



IRONSHORE SPECIALTY INSURANCE COMPANY

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DESIGNERS AND CONTRACTORS PROJECT SPECIFIC 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 IV. OF THIS POLICY.

- I. INSURING AGREEMENTS
- II. LIMITS OF INSURANCE AND SELF INSURED RETENTION
- III. EXCLUSIONS
- IV. DEFINITIONS
- V. CONDITIONS

In consideration of payment of the premium by the **First 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

1. The **Company** will pay on behalf of the **Insured** those sums in excess of the **Self-Insured Retention** and up to the applicable Limit of Insurance specified in Item 7. of the Declarations that an **Insured** becomes legally obligated to pay as **Damages**, including **Claim Expenses**, because of **Claims** 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 5. of the Declarations and prior to the expiration date of the **Policy Period** specified in Item 4. of the Declarations;
 - b. the **Wrongful Act** arises out of the performance or non-performance of **Professional Services** rendered in connection with the **Covered Project**;
 - c. 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; and
 - d. **Claims** must first be made against the **Insured** during the **Policy Period** or **Extended Reporting Period**;
2. The **Insured** must report the **Claim** to the **Company**, in writing, during the **Policy Period** however, any **Claim** reported after the expiration of the **Policy Period** but prior to the expiration of the **Extended Reporting Period** will be deemed reported during the **Policy Period**.

B. TERRITORY

The 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. Any **Claim** and any incident, circumstance or event that reasonably could give rise to a **Claim** under this policy must be reported by the **Insured** in accordance with this paragraph C. and paragraph A. of Section V. CONDITIONS of this policy. The **Company** shall have the right to investigate, control the defense of, and settle any such incident, circumstance, event or **Claim**, subject to the following:
 - a. all **Insureds** shall have the obligation to report promptly and in writing all incidents, circumstances or events, that reasonably could give rise to a **Claim**, and/or any alleged or actual **Claim**, including without limitation any demands, **Claim** letters, allegations of deficient services, service of process, subpoena, indemnification requests and/or demands, complaints, arbitration demand and/or notice of any investigation, complaint or proceeding;
 - b. the reporting obligations set forth in this paragraph C. and in paragraph A. of Section V. CONDITIONS, apply regardless of whether the incident, circumstance, event, or **Claim** involves or may involve an amount within the **Self-Insured Retention**; and

- c. it is a material and mandatory condition and requirement of this policy that all incidents, circumstances, events or **Claims** which are reported under this policy are addressed, investigated, managed, defended, settled or otherwise resolved with a joint defense approach. Under the joint defense provisions of this policy and as a condition of coverage, each **Insured** has the obligation to cooperate with the **Company** in connection with the investigation, defense and/or resolution of any incident, circumstance, event and/or **Claim**. Any failure to cooperate or otherwise comply with the joint defense provisions of this policy shall be deemed a material violation of the **Insured's** obligations under this policy. This provision is subject to ethical considerations or the need for independent legal counsel as may be required by applicable state law.
 2. An appointed **Project Program Manager** (hereinafter "**PPM**") for the **Insureds** shall be responsible for the investigation, management of the defense and coordination of the joint defense obligations of each **Insured** under the policy. In that capacity, the **PPM** shall investigate, defend or otherwise protect the interests of all **Insureds** involved in any incident, circumstance, event or **Claim** that is reported. Selection of the **PPM** shall be made by the **Company**.
 3. The **PPM** shall be responsible for the management and the coordination of the joint defense obligations of each **Insured** under the policy. Appointed joint defense counsel shall have the obligation to timely report and work in full cooperation with the **PPM's** management direction and advice,
 4. Each **Insured** must accept and consent to the joint defense approach as a condition of the issuance and provision of coverage under this policy. No **Claims**, counter-**Claims**, cross-**Claims**, third party **Claims**, for negligence, contribution, indemnification, subrogation or otherwise, arising out of any incident, circumstance event or **Claim** reported and covered under this policy may be asserted by an **Insured** against another **Insured**, regardless of whether the amount of any such incident, circumstance, event or **Claim** is or may be less than, within or in excess of the **Self-Insured Retention**. As a condition of coverage under this policy, all **Insureds** waive, release and relinquish any such **Claims** to the extent of coverage available under this policy, whether less than, within or in excess of the **Self-Insured Retention**.
- D. SELF-INSURED RETENTION: OBLIGATIONS AND ALLOCATION
1. The **Company** shall have no obligation to pay or indemnify any **Claims Expenses** and/or **Damages** unless and until the **Self-Insured Retention** has been satisfied in full by the **Insureds** involved in any incident, circumstance, event and/or **Claim** reported under this policy. The **Insured(s)** involved in any incident, circumstance, event or **Claim** shall be individually responsible for the payment of all expenses, including but not limited to **Claims Expenses** and/or **Damages** within the **Self-Insured Retention**.
 2. Upon receipt of a written notice of an incident, circumstance, event and/or **Claim**, as required by this policy, the **PPM** shall consult with the **Insured(s)** who reported the notice to determine whether there are other **Insureds** who may actually or potentially be involved in connection with the incident, circumstance, event or **Claim**. An "involved " **Insured** does not have to be sued or named by the claimant to be considered involved in an incident, circumstance, event and/or **Claim**. Other factors will be considered when determining whether there are other involved **Insureds** such as allegations of liability and/or responsibility and the potential for implication in an incident, circumstance, event and/or **Claim**. Upon identification of any such involved **Insured(s)**, the **PPM** will meet with representatives of the **Insured(s)** to whom notice was sent and those other **Insureds** identified:
 - a. to determine whether the list of **Insureds** is complete and accurate based upon the information then available; and

- b. to determine the percentage or proportion of the **Self-Insured Retention** allocated to each involved **Insured** through and including the date of final resolution through final judgment and after conclusion of the appeal period, final award, settlement, other resolution, or disposition of the reported incident, circumstance, event or **Claim**.
3. A reasonable effort will be made by the **PPM** and all **Insureds** to reach an agreement as to items set forth in subparagraphs a. and b. in the preceding paragraph 2. If an agreement is not made, a representative of the **Company**, or its designee shall make a final determination which shall remain in effect and be binding on the involved **Insureds** through the date of final resolution, subject to paragraph 5. below. Any determination by the **Company** will be made with consultation with the **PPM**.
4. Each **Insured** involved in the incident, circumstance, event and/or **Claim** shall have the obligation to pay its percentage or proportionate share of the **Self-Insured Retention** with respect to each reported incident, circumstance, event or **Claim** as determined in accordance with the process described in paragraphs 2. and 3. above. Should an involved **Insured** fail in whole or in part to satisfy this obligation, then all of the other involved **Insureds** shall be proportionately responsible for payment of any deficiency due to default or non-payment of any such delinquent involved **Insured**.
5. After the final resolution of any incident, circumstance, event and/or **Claim** reported under the policy, any **Insured** involved may request reallocation of the proportion or percentage of the **Self-Insured Retention** allocated to it in accordance with the process described in paragraphs 2., 3., and 4., above. Any such request shall be addressed to the **Insureds** identified in connection with the particular incident, circumstance, event and/or **Claim**. Should the **Insureds** fail to reach agreement as to any reallocation, then the dispute shall be submitted to arbitration and the arbitration process shall constitute the exclusive and final remedy and forum for final and binding resolution of any such disputes or controversies concerning allocation or reallocation of the **Self-Insured Retention** as between any **Insured(s)**. By acceptance of coverage under this policy, the **Insureds** agree and consent to arbitration of such disputes and controversies. The procedural rules applicable to such arbitration shall be in accordance with the Commercial Rules of the American Arbitration Association. The **PPM** shall have no role in connection with the reallocation process described in this paragraph 5.

E. SETTLEMENT PROVISIONS

1. Prior to the settlement and/or compromise of any **Claim**, the **PPM** will consult with all of the **Insureds** and/or joint defense counsel involved in the **Claim** and will endeavor to reach a consensus as to:
 - a. whether the **Claim** shall be settled or compromised; and
 - b. the amount of any payment required or appropriate in connection with any such settlement or compromise.
2. In the event that consensus is not achieved, the **Company** shall have the right to make the final and binding decision regarding the settlement or compromise of the **Claim**. The provisions stated in the preceding paragraph E.1.a. and b. shall apply regardless of whether the amount involved in any settlement or compromise is within or in excess of the **Self-Insured Retention**.

F. CLAIM EXPENSES

Claim Expenses in excess of the **Self-Insured Retention** shall be paid by the **Company**, and such payments reduce the available Limit of Insurance.

G. FIRST NAMED INSURED

The **First Named Insured** stated in Item 1. of the Declarations shall act for all **Insureds** for the following purposes:

- a. receipt of notice of cancellation by the **Company**;
- b. as the only payor of premium due the **Company** and as recipient of any unearned premium that is returned by the **Company**;
- c. requesting changes made to the policy and as recipient of the **Company's** response to any such request;
- d. payment of **Self-Insured Retention** amounts in accordance with Paragraph D., subparagraphs 1. through 5. above, and for keeping records of information the **Company** needs for premium computation; and
- e. reporting of changes in scope or nature of the project to the **Company**.

II. LIMITS OF INSURANCE AND SELF INSURED RETENTION

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

1. The Limit of Insurance - Each **Claim** shown in Item 7.a. of the Declarations is the most the **Company** will pay for **Damages** and **Claim Expenses** combined for each **Claim** or related **Claims**, as described in Section C. 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 **Self-Insured Retention**.
3. The Limit of Insurance - Aggregate specified in Item 7.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. MULTIPLE INSURED

The number of **Insureds** covered by this policy shall not operate to increase the **Limit of Insurance** as described above and as specified in Item 7. of the Declarations.

C. 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 **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 7. of the Declarations.

D. SELF-INSURED RETENTION - EACH CLAIM

1. Each covered **Claim** reported under this policy shall be subject to a separate **Self-Insured Retention**. The **Company's** obligation, under the coverages provided by this policy to pay **Damages** or **Claim Expenses** on behalf of the **Insured**, applies only to the payment of **Damages** or **Claim Expenses** in excess of the **Self-Insured Retention** stated in Item 8. of the Declarations, and subject to the **Limits of Insurance** stated in Item 7. of the Declarations.
2. The **Self-Insured Retention** shall be applied to the payment of **Damages** and **Claim Expenses**.
3. The **First Named Insured** shall be responsible for payment of the **Self-Insured Retention** on a per **Claim** basis in accordance with Section I., paragraph D., subparagraphs 1. through 5.
4. With respect to **Claim Expenses** within the **Self Insured Retention**, the **First Named Insured** shall pay the providers of services directly and promptly upon receipt of a statement for such services.

III. 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; and

Under no circumstances shall the **Company** be responsible for the payment of **Claim Expenses** related to the defense of a criminal prosecution against any **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, as amended, in the course of the performance of **Professional Services** on the **Covered Project**.
- 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. **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.
- F. **WORKERS COMPENSATION** - Any obligation of any **Insured** under any workers' compensation, disability benefits or unemployment compensation law or any similar laws.
- 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**. However, 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 of 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 the **Covered Project**, or of services or labor connected with the **Covered 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 who 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. 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.

IV. 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. **Wrongful Act** means negligence, which is the failure to meet the professional standard of care legally required or reasonably expected under the 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.
- D. **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.
- E. **Claim Expenses** means expenses incurred by the **Company** in the investigation, adjustment, negotiation, arbitration, mediation, settlement, defense and appeal 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;
 - d. reasonable and necessary expenses incurred by an **Insured** at the request of the **Company**, and

- e. fees charged by the **PPM**, when a **PPM** is assigned as the joint defense counsel for the **Insured(s)** on a **Claim** brought against the **Insured(s)**.
- 2. **Claim Expenses** do not include:
 - a. loss of earnings or profit by any **Insured**;
 - b. salaries, wages, fees, or other compensation payable to any **Insured** or employee of any **Insured**; and
 - c. fees charged by the **PPM**, if one is selected by the **Company**, except, when the **PPM** is assigned as the joint defense counsel for the **Insureds**, fees charged will be included as **Claim Expenses**.
- F. **Company** refers to the insurer that appears on the Declarations.
- G. **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.
- H. **Covered Project** means the project as specifically described in the Material Variation Endorsement, attached to this policy.
- I. **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**.
- J. **Extended Reporting Period** means that period described in Section V., paragraph B., sub-paragraphs 1. through 4. of the policy and shown in Item 6. of the Declarations.

- K. **First Named Insured** means the entity first shown in Item 1. of the Declarations.
- L. **Insured** means:
1. The **First Named Insured**;
 2. The other **Named Insured(s)**;
 3. 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**;
 4. The heirs, executors, administrators, and legal representatives of each **Insured** as defined in 1. and 2. and 3. 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;
 5. 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**; and
 6. A former partner, officer, director or employee of the **Insured** while rendering **Professional Services** on behalf of the **Insured** in connection with the **Covered Project**.
- M. **Insured's 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 adequately perform its obligations under the contract.
- O. **Named Insured** means the **First Named Insured** and any person or entity qualifying as a **Named Insured** under this policy and specified in Items 1. and 2. of the Declarations.
- P. **Policy Period** means the period of time specified in Item 4. of the Declarations or a shorter period resulting from cancellation of the policy.
- Q. **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 design services for which the **Insured** is responsible under a Design/Build contract including those design services performed 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.
- R. **Project Program Manager (PPM)** means individual(s) selected by the **Company** to act as program manager for the **Covered Project**.

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 5. of the Declarations.

U. **Self-Insured Retention** shall mean the amount shown in Item 8. of the Declarations.

V. CONDITIONS

A. INSUREDS REPORTING OBLIGATIONS

1. As a condition precedent to the right of coverage under this policy, when any **Insured** becomes aware of a **Claim**, circumstance or incident that could reasonably give rise to a **Claim**, the **Insured** must give written notice to the **Company**. 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 **Professional Services** 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 that may result in a **Claim**; and
 - e. the identities and addresses of any potential claimant(s); and
 - f. the project(s) involved in the **Claim**
3. All **Insureds** must comply with the following:
 - a. send the **Company** copies of all demands, notices, settlement offers, summonses or legal papers received in connection with the **Claim** or potential **Claim**;

- b. upon the request of the **Company**, authorize the **Company** to obtain records and other information;
 - c. cooperate with and assist the **Company** in the investigation, settlement and defense of the **Claim**;
 - d. upon the **Company's** request, submit to examination and interrogation by a representative of the **Company**, under oath if required;
 - e. attend hearings and depositions;
 - f. cooperate with and assist the **Company** in enforcing any rights of contribution or indemnity against another party who may be liable to an **Insured**;
 - g. refrain from discussing the facts and circumstances of any **Claim** with anyone other than legal counsel or representatives of the **Company** or except as may be required by law; and
 - h. not make any payment, admit any liability, settle any **Claims** or assume any obligations without prior written consent of the **Company**.
- 4. This policy requires that all incidents, circumstances, events and/or **Claims** be reported, regardless of whether the actual or alleged amounts involved or which may be involved, are less than, within and/or in excess of the amount of the **Self-Insured Retention**.
 - 5. All reported incidents, circumstances, events and/or **Claims** shall be investigated managed, defended, settled, or otherwise resolved, in accordance with the joint defense provision of this policy.

B. EXTENDED REPORTING PERIOD

- 1. The **Extended Reporting Period** is the period specified in Item 6. of the Declarations and immediately follows the **Policy Period**.
- 2. Any **Claim** against the **Insured** for which coverage is afforded by this policy made during the **Extended Reporting Period** must arise out of a **Wrongful Act** which first occurred prior to the end of the **Policy Period** and on or after the **Retroactive Date** stated in Item 5. of the Declarations.
- 3. 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**.
- 4. 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 **Breaches of Professional Duty** that occur after the **Retroactive Date** and before the expiration date of the policy.

C. 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 of subrogation 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 **Self Insured 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.

D. 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**.

E. 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.

F. CANCELLATION

1. Except as provided in this condition, this policy shall not be cancelable by either the **Named Insured** or the **Company**.
2. This policy may be canceled by the **Company** for one or more of the following reasons:
 - a. non-payment of premium by the **First Named Insured**;
 - b. non-payment by the **First Named Insured** to the **Company** of any amount within the **Self-Insured Retention** that was advanced by the **Company**; or
 - c. material breach of any provision of this policy.

3. If the **Company** cancels pursuant to the preceding paragraph 2., the notice of cancellation will be written notice to the **First Named Insured** 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.
4. The mailing of a notice of cancellation to the last known address of the **First Named Insured** shall be sufficient proof of notice.
5. The notice of cancellation will state the effective date of the cancellation. The effective date of cancellation terminates the **Policy Period** and **Extended Reporting Period**. The payment or tender by the **Company** of unearned premium is not a condition of cancellation. Unearned premium will be returned by the **Company** in due course.

G. OTHER INSURANCE

This insurance shall be primary for the **Covered Project**.

H. 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.

I. APPLICATION STATEMENTS AND WARRANTIES

The **Insured** warrants and agrees, the warranties are a condition for any obligations of the **Company** hereunder:

- 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.

J. AUDIT

The **Company** may examine and audit the **Insured's** books and records at any time during the **Policy Period** and **Extended Reporting Period** within three (3) years after the **Extended Reporting Period**, insofar as they relate to this policy.

K. JOINING THE COMPANY IN A LEGAL ACTION

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**.

L. 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 regarding the false or fraudulent **Claim** shall be forfeited as to that **Insured** only.

M. 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.

N. 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.

O. ARBITRATION

1. Notwithstanding the Service of Suit clause 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