase or purchase would constitute a proper exercise of the Company's business judgment, and an independent investment banking firm provided its prior written opinion that such contemplated offer to purchase or purchase would involve fair and adequate consideration.

- P.** Any Claim based upon, arising out of, directly or indirectly resulting from or in consequence of, or any way involving, their service as Directors, Officers, or employees of any entity other than the Insured, even if directed or requested to serve by the Insured as Directors, Officers, or employees or such other entity.
- Q.** Any liability pertaining to the ownership, maintenance, operation of any mobile equipment, including but not limited to automotive, watercraft, or aircraft.
- R.** Liability arising from the performance of professional services such as design, architecture, engineering, construction management, supervision of construction or any business activities relating to the construction industry.
- S.** Any Claim arising out of any obligation under any workers compensation law, unemployment compensation law, or similar law.

## **VII. CONDITIONS**

### **A. NOTICE OF CLAIM**

In the event of a Claim, whether or not the demand falls under or in excess of the deductible, the Purchasing Group Member shall have the duty to immediately provide written notice to the Company, c/o C. R. Vince and Associates, 3100 Dundee Road, Suite 501, Northbrook, IL 60062-2449 or as otherwise may be specified by endorsement to this policy. Such written notice must contain complete details including but not limited to, the exact date the Claim was made, location, circumstances giving rise to such Claim, all claimants and a full description of the nature and scope of the allegations. The Purchasing Group Member must forward to the Company every demand, notice, summons or other process immediately. The duty imposed upon the Purchasing Group Member hereunder shall not be delegable.

### **B. SETTLEMENT**

The Company shall have the right to negotiate the settlement of any Claim, as it deems expedient, whether under or in excess of the deductible, but the Company shall not commit the Purchasing Group Member to any settlement without the Purchasing Group Member's consent. If, however, the Purchasing Group Member refuses to consent to a settlement recommended by the Company and elects to contest such Claim or continue legal proceedings in connection with such Claim, the Company's liability hereunder shall be limited to the amount for which the Claim could have been settled and all Defense, Supplementary Payments incurred up to the time of such refusal.

### **C. COOPERATION AND ASSISTANCE OF THE INSURED**

The Insured shall have the duty to fully cooperate with and assist the Company with respect to the investigation, defense, settlement, arbitration or appeal of any Claim at its own cost. The Insured will not be compensated hereunder for any expenses or loss of earnings incurred in such cooperation or assistance, nor will any such expense or loss of earnings apply toward the satisfaction of the deductible. However, the Company will pay reasonable costs incurred in obtaining the cooperation of former principals, officers or employees in the defense of a Claim under this policy, but only if that cooperation is expressly requested by the Company.

#### **D. ADMISSION OF LIABILITY**

In the event of a Claim, the Insured shall not, without the prior written consent of the Company, incur any expenses, including, but not limited to, forgiving or reducing any compensation due or alleged to be due the Insured, make any payment, assume any obligation or admit or in any way acknowledge liability for such Claim. With the written consent of the Company, the Insured may attempt or make settlement within the deductible.

#### **E. SUBROGATION**

In the event of any payment under this policy or as a condition of payment, the Company shall be subrogated to all of the Insured's rights of recovery thereof against any person or organization other than any other Insured under this policy and the Insured shall execute and deliver instruments and papers and do whatever is necessary to secure such rights. The Insured shall do nothing before or after payment of Claim to waive or prejudice such rights.

#### **F. NO ACTION AGAINST THE COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of the policy, and the amount of the Insured's obligation to pay shall have been finally determined, either by written agreement of the Insured, the claimant, and the Company or by final judgment against the Insured after actual trial of the issues, and the time to appeal therefrom has expired without an appeal having been taken or, if an appeal has been taken, then until after actual trial of the issues, and the time to appeal therefrom has expired without an appeal having been taken or, if an appeal has been taken, then until after the appeal has been determined.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any such action against the Insured or to determine the Insured's liability.

#### **G. BANKRUPTCY OR INSOLVENCY OF THE INSURED**

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligation hereunder, except as stated in VI. Exclusions D 1.

#### **H. ASSIGNMENT**

Assignment or transfer of interest under this policy shall not bind the Company until its consent is endorsed hereon.

#### **I. CHANGES**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of the policy, nor shall the terms of this policy be waived or changed except by endorsements issued to and that form a part of this policy.

All changes in structure of the Insured including but not limited to mergers or acquisitions or changes in the type of work undertaken by such Insured must be noticed to the Company within thirty (30) days of the effective date of such changes. The Company will, at its sole discretion, be at liberty to accept or reject such additional exposure(s) and charge an additional premium, as it deems appropriate. No Coverage will attach for such additional exposures(s) until the Company has agreed to such in writing.

## **J. PURCHASING GROUP MEMBER AS AGENT**

The Purchasing Group Member initially specified in Item 3 of the General Declarations shall be considered the agent of the Insured with respect to all matters involving this policy and shall be responsible for the payment of all premiums and deductibles and the reimbursement to the Company upon demand for all amounts the Company may have elected to pay falling under the deductible.

## **K. PREMIUM**

The premium for this policy shall be the amount specified in Item 4 of the General Declarations, provided that if during this Policy Period there is a change in the Coverage afforded hereunder, the Company shall have the right to adjust such premium as of the date of such change in accordance with the Company's prevailing rules and rates.

## **L. ACCEPTANCE**

By acceptance of this policy, the Purchasing Group Member agrees that all provisions of this policy, including all endorsements attached hereto, embody all agreements existing between the Purchasing Group Member and the Company and supersede any prior agreements, whether expressed or implied.

## **M. AUDIT**

The Company may examine and audit the Purchasing Group Member's books and records at any time during the Policy Period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

## **N. RECOURSE**

In the event of any payment by the Company under this policy by reason of a breach of fiduciary obligation by a fiduciary under the provisions of the Employee Retirement Income Security Act of 1974, the Company shall have a right of recourse against such fiduciary to the extent of such payment.

## **O. THIS POLICY SHALL APPLY ONLY IF NO OTHER INSURANCE IS APPLICABLE.**

## **P. DEFENSE AND SUPPLEMENTARY PAYMENTS**

The Company Shall:

1. Defend in the Insured's name and on behalf of the Insured any suit against the Insured alleging Damages covered under the policy, even if such suit is groundless, false or fraudulent. The Company shall have the right to make such investigation and negotiation of any Claim as may be deemed expedient by the Company as a condition to providing such defense or making payment;
2. Have no duty or obligation to defend any Insured in any criminal proceedings;
3. Pay on behalf of the Insured appeal costs, premium on bonds, interest prior to and post judgment, if assessed;
4. Pay Damages, Defenses, Supplementary Payments but not to exceed the amount specified in Item 1 of the Executive Liability Declarations.

## Q. CANCELLATION

**The Purchasing Group Member may cancel this policy** by mailing to the Company, c/o its administrative address as specified herein or as otherwise may be specified by endorsement to this policy, written notice stating when thereafter such cancellation shall be effective. The Company must receive the notice before the requested date of cancellation for the cancellation to take effect.

If the Purchasing Group Member invokes cancellation of the policy, the earned premium due to the Company by The Purchasing Group Member shall be computed in accordance with the customary short rate table with one hundred percent (100%) of any policy issuance fee being fully earned at inception. However, notwithstanding the aforementioned, if any Claim(s) or circumstances(s) which may give rise to a Claim under this policy is (are) reported to the Company during the Policy Period prior to cancellation, then no premium will be returned to the Purchasing Group Member as all premium will be considered earned at the time of such notification.

**The Company may cancel this policy** by mailing to the Purchasing Group Member, specified in Item 3 of the General Declarations, written notice stating when the cancellation is to take effect, which cannot be less than sixty (60) days nor more than one hundred and twenty (120) days from the date the written notice is sent to the Purchasing Group Member, except for non-payment of premium. In the case of non-payment of premium, not less than ten (10) days advance notice of cancellation shall be given. The mailing of notice as aforesaid shall be sufficient notice of the intent to cancel. The effective date of cancellation specified in such notice shall terminate this Policy Period.

The Company can initiate the cancellation process for any reason within sixty (60) days of the policy effectuating. After the policy has been in effect for more than sixty (60) days, reasons for the Company to cancel the policy, other than nonpayment of premium as described above, include the following:

- i) A material misrepresentation or nondisclosure of fact to the Company at the time the risk was accepted;
- ii) An increased hazard or material change in the risk assumed that could not have been reasonably contemplated by the parties at the time the risk was accepted;
- iii) A substantial breach of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
- iv) A fraudulent act against the Company by the Purchasing Group Member or its representative that materially affect the nature of the risk;
- v) A lack of cooperation from the Purchasing Group Member on loss control matters affecting the nature of the risk;
- vi) A change in statutory or case law after the issuance of the policy materially affecting the insurability of the risk.

If the Company invokes cancellation of the policy, the earned premium due to the Company by the Purchasing Group Member shall be computed pro rata. Notwithstanding the aforementioned, if any Claim(s) or circumstances(s) which may give rise to a Claim under this policy is (are) reported to the Company during the Policy Period prior to cancellation, then no premium will be returned to the Purchasing Group Member as all premium will be considered earned at the time of such notification.

In the event the Purchasing Group Member ceases to be a shareholder of Architects & Engineers Insurance Company, A Risk Retention Group, for any reason whatsoever, the Company shall cancel the policy in accordance with the aforementioned cancellation procedure.

**R. EXTENDED REPORTING PERIOD**

In the event of cancellation or nonrenewal of this policy, the Purchasing Group Member shall then have the right, in consideration of an additional premium equal to one hundred percent (100%) of the full premium charged hereunder, to an extension of the Coverage granted by this policy, subject to its terms, Insuring Agreements, Definitions, Exclusions and Conditions, in respect of any Claim first made against the Purchasing Group Member and reported in writing to the Company during the period of twelve (12) months after the cancellation or expiration date of this policy but only when such Claim arises on or after the retroactive date and prior to the cancellation of this policy, or the expiration date as set forth in Item 2 of the General Declarations, whichever date is earlier.

To exercise this right, the Purchasing Group Member must give notice in writing within thirty (30) days of the cancellation or expiration date of this policy to the Company and remit full payment of the premium for this Extended Reporting Period to the Company within thirty (30) days of such notice. In the event or failure by the Purchasing Group Member to give such notice and remit such premium prior to such date, it shall not at a later date be able to invoke this extension. The mailing by the Purchasing Group Member by registered or certified mail of notice to the Company shall be sufficient proof of notice. In the event of the purchase of the Extended Reporting Period, the entire premium shall be deemed earned at its commencement and the Company shall not be liable to return any portion of the premium paid for the Extended Reporting Period.

The quotation by the Company of a different premium, Limit of Liability, Deductible or changes in policy Coverage for the purpose of renewal shall not constitute a refusal to renew by the Company.

The purchase of the Extended Reporting Period shall not reinstate or the increase the Limit of Liability as stated in Item 1 of the Executive Liability Declarations.

**S. CONFORMITY TO STATUTE**

Terms of this policy which are not protected by The Liability Risk Retention Act and which are in conflict with any statute of the state wherein this policy is issued are hereby amended to conform to such statutes.

**T. TERRITORY, POLICY PERIOD AND CLAIMS MADE PROVISIONS:**

This policy applies only to wrongful and/or negligent acts, errors or omissions which occur within the United States of America, its territories or possessions, or Canada (unless otherwise endorsed).

**IN WITNESS WHEREOF**, the Company has caused B. Insuring Agreements to be executed and attested, but this Coverage shall not be valid unless executed on the General Declarations by the Company's underwriting manager and by the Company below.

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Treasurer**