

IRONSHORE SPECIALTY INSURANCE COMPANY

One State Street Plaza
7th Floor
New York, NY 10004
(877) IRON411

Policy Number:

Insured Name:

PUBLIC OFFICIALS LIABILITY POLICY**WITH EMPLOYMENT PRACTICES LIABILITY COVERAGE**

In consideration of the premium charged, and in reliance upon the statements in the Application attached hereto and made a part hereof, and subject to the Limit of Liability stated in Item 3 of the Declarations and the terms and conditions contained herein, the Insurer and the Insured agree as follows:

1. INSURING AGREEMENT

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages and Defense Costs resulting from any Claim first made against the Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any Wrongful Act of the Insured in the performance of duties for the Public Entity.

2. DEFENSE PROVISIONS

- (a) The Insurer shall have the right and duty to defend any covered Claim made against the Insured and reported to the Insurer pursuant to the terms of this policy, even if such Claim is groundless, false or fraudulent.
- (b) The Insured shall not admit liability for, or settle or negotiate to settle any Claim or incur any cost or expense without the prior written consent of the Insurer. The Insurer shall have the right to appoint counsel and to make such investigation and conduct negotiations and, with the written consent of the Public Entity, settle any Claim as the Insurer deems expedient. If the Public Entity refuses to consent to any settlement recommended by the Insurer and acceptable to the claimant, the liability of the Insurer shall not exceed: (i) the amount for which the Claim could have been settled, (ii) the costs and expenses incurred with the Insurer's consent up to the date of such refusal, plus (iii) sixty percent (60%) of the costs and expenses incurred with the Insurer's consent subsequent to the date of such refusal.
- (c) The Insurer shall not be obligated to investigate, defend, pay Damages or pay Defense Costs or to undertake or continue defense of any Claim after the Limit of Liability set forth in Item 3 of the Declarations has been exhausted. In such event, the Insurer shall withdraw from the investigation, defense, payment or settlement of such Claim and shall tender the investigation, defense and control of such Claim to the Insured.
- (d) The Insureds shall cooperate with the Insurer and provide the Insurer with all information and assistance which the Insurer reasonably requests including but not limited to, attending hearings and depositions, assisting in the making of settlements, securing and providing evidence, obtaining the attendance of witnesses, and conducting defense of any Claim covered under the policy. The Insureds shall do nothing that may prejudice the Insurer's position.

3. DEFINITIONS

- (a) "Claim" shall mean a judicial proceeding alleging a Wrongful Act that is filed against an Insured in a court of law or equity and which seeks Damages. Claim shall also mean an administrative proceeding alleging a Wrongful Act, provided an enforceable award of Damages can be made against an Insured at the administrative proceeding. However, in no event shall the term Claim include any labor or grievance proceeding which is subject to a collective bargaining agreement.
- (b) "Damages" shall mean a monetary judgment or settlement agreed to with the consent of the Insurer. Damages shall not include (i) any amount for which an Insured is not financially liable or which is without legal recourse to the Insured; (ii) taxes; (iii) the cost to comply with any injunctive or other non-monetary relief, including specific performance, or any agreement to provide such relief; (iv) employment related benefits of any kind, including, but not limited to, termination payments, severance, perquisites, or deferred compensation; (v) any liability or costs incurred in connection with any educational, sensitivity, or other program, policy, seminar or monitoring relating to or arising out of a Claim; or (vi) matters which may be deemed uninsurable under the law pursuant to which this policy may be construed.
- (c) "Defense Costs" shall mean reasonable and necessary fees, costs, and expenses incurred by the Insurer, or incurred by the Insured with the written consent of the Insurer, (including premiums for any appeal bond, attachment bond, or similar bond but without any obligation to apply for or furnish any such bond) resulting from the investigation, adjustment, defense, and appeal of a Claim against any Insured; provided, however, that Defense Costs do not include salaries of employees or officers of any Insured.
- (d) "Employment Practice Violation(s)" shall mean any actual or alleged:
- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment including breach of an implied contract;
 - (2) harassment (including sexual harassment whether "quid pro quo", hostile work environment or otherwise);
 - (3) discrimination, (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
 - (4) Retaliation (including lockouts);
 - (5) employment-related misrepresentation(s) to an employee or applicant for employment with the Public Entity;
 - (6) wrongful failure to employ or promote;
 - (7) wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
 - (8) wrongful discipline;
 - (9) failure to provide or enforce adequate or consistent policies and procedure relating to any Employment Practices Violation;
 - (10) violation of an individual's civil rights relating to any of the above but only if the Employment Practices Violation relates to an employee or applicant for employment with the Public Entity whether direct, indirect intentional or unintentional;
 - (11) employment related libel, slander, defamation, or invasion of privacy,
- (e) "Insured" shall mean the Public Entity and:
- (1) all persons who were, now are or shall be lawfully elected or appointed officials or

employees while acting for or on behalf of the Public Entity;

- (2) commissions, boards, or other units, and members and employees thereof, operated by and under the jurisdiction of such Public Entity and within an apportionment of the total operating budget indicated in the application for this policy;
 - (3) volunteers acting for or on behalf of, and at the request and under the direction of, the Public Entity;
 - (4) officials and employees of the Public Entity appointed at the request of the Public Entity to serve with an outside tax exempt entity.
- (f) "Insurer" shall mean the company stated in Item 6 of the Declarations.
- (g) "Policy Period" shall mean the period from the inception date of this policy shown in Item 2 of the Declarations to the earlier of the expiration date shown in item 2 of the Declarations or the effective date of cancellation of this policy.
- (h) "Public Entity" shall mean the municipality, governmental body, department or unit which is named in Item 1 of the Declarations.
- (i) "Retaliation" shall mean a wrongful act of an Insured relating to or alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an employee of the Public Entity to a superior or to any governmental agency of any act by an Insured which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an employee of the Public Entity of any right that such employee has under law, including rights under workers' compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; (4) strikes by employees of the Public Entity or (5) political affiliation:
- (j) "Wrongful Act" shall mean any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or Employment Practices Violation by an Insured solely in the performance of duties for the Public Entity.

4. EXTENSIONS

Subject otherwise to the terms hereof, the policy shall cover Claims made against the estates, heirs, or legal representatives of deceased Insureds, and the legal representatives of Insureds in the event of an Insured's incompetency, insolvency or bankruptcy, who were Insureds at the time the Wrongful Acts upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Claims made against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Insured for all Claims arising solely out of his or her status as the spouse of an Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Insured and the spouse or domestic partner, or property transferred from the Insured to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any Claim for any Wrongful Act of the spouse or domestic partner, but shall apply only to Claims arising out of the Wrongful Acts of an Insured, subject to the policy's terms, conditions and exclusions.

5. EXCLUSIONS

This policy does not apply to any Claim:

- (a) alleging, arising out of, based upon or attributable to fraud, dishonesty or criminal acts or omissions; however, the Insured shall be reimbursed for the reasonable amount which would have been collectible under this policy if such allegations are not subsequently proven;

- (b) seeking relief or redress in any form other than Damages, or attorney's fees, costs or expenses which the insured shall become obligated to pay as a result of an adverse judgment or settlement for a Claim seeking such relief; however, the Insurer shall defend such a Claim in accordance with Clause 2, subject to a Policy Period aggregate limit of \$100,000 for all such Defense Costs. This limit shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations;
- (c) alleging, arising out of, based upon or attributable to false arrest, detention or imprisonment; assault or battery; malicious prosecution or abuse of process; disparagement or defamation of character including, but not limited to, libel, slander or violation of an individual's right of privacy; or wrongful entry or eviction or other invasion of the right of private occupancy;
- (d) alleging, arising out of, based upon or attributable to bodily injury to, or sickness, disease or death, or mental anguish of any person, or loss of or damage to or destruction of any property, including the loss of use thereof;
- (e) alleging, arising out of, based upon or attributable to inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use;
- (f) alleging, arising out of, based upon or attributable to strikes, riots or civil commotions;
- (g) alleging, arising out of, based upon or attributable to the failure to effect or maintain any insurance or bond, which shall include, but not be limited to, insurance provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption; provided, however, this exclusion shall not apply to Defense Costs;
- (h) alleging, arising out of, based upon or attributable to: the gaining in fact of any profit, remuneration or advantage to which the Insured is not legally entitled; the return of taxes; assessments; penalties, fines or fees; any award of salary, wages or earnings;
- (i) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly;
 - (1) the actual, alleged, or threatened discharge, dispersal, release or escape of Pollutants, or
 - (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants.

"Pollutants" include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, lead and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed;
- (j) alleging, arising out of, based upon, or attributable to the planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste storage or disposal site or any other nuclear facility, or the transportation of nuclear material;
- (k) brought by or on behalf of one Insured against another Insured, however, as respects any Claim alleging an Employment Practices Violation, this exclusion shall only apply to crossclaims or counterclaims brought by one Insured against another Insured;
- (l) alleging, arising out of, based upon, or attributable to breach of any express, implied, actual or constructive contract, warranty, guarantee or promise except this exclusion shall not apply to any Claim alleging an Employment Practices Violation;
- (m) alleging, arising out of, based upon, or attributable to the operation of or activities of any schools, airports, hospitals, clinics, nursing homes or other health care operations or the providing of any medical services, utilities, housing authorities, jails or detention facilities, law enforcement agencies or fire fighting authorities, unless specifically included in Item 7 of the Declarations or by endorsement attached;
- (n) for punitive, exemplary or the multiplied portion of multiplied Damages; however, only where permitted by law, this policy shall cover, subject to all the terms, conditions and exclusions

contained herein, up to \$50,000 punitive, exemplary or the multiplied portion of multiplied Damages, as part of and not in addition to the Limit of Liability of the Insurer otherwise afforded by this policy;

- (o) alleging, arising out of, based upon, or attributable to the improper administration or collection of taxes, or loss that reflects any tax obligation;
- (p) alleging, arising out of, based upon, or attributable to, as of the date listed in Item 8 of this policy, any pending or prior civil, criminal, administrative or investigative proceeding or EEOC notice of charges ("Pending or Prior Proceedings") as well as future Claims arising out of, based upon or related to such Pending or Prior Proceedings; if this policy is a renewal of a policy issued by the Insurer, this exclusion shall only apply with respect to a Pending or Prior Proceedings prior to the effective date of the first policy issued and continuously renewed by the Insurer;
- (q) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related Wrongful Acts alleged or contained, in any Claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (r) alleging, arising out of, based upon or attributable to any Wrongful Act prior to the inception date of the first policy issued by the Insurer and continuously renewed and maintained, if on or before such date any Insured knew or could have reasonably foreseen that such Wrongful Act could lead to a Claim;
- (s) alleging, arising out of, based upon or attributable to any obligations pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to a Claim for Retaliation;
- (t) alleging, arising out of, based upon or attributable to any Insured's activities as a trustee or fiduciary as respects any type of employee benefit plan, including any pension, savings or profit sharing plan or to any amounts or benefits due under any fringe benefit program, retirement program, incentive program, perquisite program, entitlement program or other benefits owed or allegedly owed to any employee;
- (u) alleging, arising out of, based upon or attributable to any violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act the Worker Adjustment and Retaining Notification Act, the Consolidated Omnibus Budget Reconciliation Act the Occupational Safety and Health Act any rules or regulations of the foregoing promulgated thereunder and amendments thereto or any similar provisions of any federal, state, local or foreign statutory law or common law; provided however, this exclusion shall not apply to a Claim for Retaliation;
- (v) alleging, arising out of, based upon or attributable to any costs or liability incurred by any Insured to modify any building, property or facility to make said building, property or facility more accessible or accommodating to any disabled person as mandated by the Americans With Disabilities Act of 1992, and as amended, or any similar federal, state or local law, regulation or ordinance;
- (w) alleging, arising out of, based upon or attributable to any misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right;
- (x) alleging, arising out of, based upon or attributable to any Wrongful Acts committed by any Insured in the rendering or failure to render professional services in their capacity as architects, engineers, attorneys or accountants;
- (y) alleging, arising out of, based upon, or attributable to the refusal, failure or inability of any Insured to pay wages or overtime pay for services rendered (hereinafter "Earned Wages") or for improper payroll deductions taken by any Insured from any employee, including but not limited to (i) any unfair business practices claim alleged because of the failure to pay Earned Wages or (ii) any Claim seeking Earned Wages because any employee or purported employee was improperly classified or mislabeled as "exempt".

6. LIMIT OF LIABILITY

- (a) The total liability of the Insurer for all Damages and Defense Costs arising from all Claims made against the Insured during the Policy Period and during the Discovery Period, if applicable, shall not exceed the Limit of Liability stated in Item 3 of the Declarations.
- (b) Defense Costs shall be part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations. Such Defense Costs shall serve to reduce the Limit of Liability.
- (c) If additional Claims are subsequently made which arise out of, are related to, or are based upon the same Wrongful Act or series of continuous, repeated or interrelated Wrongful Acts as any Claims already made and reported to the Insurer, then all such Claims, whenever made, shall be considered first made within the Policy Period or the Discovery Period in which the earliest Claim arising out of, related to or based upon such Wrongful Act or series of continuous, repeated or interrelated Wrongful Acts was first made and reported to the Insurer, and all such Claims shall be subject to one such Limit of Liability.

7. DEDUCTIBLE

Subject to the Limit of Liability, exclusions and other terms of this policy, the Insurer shall only be liable for those Damages and Defense Costs which are in excess of the Deductible stated in Items 4(a) or 4(b) of the Declarations. This Deductible shall apply to each Wrongful Act or Employment Practice Violation or series of continuous, repeated or interrelated Wrongful Acts or Employment Practice Violations and shall be borne by the Public Entity and remain uninsured. The Public Entity shall also be responsible for payment of the Deductible. The Insurer may direct the Public Entity to make partial or full payment of the Deductible to others.

8. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to the Insurer named in Item 6 of the Declarations at the address indicated in item 6 of the Declarations.

If mailed, the date of the mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. A Claim shall be considered to have been first made against an insured when written notice of such Claim is received by any Insured, by the Public Entity on the behalf of any Insured or by the Insurer, whichever comes first.

- (a) The Public Entity or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of any Claim made against an Insured as soon as practicable and either:
 - (1) anytime during the Policy Period or during the Discovery Period (if applicable)
 - (2) within 45 days after the end of the Policy Period or Discovery Period (if applicable).
- (b) If written notice of a Claim has been given to the Insurer pursuant to Clause 8(a) above, then any Claim which is subsequently made against the Insureds and reported to the Insurer arising out of, related to or based upon the facts alleged in the Claim for which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the Claim of which such notice has been given, shall be considered made at the time such earlier notice was given.

- (c) If during the Policy Period or during the Discovery Period (if applicable) the Public Entity or the Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against the Insureds and shall give written notice to the Insurer of the circumstances and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, then any Claim which is subsequently made against the Insureds and reported to the Insurer arising out of, related to or based upon such circumstances or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

9. DISCOVERY CLAUSE

- (a) Automatic Discovery Period

If the Insurer or the Public Entity shall cancel or refuse to renew this policy and the Public Entity does not obtain replacement coverage as of the effective date of such cancellation or nonrenewal, the Public Entity shall have the right to a period of sixty (60) days following the effective date of such cancellation or non-renewal in which to give written notice to the Insurer of any Claim made against the insured during said 60 day period for any Wrongful Act before the end of the Policy Period. This Automatic Discovery Period shall immediately expire upon the purchase of replacement coverage by the Public Entity.

- (b) Optional Discovery Period

If the Insurer or the Public Entity shall cancel or refuse to renew this policy, the Public Entity shall have the right, upon payment of an additional premium of one hundred percent (100%) of the annual policy premium (or if the Policy Period is other than annual, one hundred percent (100%) of the annualized premium), to a period of twelve (12) months following the effective date of such cancellation or non-renewal in which to give written notice to the Insurer of any Claim made against the Insured during said twelve (12) month period for any Wrongful Act before the end of the Policy Period. This right shall terminate, however, unless written notice of such election together with the additional premium due is received by the Insurer within thirty (30) days after the effective date of cancellation or non-renewal. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

10. CANCELLATION CLAUSE

This policy may be canceled by the Public Entity by surrender of this policy or by giving written notice to the Insurer stating when thereafter such cancellation shall be effective. This policy may also be canceled by the Insurer by mailing to the Public Entity by registered, certified, or other first class mail, at the Public Entity's address shown in Item 1 of the Declarations, written notice stating when, not less than sixty (60) days thereafter, the cancellation shall be effective. However, if the Insurer cancels this policy because the Public Entity has failed to pay a premium when due, or has failed to reimburse the Insurer such amounts as the Insurer has paid as Damages or Defense Costs within the amount of the applicable Deductible, or excess of the Limit of Liability, this policy may be canceled by the Insurer by mailing to the Public Entity by registered, certified, or other first class mail, at the address shown in Item 1 of the Declarations, written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this policy shall terminate at the date and hour specified in such notice.

If this policy shall be canceled by the Public Entity, the Insurer shall retain the customary short rate proportion of the premium hereon. If this policy shall be canceled by the Insurer, the Insurer shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

11. REIMBURSEMENT OF THE INSURER

If the Insurer has paid any Damages or Defense Costs in excess of the Limit of Liability or Damages or Defense Costs within the applicable Deductible, the Insureds, jointly and severally, shall be liable to the Insurer for any and all such amounts and, upon demand, shall pay such amounts to the Insurer.

12. SUBROGATION

In the event of any payment under this policy, the Insurer shall be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights for the Insurer. The Insured shall do nothing to prejudice such rights. Any amount recovered in excess of the total payment by the Insurer shall be restored to the Insured, less the cost to the Insurer of recovery.

13. OTHER INSURANCE

Insurance as is provided under this policy shall apply only as excess over any other valid and collectible insurance, self insurance, or indemnification or any similar agreement whether such other insurance or agreement is stated to be primary, pro rata, contributory, excess, contingent or otherwise.

14. NOTICE AND AUTHORITY

By the acceptance of this policy, the Public Entity agrees to act on behalf of all Insureds with respect to the giving of notice of Claim, the giving or receiving of notice of cancellation or non renewal, the payment of premiums, the receiving of any premiums that may become due under this policy, consenting to any settlement and exercising the right to the Discovery Period. All Insureds agree that the Public Entity shall act on their behalf.

15. ASSIGNMENT

Assignment of interest under this policy shall not bind the Insurer until its consent is endorsed hereon; however, subject otherwise to the terms hereof, this policy shall cover the estate, heirs, legal representatives or assigns of the Insured in the event of the death, bankruptcy or insolvency of the insured or the Insured being adjudged incompetent.

16. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the obligation of the Insured to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer.

Any Insured or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No Insured shall have any right under this policy to join the Insurer as a party to any action against other Insureds or the Public Entity to determine the Insured's liability, nor shall the Insurer be impleaded by the Insureds or the Public Entity or their legal representatives. Bankruptcy or insolvency of the Insured or the estate of the insured shall not relieve the Insurer of any obligation hereunder.

17. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this policy, it is agreed that the Insurer has relied upon the statements and representations contained in the application for this policy (including materials submitted thereto and, if this is a renewal application, all such previous policy applications for which this policy is a renewal) as being accurate and complete. All such statements and representations shall be deemed to be material to the risk assumed by the Insurer, are the basis of this policy and are to be considered as incorporated into this policy.

With respect to such statements and representations, no knowledge or information possessed by any Insured shall be imputed to any other Insured, if any person who executed the application knew that such statement or representation was inaccurate or incomplete, such statement shall not be imputed to any Insured other than such signator and any other Insureds who knew such statement or representation was inaccurate or incomplete.

18. POLICY TERRITORY

This policy applies to Wrongful Acts committed anywhere in the world provided Claim is made in the United States of America, its territories or possessions, or Canada.

20. HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

Ironshore Specialty Insurance Company by:

Secretary

President

SPECIMEN