

**THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMITS OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY.**

## **HOMELAND INSURANCE COMPANY OF NEW YORK**

### **HEALTH CARE CONSULTANT PROFESSIONAL LIABILITY INSURANCE POLICY**

**Subject to the applicable Limits of Liability and all of the terms and conditions of this Policy, Homeland Insurance Company of New York (the “Underwriter”) and the Insured agree as follows:**

#### **I. INSURING AGREEMENT**

The Underwriter will pay on behalf of the **Insured** any **Damages** which the **Insured** shall become legally obligated to pay and **Defense Expenses** as a result of any **Claim** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriter during the **Policy Period** for a **Wrongful Act** first committed on or after the Retroactive Date stated in ITEM 7 of the Declarations. As part of and subject to the applicable Limits of Liability, the Underwriter shall have the right and duty to defend any such **Claim**, even if the **Claim** is groundless.

#### **II. DEFINITIONS**

- (A) “**Claim**” means any civil action, suit, proceeding, arbitration, mediation, or demand by any person or entity seeking to hold the **Insured** responsible for monetary damages as a result of a **Wrongful Act** actually or allegedly committed by the **Insured** or by any other person for whose **Wrongful Acts** the **Insured** is legally responsible.
- (B) “**Damages**” means judgments or settlements negotiated with the approval of the Underwriter; however, **Damages** shall not include:
- (1) fines, taxes, or penalties;
  - (2) fees, revenue, or sums due to the **Insured**;
  - (3) any amounts payable in connection with any portion of a **Claim** for injunctive or equitable relief;

- (4) punitive or exemplary damages or the multiplied portion of any multiplied damage award; except where permitted by law **Damages** shall include, in an amount not exceeding the sum of \$25,000, the multiplied portion of a multiplied damages award or an award of punitive or exemplary damages, which sum shall be part of and not in addition to the applicable Limits of Liability; or
- (5) salaries, overhead or benefit expenses or other fees and charges of the **Insured**.
- (C) “**Defense Expenses**” means reasonable expenses and legal fees incurred with the approval of the Underwriter in the investigation, adjustment, defense, or appeal of a **Claim** against the **Insured**; however, **Defense Expenses** shall not include salaries, overhead or benefit expenses, or other fees and charges of the **Insured**.
- (D) “**Employment Practices**” means any of the following: breach of any employment contract, whether oral or written, express or implied; failure or refusal to hire or employ; dismissal, discharge or termination of employment, whether actual or constructive; demotion, reassignment, failure or refusal to promote, or deprivation of career opportunity; discipline of employees; evaluation of employees; discrimination or harassment of any kind or on any basis affecting an employee or applicant for employment; failure to provide benefits or accommodations; humiliation or defamation of any employee or applicant for employment; retaliatory treatment against an employee arising out of the employee's attempted or actual exercise of the employee's rights under the law; employment-related misrepresentations; and failure to implement appropriate workplace or employment policies and procedures.
- (E) “**Insured**” means the person or entity stated in ITEM 1 of the Declarations and any natural person who was, is, or shall become a director, an officer, an employee or a partner thereof, but only while such person was, is, or shall be acting within the scope of his or her duties as such.
- (F) “**Legal Services**” means legal services provided by an **Insured** as:
- (1) an attorney or a notary public; or
  - (2) an administrator, a conservator, an executor, a trustee, a guardian or a committee or in any similar fiduciary capacity incidental to the practice of the law.

- (G) **“Medical Services”** means health care, medical care or treatment provided to any individual, including without limitation any of the following: medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing or other professional health care; the furnishing or dispensing of medications, drugs, blood, blood products or medical, surgical, dental or psychiatric supplies, equipment or appliances in connection with such care; the furnishing of food or beverages in connection with such care; the providing of counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.
- (H) **“Policy Period”** means the period from the Inception Date to the Expiration Date stated in ITEM 2 of the Declarations, or to any earlier cancelation date.
- (I) **“Professional Services”** means only those services performed for others for a fee which are listed in ITEM 6 of the Declarations; provided, however, **Professional Services** shall not include **Medical Services** or **Legal Services**.
- (J) **“Related Claims”** means collectively all **Claims** involving the same **Wrongful Act** or **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision.
- (K) **“Wrongful Act”** means any actual or alleged act, error or omission committed solely in the performance of, or failure to perform, **Professional Services**.

### III. EXCLUSIONS

- (A) No coverage shall be available under this Policy for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) any criminal, fraudulent, dishonest or discriminatory act or omission or any act, error or omission committed with knowledge of its wrongful nature; any willful violation of law; or the gaining by the **Insured** of any personal profit, gain or advantage to which the **Insured** was not legally entitled; provided, however, the Underwriter shall reimburse the **Insured** for any **Defense Expenses** that would have been payable under this Policy if, upon final disposition of such **Claim**, such allegations have not been proven;

- (2) any actual or alleged act, error, or omission for which the **Insured** may be held liable:
- (a) under any workers' compensation law, rules, or regulations; unemployment compensation law, rules, or regulations; disability benefits law, rules, or regulations; or any similar law, rule; or regulation;
  - (b) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged damage to or destruction of any tangible property (including use thereof), invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, loss of consortium; or
  - (c) for any injury or damage arising out of the ownership, maintenance, use (including operation and loading or unloading) or entrustment to others of any aircraft, auto or watercraft owned or operated by or rented or loaned to any **Insured**;
- (3) any actual or alleged infringement of patent, copyright, title, trademark, service mark, or slogan;
- (4) any actual or alleged act, error, or omission involving or related to:
- (a) an **Insured's** fiduciary obligation as an employer or benefit plan sponsor;
  - (b) any certified auditing, accounting, architectural, or engineering services; or
  - (c) any advice relating to mergers or acquisitions;
- (5) any action or proceeding brought by or on behalf of any federal, state or local governmental, regulatory, or administrative agency, whether such action or proceeding is brought in the name of such agency, or by or on behalf of such agency in the name of any other individual or entity;
- (6) any actual or alleged **Employment Practices**; or

(7) any act, error, omission, fact, circumstance, situation, transaction, event, or decision which is the subject of any notice or **Claim** under any prior policy; or any other act, error, or omission, whenever occurring, which is logically or causally connected by reason of any common fact, circumstance, situation, transaction, event, or decision, with any act, error, or omission which is the subject of such notice or such **Claim**.

(B) No coverage shall be available under this Policy for any **Claim** against any **Insured** by or on behalf of, or in the name or right of, or for the benefit of, any person or entity included within the definition of **Insured**, whether or not such **Claim** is brought or maintained by such person or entity in his, her, or its capacity as an **Insured**.

#### IV. **CONDITIONS**

(A) **Territory:**

This Policy applies only to **Wrongful Acts** committed and to **Claims** made against the **Insured**, in the United States of America, its territories or possessions, or Canada.

(B) **Notice:**

(1) As a condition precedent to any right to payment in respect of any **Claim**, including any **Claim** for a **Wrongful Act** of which notice was previously given under CONDITION (B)(2), the **Insured** must give written notice to the Underwriter of such **Claim**, with full details, as soon as practicable after such **Claim** is first made and, subject to CONDITION (C) below, during the **Policy Period** or Extended Reporting Period, if applicable.

(2) If during the **Policy Period**, the **Insured** becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of the Policy:

(a) gives the Underwriter written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**, and

- (b) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then the Underwriter will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**, or, if applicable, the Extended Reporting Period.

- (3) All notices under CONDITIONS (B)(1) and (2) must be sent by certified mail to the address set forth in ITEM 8 of the Declarations.

(C) **Date of Related Claims:**

**Related Claims** shall be deemed to have been first made at the earlier of the following times:

- (1) at the time the earliest of the **Related Claims** was first made; or
- (2) at the earliest time at which notice was given under any policy of insurance of any act, error, omission, fact, circumstance, situation, transaction, event or decision underlying any of the **Related Claims**.

(D) **Defense and Settlement of Claims:**

The **Insured** shall not admit any liability for or settle any **Claim** or incur any costs, charges or expenses without the written consent of the Underwriter. The Underwriter shall have the right to make investigations and conduct negotiations and, with the written consent of the **Insured**, enter into such settlement of any **Claim** that the Underwriter deems appropriate. If the **Insured** shall refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, the **Insured** shall thereafter negotiate or defend such **Claim** at the **Insured's** own expense independently of the Underwriter, and, subject to the applicable Limits of Liability of this Policy, the Underwriter's liability for such **Claim** shall not exceed the amount for which such **Claim** could have been settled plus **Defense Expenses** incurred with the Underwriter's consent up to the date the **Insured** refused to settle such **Claim**.

(E) **Limits of Liability and Retention:**

- (1) Regardless of the number of **Claims**, the number of person(s) or entity(ies) included with the definition of **Insured**, or the number of claimants who make **Claim** against the **Insured**:
  - (a) the amount stated in ITEM 3(a) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Damages** and **Defense Expenses** resulting from each **Claim** or **Related Claims** made against the **Insured**, which amount shall be part of and not in addition to the amount stated in ITEM 3(b) of the Declarations;
  - (b) the amount stated in ITEM 3(b) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all **Damages** and **Defense Expenses** resulting from all **Claims** under this Policy; and
  - (c) the retention stated in ITEM 4 of the Declarations shall apply separately to each **Claim** or **Related Claims** and shall also apply to either **Damages** or **Defense Expenses** or both.
- (2) **Defense Expenses** shall be part of and not in addition to the applicable Limits of Liability, and payment of **Defense Expenses** by the Underwriter shall reduce, and may exhaust, the applicable Limits of Liability.
- (3) The obligations of the Underwriter to pay **Damages** and to defend any **Claim** seeking **Damages** from the **Insured** or pay **Defense Expenses** shall only be in excess of the retention, which amount shall be borne by the **Insured** at the **Insured's** own expense. The Underwriter shall have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of the retention amount on behalf of the **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insured** will repay the Underwriter any amounts so paid.
- (4) The Underwriter shall not be obligated to pay any **Damages** or to defend or continue to defend any **Claim** after the applicable Limit of Liability has been exhausted by the payment of **Damages** or **Defense Expenses** or both.

(F) **Extended Reporting Period:**

- (1) If this Policy is not renewed for any reason, or is canceled for any reason other than for non-payment of premium, the **Insured** shall have the right to purchase an extension of the coverage granted by this Policy for a period of one (1) year after the effective date of such cancellation or non-renewal (an Extended Reporting Period), but only with respect to any **Wrongful Act** committed before the effective date of such cancellation or non-renewal and otherwise covered by this Policy. The premium for this Extended Reporting Period shall be seventy-five percent (75%) of the premium set forth in ITEM 5 of the Declarations, as the same may be amended from time to time, and must be paid within thirty (30) calendar days after the effective date of cancellation or non-renewal. Such additional premium shall be deemed fully earned immediately upon the inception of the Extended Reporting Period.
- (2) The Underwriter's Limits of Liability during the Extended Reporting Period shall be part of, and not in addition to, the Underwriter's Limits of Liability stated in ITEM 3 of the Declarations.

(G) **Other Insurance:**

This policy shall be specifically excess over, and shall not contribute with, any other valid insurance (whether collectable or not), whether such other insurance is stated to be primary, contributing, excess (except insurance specifically in excess of this Policy), contingent, or otherwise.

(H) **Cooperation and Subrogation:**

- (1) In the event of a **Claim**, or after giving the Underwriter notice of circumstances which may subsequently give rise to a **Claim**, the **Insured** will provide the Underwriter with all information, assistance and cooperation as the Underwriter may reasonably request. The **Insured** shall, upon the Underwriter's request, assist in investigating, defending, and settling Claims and in the conduct of actions, suits, appeals or other proceedings, including but not limited to attending trials, hearings, and depositions, securing and giving evidence, and obtaining the attendance of witnesses.
- (2) The **Insured** will do nothing that may prejudice the Underwriter's position or the Underwriter's potential or actual rights of recovery in the event of a **Claim**.



- (3) In the event of payment under this Policy, the Underwriter shall be subrogated to, and entitled to an assignment of, all of the rights of recovery therefor of the **Insured**. The **Insured** shall execute all papers and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the Underwriter effectively to pursue and enforce such rights and to bring suit in the name of the **Insured**.

(I) **Cancellation:**

- (1) The Underwriter may not cancel this Policy except for failure to pay a premium when due, in which case twenty (20) days' written notice will be given.
- (2) The **Insured** may cancel this Policy by mailing to the Underwriter written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedures. Premium adjustment may be made either at the time cancellation by the **Insured** is effective or as soon as practicable thereafter, but payment or tender by the Underwriter of unearned premium is not a condition of cancellation by the **Insured**.
- (3) The Underwriter will not be required to renew this Policy upon its expiration. If the Underwriter elects not to renew this Policy, the Underwriter will deliver or mail to the **Insured** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.

(J) **Representations; Severability:**

The **Insureds** represent that the particulars and statements contained in the Application are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the Application. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the Application, this Policy will be void with respect to any **Insured** who knew or such untruth, misrepresentation or omission or to who such knowledge is imputed.

(K) **Entire Agreement:**

The **Insured** agrees that this Policy, including any endorsements and the application attached to and forming part of this Policy, and including any materials submitted in connection with such Application, which are on file with the Underwriter and are a part of this Policy, as if physically attached, constitutes the entire agreement existing between the **Insured** and the Underwriter or any of its agents relating to this insurance.

(L) **Representations:**

The **Insured** represents that the particulars and statements contained in the application and all materials submitted in connection therewith are true, accurate and complete, and agrees that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are incorporated into and constitute a part of this Policy, are the basis of this Policy and are material to the Underwriter's acceptance of this risk.

(M) **No Action against Company; Bankruptcy of Insured:**

- (1) No action shall be taken against the Underwriter unless, as conditions precedent thereto, there shall have been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insured** to pay shall have been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the Underwriter.
- (2) No person or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** against the **Insured** to determine the liability of the **Insured**, nor shall the Underwriter be impleaded by the **Insured** or the **Insured's** legal representative in any such **Claim**.
- (3) Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Underwriter of any of its obligations hereunder.

(N) **Authorization and Notices:**

The person or entity stated in ITEM 1 of the Declarations shall be the sole agent, and shall act on behalf of all **Insureds**, with respect to all matters under this Policy, including but not limited to giving and receiving notices and other communications, effecting or accepting any endorsements to or cancelation of this Policy, the payment of premium and the receipt of any return premiums, and the purchase of any Extended Reporting Period.

(O) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or estop the Underwriter from asserting any right under its terms, conditions and limitations; nor shall the terms, conditions and limitations of this Policy be waived or changed except by written endorsement issued to form a part of this Policy.

(P) **No Transfer or Assignment of Insured's Interest:**

No transfer or assignment of interest under this Policy or any cause of action against the Underwriter arising out of its performance of, or alleged failure to perform in accordance with the terms and conditions of this Policy shall be effective without the Underwriter's written consent; however, in the event of the death, incapacity, or bankruptcy of any person or entity within the definition of **Insured**, a **Claim** against the estate, heirs, legal representatives or assigns of the **Insured** for a **Wrongful Act** by such **Insured** shall be considered a **Claim** against the **Insured**.

(Q) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of the Policy.

**In witness whereof, the Underwriter has caused this Policy to be executed by its authorized representative.**