



IRONSHORE SPECIALTY INSURANCE COMPANY

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DESIGNERS AND CONTRACTORS PROFESSIONAL LIABILITY INSURANCE POLICY

IMPORTANT NOTICE (Claim Expenses are within the Limit of Insurance)

THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD AND WHICH ARE REPORTED TO THE COMPANY IN ACCORDANCE WITH THE TERMS SET FORTH HEREIN.

THE LIMIT OF INSURANCE AVAILABLE TO PAY DAMAGES WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF CLAIM EXPENSES. PLEASE READ THE POLICY CAREFULLY.

TERMS THAT APPEAR IN **BOLDFACE** TYPE HAVE SPECIAL MEANING, PLEASE REFER TO SECTION V. OF THIS POLICY.

- I. INSURING AGREEMENTS
- II. COVERAGE EXTENSIONS
- III. LIMITS OF INSURANCE AND RETENTION
- IV. EXCLUSIONS
- V. DEFINITIONS
- VI. CONDITIONS

In consideration of payment of the premium by the **Named Insured** and in reliance on all statements made and information provided to the **Company**, including but not limited to the statements contained in or provided with the **Insured's Application**, and subject to all terms and conditions of this policy, the **Company** agrees with the **Insured** as follows:

I. INSURING AGREEMENTS

A. COVERAGE

The **Company** will pay on behalf of the **Insured** those sums in excess of the **Retention** and up to the applicable Limit of Insurance specified in Item 5. of the Declarations that the **Insured** becomes legally obligated to pay as **Damages**, including **Claim Expenses**, because of a **Claim** for a **Wrongful Act** in the performance or non-performance of **Professional Services** rendered to others by the **Insured** or by any person or entity for whom the **Insured** is legally liable and to which this insurance applies.

For this coverage to apply, all of the following conditions must be satisfied:

- a. the **Wrongful Act** forming the basis of any **Claim** must first take place on or after the **Retroactive Date** specified in Item 3. of the Declarations and prior to the expiration date of the **Policy Period** specified in Item 2. of the Declarations;
- b. prior to the effective date of this policy, no officer, director, principal, partner, insurance manager, risk manager or in-house counsel of any **Insured** had knowledge of any actual or alleged **Wrongful Act** or circumstance that reasonably could give rise to a **Claim** under this policy;
- c. **Claims** must first be made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period**; and
- d. the **Insured** must report the **Claim** to the **Company**, in writing, during the **Policy Period** or within sixty (60) days after the expiration of the **Policy Period** or during any applicable **Extended Reporting Period**.

B. TERRITORY

This coverage afforded by this policy applies to **Claims** arising out of a **Wrongful Act** in the performance or non-performance of **Professional Services** that take place in and result in a **Claim** brought anywhere in the world. If **Damages** or **Claim Expenses** are paid in a currency other than United States of America dollars, then the payment under this policy will be considered to have been made in United States of America dollars at the conversion rate that was used for the payment.

C. DEFENSE PROVISIONS

1. **Claims** brought within the United States of America its territories or possessions or Puerto Rico:
 - a. For all **Claims** brought against an **Insured** within the United States of America, its territories or possessions or Puerto Rico, for which coverage is provided under this policy, the **Company** has the right to investigate such **Claim** and the duty to defend such **Claim** with defense counsel selected by the **Company** even if the allegations of the **Claim** are groundless, false or fraudulent. **Claim Expenses** reduce the Limit of Insurance and shall be applied against the **Retention** shown in Item 6. of the Declarations. The **Company** shall not defend any **Claim** or pay any **Claim Expenses** or **Damages**:
 - i. after the applicable Limit of Insurance has been exhausted by payment of **Claim Expenses** or **Damages** or both;
 - ii. after the applicable Limit of Insurance has been exhausted by the payment of **Claim Expenses** or a tender of **Damages** into a court of applicable jurisdiction or both;
 - iii. upon the **Insured's** refusal to a settlement offer as provided in paragraph D., subparagraph 2. below.
 - b. Should any of the preceding occur, the **Company** shall have the right to withdraw from the further defense of such **Claim** and control of the defense shall be ceded to the **Insured**.

2. **Claims** brought outside the United States of America, its territories, possessions or Puerto Rico:

- a. When any **Claim** against an **Insured** for which coverage is provided under this policy is brought outside the jurisdiction set forth in paragraph C., subparagraph 1. above, the **Company** shall have the right and duty to defend if permissible under the law of the jurisdiction where the **Claim** is made. If, however, the law of the jurisdiction where the **Claim** is made does not permit the **Company** to defend the **Claim**, the **Company** shall have the right to associate with the **Insured** in the investigation, defense and control of such **Claim** from the date the **Claim** is first made against the **Insured** and has been received by the **Company**. The **Insured** has a right to select defense counsel for such matters with the **Company's** prior consent, which consent shall not be unreasonably withheld. The **Insured** has a duty to cooperate with the **Company** and promptly provide any information or materials that the **Company** requests. The **Company** shall reimburse the **Insured** for **Damages** and/or **Claim Expenses** as authorized by the **Company**. The **Company** shall not pay **Damages** and/or **Claim Expenses** after the applicable Limit of Insurance has been exhausted.

D. SETTLEMENT PROVISIONS

1. An **Insured** may not, except at its own non-reimbursable cost, settle any **Claim** or incur any costs or expenses in connection with any **Claim** without the prior written consent of the **Company**.
2. The **Company** has the right to settle all **Claims** subject to the consent of the **Insured**. However, if the **Insured** refuses to consent to any settlement recommended by the **Company**, then the liability of the **Company** for the **Claim** will be limited to the amount equal to the amount for which the **Claim** could have been settled plus **Claim Expenses** incurred up to the date of the refusal of the **Insured** to consent to the settlement minus any remaining **Retention** payable by the **Insured**.
3. The failure of the **Insured** to express consent to a settlement recommended by the **Company** will be deemed refusal to consent to the settlement.

II. COVERAGE EXTENSIONS

A. DISCIPLINARY PROCEEDINGS

1. Upon written request from the **Insured**, the **Company** will reimburse the **Insured** for reasonable attorney fees and court or administrative costs incurred by the **Insured** to investigate, defend or appeal any formal **Disciplinary Proceeding**, provided such proceeding is first commenced during the **Policy Period** and is brought against the **Insured** by a disciplinary or regulatory official, board or agency through the filing of a notice of charges, formal investigative order, service of summons or similar document. Reimbursement is subject to the following:
 - a. payments made by the **Company** shall not include fines, penalties or sanctions assessed against any **Insured**; or salaries, wages, fees, or other compensation payable to any **Insured**;
 - b. the maximum total liability of the **Company** for such reimbursement shall not exceed twenty five thousand dollars (\$25,000) in the aggregate for all such proceedings regardless of the number of **Insureds** or **Disciplinary Proceedings**; and

- c. the reimbursement amount is included within and reduces the Limit of Insurance. The **Retention** amount applicable to each **Claim** including **Claim Expenses** shall not apply to the payments made by the **Company** pursuant to this provision of this policy.
2. The **Company** has no obligation to defend or provide defense counsel with respect to such **Disciplinary Proceedings**.

B. MEDIATION INCENTIVE

If the **Insured** and the **Company** jointly agree to utilize Mediation as a means to try to resolve a **Claim** made against the **Insured**, and if such **Claim** is fully and finally resolved through the use of Mediation, then the **Insured's Retention** for such **Claim** shall be fifty percent (50%) of the amount of the **Retention** shown in Item 4. of the Declarations applicable to such **Claim**, subject to a maximum reduction of twenty thousand dollars (\$20,000) for such **Claim**. The **Company** shall reimburse the **Insured** for any applicable **Retention** payment made in excess of such reduced **Retention**, as soon as practicable, after the final resolution of the **Claim**.

C. ATTENDANCE AT MEDIATIONS, ARBITRATIONS, DEPOSITIONS, OR TRIAL

Upon written request by the **Insured**, the **Company** will reimburse reasonable expenses incurred by the **Insured** for loss of earnings incurred as a result of being required to attend, at the **Company's** request, a mediation, arbitration, deposition or trial related to a covered **Claim**, subject to the following:

1. No reimbursement will apply for the first two (2) days of attendance by the **Insured**;
2. Loss of earnings reimbursement for attending mediations, arbitrations, depositions or trials shall not exceed five hundred dollars (\$500) per **Insured** per day for each **Claim** subject to a maximum policy aggregate of seven thousand five hundred dollars (\$7,500) regardless of the number of **Insureds** who attend such proceedings at the request of the **Company**.
3. Loss of earnings reimbursement will not be considered **Damages** and/or **Claim Expenses** and will be reimbursed in addition to the Limit of Insurance.
4. Loss of earnings reimbursement is not subject to the **Retention** shown in Item 6. of the Declarations.

D. ESTATES, HEIRS AND LEGAL REPRESENTATIVES

In the event of the death or incapacity of an **Individual Insured**, or the bankruptcy of an **Insured**, any **Claim** made against any of the heirs, executors, administrators, trustees in bankruptcy, assignees and legal representatives of any **Insured**, based upon actual or alleged **Wrongful Acts** of such **Insured**, shall be deemed to be a **Claim** against such **Insured** for the purposes of this Policy.

E. SPOUSAL AND DOMESTIC PARTNER LIABILITY

If a **Claim** is asserted against the lawful spouse or a person qualifying as a domestic partner under the provisions of any applicable federal, state or local law of any **Individual Insured** solely as a result of:

1. the status of the spouse or domestic partner as spouse or domestic partner of any **Individual Insured**; or
2. the ownership interest of the spouse or domestic partner in property, which the claimant seeks as recovery for actual or alleged **Wrongful Acts** of any **Individual Insured**.

Then, such **Claim** shall be deemed a **Claim** against the **Individual Insured** for the purpose of this Policy; provided, however, that, subject to all of the terms, conditions, limitations, restrictions and exclusions of the Policy, coverage shall only apply to **Claims** for actual or alleged **Wrongful Acts** of the **Insured** and no coverage will be provided for any **Claim** for any actual or alleged **Wrongful Acts** of the spouse or domestic partner.

III. LIMIT OF INSURANCE AND RETENTION

A. LIMIT OF INSURANCE - EACH CLAIM AND LIMIT OF INSURANCE - AGGREGATE

1. The Limit of Insurance-Each **Claim** shown in Item 5.a. of the Declarations is the most the **Company** will pay for **Damages** and **Claim Expenses** combined for each **Claim** or related Claim, as described in Section B.1. Related Claims, made during the **Policy Period** and any **Extended Reporting Period**, no matter how many:
 - a. **Insureds** this policy covers;
 - b. **Claims** that are made; or
 - c. persons or organizations that make **Claims**.
2. The Limit of Insurance-Each **Claim** shall apply in excess of the **Retention**.
3. The Limit of Insurance-Aggregate specified in Item 5.b. of the Declarations is the most the **Company** will pay for **Damages** and **Claim Expenses** combined for the total of all **Claims** made during the **Policy Period** and any **Extended Reporting Period**, no matter how many:
 - a. **Insureds** this policy covers;
 - b. **Claims** that are made; or
 - c. persons or organizations that make **Claims**.
4. Each payment the **Company** makes for **Damages** or **Claim Expenses** reduces the Limit of Insurance-Each **Claim** amount and reduces the Limit of Insurance-Aggregate.
5. The **Company** will not be obligated to pay or reimburse any **Claim Expenses** or **Damages** or defend any **Claim** after the Limit of Insurance-Each **Claim** is exhausted, subject to the Limit of Insurance-Aggregate.
6. The **Company** will not be obligated to pay or reimburse any **Claim Expenses** or **Damages** or defend any **Claim** after the Limit of Insurance-Aggregate is exhausted.

B. RELATED CLAIMS

1. Two or more covered **Claims** arising out of a single **Wrongful Act** or any series of logically or causally related **Wrongful Acts** will be considered a single **Claim** and shall be deemed to be made at the time the first of such **Claims** is made.

2. This policy shall only apply if the first or earliest **Claim** arising from such logically or causally related **Wrongful Act** is made during the **Policy Period**, or any applicable **Extended Reporting Period**.
3. These provisions apply regardless of the number of **Insureds** involved in such a **Claim**, the number of **Claims** made, or the number of people or organizations that make the **Claims**. The number of **Claims** made or the number of people or organizations that make **Claims** shall not operate to increase the Limit of Insurance as described above and as specified in Item 5. of the Declarations

C. RETENTION

1. The “Each **Claim Retention**” stated in Item 6. of the Declarations applies separately to each **Claim**.
2. The Each **Claim Retention** shall be satisfied by monetary payments by the **Named Insured** for **Damages** and **Claim Expenses** resulting from **Claims** first made during the **Policy Period** and reported to the **Company** pursuant to the terms of this Policy. Satisfaction of the Each **Claim Retention** is a condition precedent to the payment by the **Company** of any amounts hereunder, and the **Company** shall be liable only for the amounts in excess of the Each **Claim Retention** subject to the **Company’s** total liability not exceeding the Limit of Insurance stated in Items 5.a. and 5.b. of the Declarations.

IV. EXCLUSIONS

This policy does not provide coverage and the **Company** is not obligated to pay **Damages** or **Claim Expenses** or defend any **Claim** based upon or arising out of:

- A. **DISHONEST ACTS** - Dishonest, fraudulent, criminal or malicious act, or omission or any intentional or knowing violation of any law, statute, ordinance, rule or regulation by an **Insured** or at the direction of an **Insured**, provided, however, this exclusion shall not apply:
 1. To **Claim Expenses** or the duty of the **Company** to defend any such **Claim** until there is a judgment against, binding arbitration against, adverse admission by, finding of fact against, or pleas of *nolo contendere* or no contest by the **Insured**, at which time the **Insured** shall reimburse the **Company** for any **Claim Expenses** paid by the **Company**;
 2. To any individual **Insured** who did not commit, participate or have knowledge of such conduct or violation; andUnder no circumstances shall the **Company** be responsible for the payment of **Claim Expenses** related to the defense of a criminal prosecution against the **Insured**.
- B. **DISCRIMINATION, HARASSMENT, WRONGFUL TERMINATION** - Any unlawful discrimination, harassment or wrongful termination including that based upon race, creed, color, religion, national origin, age, sex, marital status, sexual orientation or disability. However, this exclusion shall not apply where such **Claim** arises out of the failure to make reasonable accommodations under the Americans With Disabilities Act (“ADA”) or any state or local versions of that act, as amended, in the course of the performance of **Professional Services**.
- C. **INSURED VS. INSURED** - Any **Claim** made by any **Insured** against any other **Insured**.

- D. SAFETY - Any failure to recommend, implement, review, or monitor safety precautions or programs.
- E. WORKERS COMPENSATION - Any obligation of any **Insured** under any workers' compensation, disability benefits or unemployment compensation law or any similar laws.
- F. CONTRACTUAL LIABILITY - Liability of others assumed by any **Insured** under any contract or agreement; except this exclusion does not apply to liability an **Insured** would have in the absence of such contract or agreement.
- G. WARRANTY OR GUARANTEE - Any express warranty or guarantee unless the **Insured's** liability arises as a result of a **Wrongful Act** and would have existed absent such warranty or guarantee.
- H. FAULTY WORKMANSHIP - The cost to repair or replace any faulty workmanship in any construction, erection, fabrication, installation, assembly or manufacturing including materials, parts or equipment furnished in connection therewith, and including any workmanship which is not in accordance with the drawings and specifications with respect to any construction, erection, fabrication, installation, assembly or manufacturing process. However this exclusion does not apply to a **Claim** which results from a **Wrongful Act** in the performance of **Professional Services** by the **Insured** or others for whom the **Insured** is legally responsible.
- I. CONSTRUCTION MEANS AND METHODS - Any actual or alleged obligation on the part of any **Insured** for construction means, methods, techniques, sequences or procedures, unless the **Insured's** obligation arises from the **Insured's** design documents which require specific construction means, methods, techniques, sequences or procedures to execute the design.
- J. BUSINESS ENTERPRISE - Any **Insured's** involvement as a partner, officer, director, stockholder, employer or employee of any business enterprise not named in the Declarations.
- K. RELATED ENTITIES - Any **Claim** made by any organization or subsidiary or affiliate thereof, not named in the Declarations, which any **Insured** controls, manages, operates or holds more than a twenty five percent (25%) ownership interest in or which controls, manages, operates or holds more than a twenty five percent (25%) ownership interest in any **Insured**.
- L. PRODUCTS - The design, manufacture, sale, supply or distribution of any goods or products by any **Insured**, any subsidiary or any entity which wholly or partly owns, operates, or manages the **Insured** or any subsidiary of such entity, or by any person or entity under license from the **Insured**;
1. Except this exclusion does not apply to computer programs or software created or modified specifically for a client in connection with **Professional Services** performed by the **Insured** for that client.
- M. INSURANCE, BONDS AND SURETIES - The **Insured's** requiring, obtaining, maintaining or the **Insured's** failure to require, obtain or maintain any bond, suretyship or any form of insurance, or any **Claim** based upon or arising out the **Insured's** advising or failing to advise with respect to the requiring, obtaining or maintaining of any bond, suretyship or any form of insurance.
- N. INTELLECTUAL PROPERTY - Infringement of patent, trademark or trade dress or misappropriation of trade secrets.
- O. FINANCIAL ADVICE AND PROCUREMENT - The **Insured's** advising or requiring of, or failure to maintain or procure any financing or monies for payment of any portion of a project;

P. BODILY INJURY - **Bodily Injury** sustained by any employee of any **Insured** while engaged in employment by any **Insured**, or by any person whose right to assert a **Claim** against the **Insured** arises by reason of any blood, marital or other relationship with the employee. This exclusion applies:

1. Whether the **Insured** may be liable as an employer or in any other capacity; and
2. To any obligation to share **Damages** with or repay someone else whom must pay **Damages** because of such **Bodily Injury**;

Q. WAR - War, including undeclared or civil war; or

1. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
2. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

This exclusion does not apply to a certified act of terrorism defined by Section 102. Definitions, of the Terrorism Risk Act of 2002 and any revisions or amendments thereto.

R. NUCLEAR – Based on or arising out of radioactive, toxic or explosive properties of source materials, special nuclear materials or by-product materials as defined in the Atomic Energy Act of 1954 or any amendment thereof, and for which the United States Department of Energy or any other government authority or agency has indemnified the **Insured** or for which financial protection or the Price Anderson Act provides protection for the **Insured**.

S. PRIOR NOTICE - Any **Claim**, fact or circumstance for which notice was given by an **Insured** to any other insurer prior to the effective date of this policy.

T. ASBESTOS – The manufacture, mining, use, sale, installation, removal, distribution of, or exposure to asbestos or silicone, materials or products containing asbestos or silicone, or asbestos fibers or dust, or silicone fibers or dust, or any obligation of any **Insured** to indemnify any party because of **Damages** arising out of such liability.

V. DEFINITIONS

Some **Boldfaced** words may be defined in other parts of the policy.

A. **Application** means the signed application for the policy including any attachments and other materials submitted in conjunction with the signed **Application**. The **Application** shall be maintained by the **Company** and shall be deemed a part of this policy as if physically attached. If this policy is a renewal or replacement of a previous policy or policies issued by the **Company**, all signed applications and other materials that were attached to and became a part of these previous policies shall be considered as part of the **Application** for this policy.

B. **Bodily Injury** means physical bodily injury, sickness, disease, death, mental anguish or emotional distress sustained by any person.

C. **Claim** means any demand received by an **Insured** alleging a **Wrongful Act** on the part of the **Insured** or persons for whose conduct the insured is legally liable.

D. **Claim Expenses** means expenses incurred by the **Company** in the investigation, adjustment, negotiation, arbitration, mediation, settlement and defense of **Claims**.

1. **Claim Expenses** include:

- a. expenses the **Company** incurs, other than salary, wages or expenses of the regular employees of the **Company**, to investigate, adjust, negotiate, arbitrate, mediate, settle, defend or appeal a **Claim**;
- b. reasonable and necessary fees charged by attorneys selected or pre-approved by the **Company** to defend an **Insured**;
- c. the cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. The **Company** will not apply for or furnish these bonds; and
- d. reasonable and necessary expenses incurred by an **Insured** at the request of the **Company**.

2. **Claim Expenses** do not include:

- a. loss of earnings or profit by any **Insured**; and
- b. salaries, wages, fees, or other compensation payable to any **Insured** or employee of any **Insured**.

E. **Company** refers to Ironshore which appears on the Declarations.

F. **Construction Manager** means a person or organization that provides professional consulting services to a project owner to assist the project owner in the oversight of the project and to monitor the progress of the design and construction process.

G. **Damages** means:

1. Amounts which an **Insured** is legally obligated to pay for any **Claim** to which this insurance applies, as a result of a covered judgment, award or settlement;
2. Costs charged against an **Insured** in any suit defended by the **Company** unless such costs are assessed as a sanction for the delay or misconduct in the litigation process by an **Insured**;
3. Pre-judgment interest and post-judgment interest assessed before the **Company** has paid, offered to pay or deposited in court the part of the judgment that is covered by this policy and that is within the applicable Limit of Insurance; and
4. Punitive, exemplary or multiple damages, where insurable by law.
5. **Damages** do not include:
 - a. taxes, criminal or civil fines or penalties imposed by law;
 - b. the return or withdrawal of professional fees;
 - c. amounts deemed uninsurable by the law pursuant to which this policy is construed; or

- d. **Liquidated Damages** except for liability the **Insured** would have in the absence of such **Liquidated Damages**.
- H. **Disciplinary Proceedings** means any matter alleging a violation of a rule of professional conduct, including an initial inquiry before a state or federal licensing board or a peer review committee to investigate such charges.
- I. **Retention** shall mean the amount shown in Item 6. of the Declarations
- J. **Extended Reporting Period** means that period described in Section VI., paragraph D1., a. and b. and shown in Item 4. of the Declarations.
- K. **Individual Insured** means any past, present or future partner, director, officer, member, board member or employee of the **Named Insured**, but only for acts within the scope of their duties for the **Named Insured**.
- L. **Insured** means:
1. The **Named Insured**;
 2. Any past, present or future partner, director, officer, member, board member or employee of a **Named Insured**, but only for acts within the scope of their duties for the **Named Insured**;
 3. The heirs, executors, administrators, and legal representatives of each **Insured** as defined in 1. and 2. above, in the event of death, incapacity or bankruptcy of such **Insured**, but only as respects liability arising out of **Professional Services** rendered by or on behalf of the **Named Insured** prior to such **Insured's** death, incapacity or bankruptcy;
 4. Contract or leased personnel or any independent contractor of the **Named Insured**, but only for **Professional Services** performed on behalf of and at the direction of the **Named Insured**;
 5. A joint venture in which a **Named Insured** is named as a co-venturer, but only for the **Named Insured's** legal liability arising out of the **Named Insured's** participation in such joint venture; or
 6. A limited liability company in which the **Named Insured** is a member, but only for the **Named Insured's** legal liability arising out of the **Named Insured's** participation in such limited liability company; or
 7. Any **Predecessor in Interest**.
- M. **Insureds Products** means goods, products or pieces of equipment, including component parts thereof, and including other products in which goods, products or pieces of equipment are incorporated, which are manufactured, sold, furnished, or supplied by an **Insured**, any subsidiary of an **Insured** or any subsidiary of such subsidiary, or any other person under license from the **Insured**.
- N. **Liquidated Damages** means an amount stipulated in advance in a contract to be the amount or measure of damages to be recovered by a party to that contract if the other party breaches the agreement or fails to perform or fails to adequately perform its obligations under the contract.
- O. **Named Insured** means the entity shown in Item 1. of the Declarations.

- P. **Policy Period** means the period of time specified in Item 2. of the Declarations or a shorter period resulting from cancellation of the policy.
- Q. **Predecessor in Interest** means any prior entity that:
1. Was acquired or whose assets were acquired by the **Named Insured** prior to the effective date of this policy or for which a name change has occurred prior to the effective date of this policy,
 2. Has been disclosed in the application for insurance under this Policy, or
 3. For which the **Named Insured** in a written contract or written agreement is required to provide insurance coverage as is provided by this policy.
- R. **Professional Services** means those services the **Insured**, or any person or entity for whom the **Insured** is legally liable, is qualified to perform for others as an architect, engineer, **Construction Manager**, land surveyor, landscape architect, scientist, or technical consultant, including when such services are performed on projects seeking LEED Certification and/or utilizing Building Information Modeling “(BIM)” or as specifically defined by endorsement to this policy. **Professional Services** also includes those design services provided under a written contract to facilitate the construction process whether performed by the **Insured** or anyone for whom the **Insured** is legally liable.
1. **Professional Services** shall not include maintenance operation services or property and/or facility operation services.
- S. **Property Damage** means:
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 event giving rise to the **Property Damage**; or
 2. Loss of use of tangible property that has not been physically injured or destroyed caused by or arising out of a **Wrongful Act**.
- T. **Retroactive Date** means the date specified in Item 3. of the Declarations.
- U. **Wrongful Act** means negligence, which is the failure to meet the professional standard of care legally required or reasonably expected, under the same or similar circumstances, in the performance or non-performance of **Professional Services** rendered to others by the **Insured** which results in **Damages** for which the **Insured** is legally liable

VI. CONDITIONS

A. REPORTING A CLAIM

1. As a condition precedent to the right of coverage under this policy, the **Insured** has the duty to give written notice to the **Company**, of any **Claim** made against the **Insured**, as soon as practicable either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period**, during any applicable **Extended Reporting Period** or upon an earlier termination date of the policy. Written notice shall be given to:

C/O Ironshore Insurance Services, LLC
Attention: President of Claims
Designers and Contractors Professional Liability (DCPL)
One State Street Plaza, 7th Floor
New York, New York 10004

2. Written notice shall include all of the following:
 - a. the actual or alleged **Wrongful Act** or circumstance which is the subject of the **Claim**; and
 - b. a description of the project and the **Professional Services** performed or failed to be performed by the **Insured(s)**; and
 - c. the date(s) that such **Professional Services** were performed or failed to be performed by the **Insured(s)**; and
 - d. a description of the injury or damage; and
 - e. the identities and addresses of any potential claimant(s); and
 - f. the project(s) involved in the **Claim**; and
 - g. every demand, notice, summons or other process received by the **Insured** or the **Insured's** representatives.
3. In addition, the **Insured** must comply with all of the following:
 - a. cooperate with the **Company** in the investigation, defense and settlement of the **Claim**, including providing the **Company** with information and/or documents requested by the **Company** in connection with its investigation or defense of the **Claim**, within thirty (30) days after such request by the **Company**; and
 - b. immediately notify the **Company** of any settlement offers or demands; and
 - c. immediately notify the **Company** upon the receipt of any request to engage in settlement negotiations; and
 - d. submit to an examination under oath by a representative of the **Company**, if required by the **Company**; and

- e. assist the **Company**, upon the **Company's** request, to secure and affect any rights of indemnity, contribution or apportionment.
4. Unless explicitly provided under Section II., paragraph C. ATTENDANCE AT MEDIATIONS, ARBITRATIONS, DEPOSITIONS OR TRIAL, any expenses incurred by the **Insured** with respect to the above subparagraphs 3.a. through 3.e., inclusive, shall be without charge to the **Company**.
5. If the **Insured** has the right to either accept or reject arbitration of any **Claim**, the **Insured** shall exercise such right only with the written consent of the **Company**.
6. Other than what is required by law, the **Insured** shall refrain from discussing the facts and circumstances of any **Claim** with anyone other than defense counsel representing the **Insured** or representatives of the **Company**.

B. REPORTING A POTENTIAL CLAIM

1. If the **Insured** first becomes aware during the **Policy Period** of an actual or alleged **Wrongful Act** or circumstance that reasonably could give rise to a **Claim** under this policy, the **Insured** may give written notice to the **Company** containing all of the information below. If such written notice is received by the **Company** prior to the end of the **Policy Period**, then any **Claim** subsequently made against the **Insured** arising out of the same **Wrongful Act** or circumstance shall be deemed to have been first made during the **Policy Period**.
2. Written notice shall contain all of the following information:
 - a. the actual or alleged **Wrongful Act** or circumstance which is the subject of a potential **Claim**; and
 - b. a description of the **Professional Services** rendered by the **Insured** which may result in the **Claim**; and
 - c. the date(s) that such **Professional Services** which may result in the **Claim** were rendered; and
 - d. a description of the injury or damage that may result in a **Claim**; and
 - e. the identities and addresses of any potential claimant(s); and
 - f. the project(s) involved in any such potential **Claim**; and
 - g. the circumstances by which the **Insured** first became aware of the potential **Claim**.
3. The **Insured** shall cooperate fully with the **Company** in any investigation of a potential **Claim**.

C. ACQUISITIONS OR FORMATION OF NEW ENTITIES

1. The **Company** will cover any organization, other than joint ventures or limited liability companies, that the **Named Insured** newly acquires or forms and over which the **Named Insured** maintains ownership or a majority interest, from the date that the **Named Insured** acquires or forms the organization (hereinafter the "initial period") for sixty (60) days or for the remainder of the **Policy Period**, whichever is less, provided that no **Insured** is covered for any **Wrongful Act** that occurred before the **Named Insured** acquired or formed the organization.

2. The **Named Insured** shall notify the **Company** in writing within sixty (60) days after the **Named Insured** newly acquires or forms such organization. The **Company** reserves the right to charge an additional premium for this initial period.
3. For coverage to apply after the expiration of this initial period, the **Named Insured** must provide any information the **Company** requires within the first sixty (60) days after the **Named Insured** newly acquires or forms such organization. The **Company** will review such information and reserves the right to amend the policy and charge an additional premium from the date of the acquisition or formation of such organization. The additional premium must be paid when due in order for coverage to be extended for the newly acquired or formed organization.
4. The **Company** will not provide coverage after the initial period unless the **Named Insured** has notified the **Company** as set forth in paragraph C., subparagraph 2., above.

D. EXTENDED REPORTING PERIOD

1. In the event of cancellation or non-renewal of this policy by the **Company** or the **Named Insured**, for reasons other than non-payment of premium and/or non-payment of the **Retention** and/or non-compliance with the terms and conditions of this policy, the **Named Insured** will have the right to purchase an **Extended Reporting Period**.
 - a. The right to purchase the **Extended Reporting Period** will terminate unless written notice of the intention of the **Named Insured** to purchase it, together with payment of the additional premium due, is received by the **Company** within thirty (30) days after the effective date of the termination or cancellation.
 - b. The additional premium for the **Extended Reporting Period** will be calculated using the percentage shown in Item 4. and the premium shown in Item 7. of the Declarations. The additional premium for the **Extended Reporting Period** will be fully earned at inception. Once purchased, the **Extended Reporting Period** may not be cancelled.
2. A **Claim** made during the **Extended Reporting Period** will be deemed to have been made on the last day of the **Policy Period**. All terms and conditions in effect on that day will apply to the **Claim**.
3. The **Extended Reporting Period** does not extend the **Policy Period** or change the scope of coverage provided nor does it provide an additional or renewed Aggregate Limit of Insurance. It applies only to **Claims** made against an **Insured** during the **Extended Reporting Period** for a **Wrongful Act** in the performance or non-performance of **Professional Services** that occurs after the **Retroactive Date** and before the end of the **Policy Period**.
4. In the event the **Named Insured** elects to cancel or non-renew this policy, the **Company** will offer an **Extended Reporting Period** at its discretion.
5. As a condition precedent to the **Named Insured's** right to purchase the **Extended Reporting Period**, the **Named Insured** must have satisfied all conditions of this policy and must have paid all premiums and retention amounts due.

E. SUBROGATION

1. The **Insured** and the **Company** may have rights to recover all or part of any payment an **Insured** or the **Company** makes under this policy. If so, those rights are transferred to the **Company**.
2. The **Insured** must do nothing to impair such rights. The **Insured** will do everything necessary to secure such rights and help the **Company** enforce them, including the execution of documents necessary to enable the **Company** to effectively bring suit. Any recoveries will be applied as follows:
 - a. first, to the **Company** up to the amount of its payment for **Damages** and **Claim Expenses**;
 - b. then, to the **Insured** as recovery of **Retention** amounts paid as **Damages** and **Claim Expenses**.
3. The **Company** agrees to waive its right of subrogation against any client of the **Insured** for a **Claim** which is covered by this policy to the extent that the **Insured** had, prior to such **Claim** having been made, a written agreement to waive such rights.

F. TRANSFER OF RIGHTS AND DUTIES UNDER THIS POLICY

Any rights and duties of the **Insured** under this policy may not be transferred without the prior written approval of the **Company**.

G. NO WAIVER OR CHANGE OF TERMS

Notice or knowledge possessed by any person will not result in a waiver or a change in any part of this policy or estop the **Company** from asserting any rights under the terms of the policy; nor will the terms of this policy be waived or changed except by written endorsement issued by the **Company** and made part of the policy.

H. CANCELLATION; NO OBLIGATION TO RENEW

1. The **Named Insured** may cancel this policy by mailing or delivering to the **Company** advance written notice of cancellation. If the **Named Insured** cancels this policy, the earned Premium will be calculated using the customary short rate table and procedure.
2. The **Company** may cancel this policy by mailing or delivering to the **Named Insured** written notice of cancellation at least:
 - a. ten (10) days before the effective date of cancellation for nonpayment of Premium; or
 - b. thirty (30) days before the effective date of cancellation for any other reason or as otherwise specified by state law.

3. The **Company** will mail or deliver its notice to the last known mailing address of the **Named Insured**. Notice of cancellation will state the effective date of the cancellation. This policy will expire on that date. If this policy is cancelled, the **Company** will send the **Named Insured** any Premium refund due. The payment or tender by the **Company** of unearned Premium is not a condition of cancellation. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. The **Company** will not be obligated or required to renew this policy. Any offer of renewal terms involving a change of Retention, Premium, Limit of Insurance, or other terms and conditions will not constitute, nor be construed as, a refusal by the **Company** to renew this policy. The **Company** may elect to non-renew this policy by mailing to the **Named Insured** at least thirty (30) days advance written notice or notice as otherwise specified by state law.

I. OTHER INSURANCE

1. The insurance afforded by this policy is in excess over any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **Named Insured** to apply in excess of this insurance.
2. The **Insured** shall promptly, upon request of the **Company**, provide the **Company** with copies of all policies potentially applicable, whether collectible or not, against the liability covered by this policy.

J. BANKRUPTCY

The bankruptcy or insolvency of an **Insured** or of the estate of an **Insured** will not relieve the **Company** of its obligations under this policy nor deprive the **Company** of its rights or defenses under this policy. However, such bankruptcy, receivership or insolvency shall in no way increase the **Company's** liability under this policy nor will this insurance apply to liability directly or indirectly due to bankruptcy, insolvency, receivership, or subsequent liquidation.

K. APPLICATION STATEMENTS AND WARRANTIES

1. The **Insured** warrants and agrees that the warranties herein are a condition for any obligations of the **Company** hereunder and the **Insured** further warrants and agrees as follows:
 - a. that statements made in the **Application** and in its attachments and any materials submitted therewith are true and are the basis of the policy and are to be considered as incorporated into and constituting a part of this policy; and
 - b. that the statements made in the **Application** and in its attachments and any materials submitted therewith are representations the **Named Insured** made on behalf of the **Insured**; that they shall be deemed material to the acceptance of the risk assumed by the **Company** under the policy and that this policy is issued in reliance upon the truth of such representations; and
 - c. that in the event the **Application**, including its attachments and any materials submitted therewith, contains misrepresentations which materially affect the acceptance of the risk assumed by the **Company** under this policy, this policy shall be void and of no effect whatsoever.

L. JOINING THE COMPANY IN A LEGAL ACTION

1. No person or organization has a right under this policy to join the **Company** as a party or otherwise bring the **Company** into a suit against an **Insured** unless;
 - a. the **Insured** has fully complied with all terms and conditions of this policy, and
 - b. the amount of such loss has been fixed or rendered certain either by:
 - i. final judgment against the **Insured** after trial of the issues and after the time to appeal such judgment has expired without an appeal being taken;
 - ii. if appeal is taken, after the appeal has been determined; or
 - iii. an agreed settlement in accordance with the terms and conditions of this policy. An agreed settlement means a settlement and release of liability executed by the claimant or the claimant's legal representative, and the **Insured**, with the written consent of the **Company**.

M. FALSE OR FRAUDULENT CLAIMS

If any **Insured** refers any **Claim** to the **Company** knowing such **Claim** to be false or fraudulent, this policy shall become void as to that **Insured** only and all insurance coverage hereunder as regards the false or fraudulent **Claim** shall be forfeited as to that **Insured** only.

N. SERVICE OF SUIT

1. In the event of failure of the **Company** to pay any amount claimed to be due hereunder, the **Company**, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the **Company's** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Ironshore, One State Street Plaza, New York, New York, 10004 or his or her representative, and that in any suit instituted against the **Company** upon this policy, the **Company** will abide by the final decision of such court or of any appellate court in the event of an appeal.
2. Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the **Company** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this policy of insurance and hereby designates the above named Counsel as the person to whom said officer is authorized to send such process or a true copy thereof.

O. SEVERABILITY

If any material provision or clause of this policy is declared illegal, ambiguous or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this policy in full force and effect.

P. ARBITRATION

1. Notwithstanding Condition N. Service of Suit above, in the event of a disagreement as to the interpretation of this policy, it is mutually agreed that such dispute shall be submitted to binding arbitration before a panel of three (3) arbitrators, consisting of two (2) party-nominated (non-impartial) arbitrators and a third (impartial) arbitrator (hereinafter "umpire") as the sole and exclusive remedy.
2. The party desiring arbitration of a dispute shall notify in writing the other party, said notice including the name, address and occupation of the arbitrator nominated by the demanding party. The other party shall, within thirty (30) days following receipt of the demand, notify in writing the demanding party of the name, address and occupation of the arbitrator nominated by it. The two (2) arbitrators so selected shall, within thirty (30) days of the appointment of the second arbitrator, select an umpire. If the arbitrators are unable to agree upon an umpire, each arbitrator shall submit to the other arbitrator a list of three (3) proposed individuals, from which list such arbitrator shall choose one (1) individual. The names of the two (2) individuals so chosen shall be subject to a draw, whereby the individual drawn shall serve as umpire.
3. The parties shall submit their cases to the panel by written and oral evidence at a hearing. Said hearings shall be held within thirty (30) days of the selection of the umpire unless otherwise agreed by a majority of the panel. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two (2) of the three (3) panel members shall be binding and final and not subject to appeal except for grounds of fraud or gross misconduct by the arbitrators. The award will be issued within thirty (30) days of the close of the hearings. Each party shall bear the expenses of its designated arbitrator and shall jointly share with the other the expense of the umpire and of the arbitration proceeding.
4. The arbitration proceeding shall take place in or in the vicinity of New York, New York. The procedural rules applicable to this arbitration, shall, except as provided otherwise herein, be in accordance with the Commercial Rules of the American Arbitration Association.

IN WITNESS WHEREOF, the **Company** has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of its duly authorized representatives.

Ironshore Specialty Insurance Company by:

Secretary

President