

**DARWIN NATIONAL ASSURANCE COMPANY  
CLAIMS MADE MENTAL HEALTH COUNSELORS' PROFESSIONAL AND  
OFFICE LIABILITY POLICY**

ADMINISTERED BY:  
**AMERICAN PROFESSIONAL AGENCY, INC.**  
95 Broadway, Amityville, NY 11701  
800-421-6694 • 631-691-6400

**NOTICE: THIS POLICY PROVIDES CLAIMS MADE COVERAGE. A LOWER LIMIT OF LIABILITY APPLIES TO JUDGMENTS OR SETTLEMENTS WHEN THERE ARE ALLEGATIONS OF SEXUAL MISCONDUCT (SEE THE SPECIAL PROVISION "SEXUAL MISCONDUCT" IN THE POLICY). PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR LEGAL OR INSURANCE ADVISOR.**

**We** provide this Policy in consideration of the full payment of all premiums when due and in reliance upon the truthfulness of all of the statements in the application. The Policy consists of a Declarations Page, Insuring Agreement, Exclusions, Definitions and Coverage Conditions, and may also contain one or more endorsements. Endorsements alter the Policy. Terms printed in bold type have meanings referenced, in whole or in part, elsewhere in the Policy. Please read the Policy and all the endorsements carefully to determine what is and what is not covered, as well as the rights and duties of the parties under the Policy.

Subject to the applicable limits and all terms, conditions and exclusions of this Policy, **We** and **You** agree as follows:

**I. WHAT THIS POLICY COVERS:**

A. Mental Health Counselors' Professional Liability:

**We** will pay on **Your** behalf, and subject to **Our** applicable Limit of Liability, amounts **You** are legally required to pay to others as judgments (including pre- and post-judgment interest) or settlements as the result of any **Claim** first made against **You** during the **Policy Period** for **Your Wrongful Acts**, or for the **Wrongful Acts** of others for whom **You** are legally responsible. The **Wrongful Act** must be in the conduct of **Your** profession as a **Mental Health Counselor** and must take place on or after the **Retroactive Date** specified in the Declarations.

B. Premises Liability:

**We** will pay on **Your** behalf, and subject to **Our** applicable Limit of Liability, amounts **You** are legally required to pay to others as judgments (including pre- and post-judgment interest) or settlements as the result of any **Claim** first made against **You** during the **Policy Period** for **Bodily Injury** or **Property Damage** caused by an **Occurrence** which takes place on the premises used principally in **Your** practice as a **Mental Health Counselor** and which takes place on or after the **Retroactive Date** specified in the Declarations.

C. Costs Related to Proceedings:

**We** will reimburse to **You** reasonable costs **You** incur, including reasonable fees charged by an attorney representing **You**, in the investigation or defense of any **Proceeding** arising from **Your** profession as a **Mental Health Counselor** and first brought during the **Policy Period**. The amount shown in Item 4(b) of the Declarations is the most **We** will reimburse to **You** in connection with any single **Proceeding** under this Policy Section I.C.

**II. ADDITIONAL BENEFITS:**

**We** will provide the following benefits in addition to the Limits of Liability applicable to Policy Sections I.A. and I.B. With respect to any **Claim**, and subject to Section V., these benefits end after the Limits of Liability applicable to that **Claim** has been used up in paying judgments (including pre- or post-judgment interest) or settlements.

A. Defending and Settling Claims:

**We** have the right and duty to defend, at **Our** expense and using counsel selected by **Us**, any **Claim** against **You** covered under Section I.A. or I.B., even if the **Claim** is groundless or fraudulent. **We** have the right to investigate any **Claim** and, with **Your** written consent, to settle any **Claim** if **We** believe that settlement is proper. **Our** duty to defend a **Claim** against **You** will end if **You** refuse to consent to a settlement that **We** recommend and which the claimant will accept. From then on, **You** will have to defend that **Claim** at **Your** own expense and negotiate any settlement. **Our** liability for judgments or settlements with respect to that **Claim** will not be more than the amount for which **We** could have settled it if **You** had consented.

B. Post-Judgment Interest:

**We** will pay all interest on that amount of any judgment resulting from any covered **Claim** that is within **Our** applicable Limit of Liability, and that accrues after the entry of judgment but before **We** have paid, offered to pay, or deposited in court that part of the judgment that is within **Our** applicable Limit of Liability.

C. Legal Bonds:

**We** will pay premiums for appeal bonds, or bonds to release property used to secure a legal obligation, if required in a **Claim** **We** defend. However, **We** will only pay for bonds for amounts within **Our** applicable Limits of Liability. **We** have no obligation to appeal any decision or to obtain these bonds.

D. Costs Related to Defense:

**We** will pay reasonable cost, other than loss of earnings, **We** ask **You** to incur while helping **Us** defend a **Claim**. **We** will also pay up to \$250 per day for loss of earnings, subject to a maximum amount of \$5,000 for each **Claim**, if **You** must be away from **Your** practice at **Our** request to help **Us** defend a **Claim**.

III. **WHEN A CLAIM IS COVERED:**

A. **Claims:**

**We** will cover **Claims** first made against **You** during the **Policy Period**. **You** must give written notice of the **Claims** to **Us** or to **Our** authorized agent in accordance with Section VII.B. of this Policy. The **Claims** must be for **Wrongful Acts** or **Occurrences** taking place on or after the **Retroactive Date**, but before the end of the **Policy Period**.

B. Reported Wrongful Acts or Occurrences:

**We** will also cover **Claims** first made against **You** after the **Policy Period**, but only if those **Claims** are for **Wrongful Acts** or **Occurrences** of which **You** have given written notice to **Us** or to **Our** authorized agent in accordance with Section VII.C. of this Policy.

C. Optional Reporting Endorsement:

If **You** or **We** cancel or do not renew this Policy, **You** have the right to buy a reporting endorsement. **You** will not have this right if **We** cancel for non-payment of premium.

The reporting endorsement will apply only to **Claims** which arise out of **Wrongful Acts** or **Occurrences** first taking place on or after the **Retroactive Date**, but before the end of the **Policy Period**. It will cover such **Claims** if they are first made against **You** after the **Policy Period**, and **You** report them in writing to **Us** or to **Our** authorized agent as soon as practicable after they are made, and in no event later than 60 days after **You** first become aware of a **Claim** against **You**. Any such **Claims** will be subject to the same Limits of Liability applicable to Policy Sections I.A. and I.B.; this reporting endorsement shall not increase or amend the applicable Limits of Liability.

To obtain the reporting endorsement **You** must request it from **Us** in writing within 60 days after the **Policy Period** ends and pay **Us** the premium when due. If **You** do so, **We** may not cancel the reporting endorsement. The premium will be the amount shown in Item 7 of the Declarations. If **We** do not receive **Your** written request and payment as required, **You** will have no right to buy a reporting endorsement at any later date.

If **You** die or become permanently disabled so **You** cannot continue as a **Mental Health Counselor**, **We** will not charge **You** a premium for the reporting endorsement. If **You** permanently retire as a **Mental Health Counselor**, and have been insured by **Us** or an affiliate for 5 consecutive years, **We** will not charge **You** for the reporting endorsement. If **You** permanently retire, but do not meet the other requirements, payment of a premium is required, and will be the amount shown in Item 7 of the Declarations. **You** or **Your** legal representative (as described in Section VII.I.) will still have to request the reporting endorsement from **Us** in writing within 60 days after the **Policy Period** ends. **You** or **Your** legal representative will have to give **Us** reasonable proof of death, permanent disability or permanent retirement. **You** or **Your** legal representative will also have to give **Us** written confirmation that during the past 5 years there have been no **Claims** against **You** for **Sexual Misconduct**, as described in the "**Sexual Misconduct**" section (Section VI.) of this Policy.

IV. **EXCLUSIONS - CLAIMS NOT COVERED:**

**We** will not cover any **Claim**:

- A. Arising from **Your** dishonest, fraudulent, criminal, or malicious act, error, or omission, or that of any person for whose acts **You** are legally responsible. This exclusion will not apply to any individual who did not personally participate in such act, error, or omission;
- B. Arising from **Your** ownership or operation of a hospital or other similar facility, or any other facility which provides bed and board or in-patient care, or a laboratory;

- C. Arising from medical treatment, including the providing of drugs unless such treatment is provided under the written direction of a physician; This Exclusion shall not apply to **Your** use of biofeedback equipment customarily used in **Your** practice as a **Mental Health Counselor**.
- D. Arising from disputes about **Your** fees, including, but not limited to, collecting fees from third parties and billing investigations by or on behalf of government entities or commercial payors;
- E. Arising out of **Your** employment practices, including **Claims** involving the following: **Discrimination** against **Your** employees or prospective employees; breach of employment contract; **Your** failure or refusal to hire, employ or promote a person; **Your** demotion or discharge of a person; employment-related defamation, humiliation or harassment by **You**; retaliation against an employee; discipline or evaluation of an employee; or misrepresentations or misstatements to employees regarding the terms and conditions of their employment with **You**;
- F. For **Discrimination** on any basis whatsoever against any person not employed by **You**;
- G. For **Wrongful Acts** of a managerial or administrative nature. This Exclusion does not apply to **Wrongful Acts** that arise from **Your** professional activities as a member of a formal accreditation or professional review board of a hospital or professional society, or a professional licensing board;
- H. By any other person or organization covered under this Policy, or for injury or damage sustained by any spouse or **Household Member**;
- I. For **Bodily Injury** or **Property Damage** in any way involving any **Automobile**, watercraft, or aircraft;
- J. For **Bodily Injury** or damage to **Your** employee or any independent contractor or employee of any independent contractor working for **You**, arising out of the course of his or her work for **You**, or to the spouse or relative of such employee or independent contractor as a consequence of injury or damage to the employee or independent contractor;
- K. For which **You** or **Your** insurer may be held liable under any workers' or unemployment compensation law, or disability benefits law, or any similar law;
- L. Arising from copyright, trademark or patent infringement;
- M. Arising from **Property Damage** to property **You** own, rent, occupy, borrow or use, or in **Your** care, or to premises **You** have sold, given away, or abandoned;
- N. Arising out of any business relationship between **You** and any past or present patient or client;
- O. Arising from any **Wrongful Act** committed with the knowledge that it was a **Wrongful Act**, or which, before the Effective Date of this Policy, **You** were aware of and could reasonably have foreseen might result in a **Claim**;
- P. For fines, penalties, or punitive, exemplary, or multiplied damages. However, if permitted by law, **We** will pay, as part of the applicable Limits of Liability, up to \$25,000 in punitive, exemplary, or multiplied damages **You** are liable to pay as the result of any covered **Claim**;
- Q. Arising out of any **Wrongful Act** committed while **You** did not have a license, as required by law, or while **Your** license was suspended, or which is outside of the scope of authority granted under **Your** license, or any **Wrongful Act** committed while **You** were under the influence of a drug or intoxicant;
- R. Caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction or seizure of property for use for a military purpose;
- S. Arising from any procedure, treatment, course of treatment, or diagnosis that is outside the scope of **Your** specialty or training;
- T. Arising from the design, manufacture, use, distribution, promotion, or sale of any medication, device or equipment, or protocols;
- U. Arising in any way from fungi, including mold or mildew, or any by-products of fungi;
- V. Arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or any liability or obligation to test, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- W. Arising out of any misuse or improper release of confidential, private or proprietary information, or any other act, error or omission in violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any of its related regulations; provided, however, that this Exclusion W shall not apply to **Claims** alleging any misuse or improper release of confidential, private or proprietary information, in violation of HIPAA or any other law, if:
  1. such release of information was in response to any threat to the personal safety or health of **Your** patient or other party; and
  2. such **Claim** is brought by an individual or individuals solely in their capacity as a private party, and not by or on behalf of any governmental entity or agency.
- X. Arising out of the rendering or failure to render mental health services by someone other than **You**, however, this Exclusion shall not apply to **Your** vicarious liability with regard to such mental health services;
- Y. Arising out of **Your** activities as a mediator, including but not limited to the provision of **Divorce Mediation Services**, whether or not for a fee; provided that this Exclusion Y shall not apply to **Your** provision of **Divorce Mediation Services**, if:
  1. prior to providing such services, **You** provide a written statement to all parties explaining **Your** role as a neutral and unbiased intermediary whom shall not act as an advocate for any one party;
  2. **You**, in fact, act exclusively as a neutral and unbiased intermediary between the parties;
  3. where **You** prepare, or assist in preparing, a written settlement agreement or other statement of agreement in connection with such **Divorce Mediation Services**, **You** advise all parties, in writing at the time such agreement is presented to the parties, to have such agreement reviewed independently by counsel of their choice prior to their execution of the agreement.

**V. LIMITS OF LIABILITY:**

**A. Maximum Limits of Liability:**

1. The amount shown in Item 4 (a) of the Declarations ("Each **Wrongful Act** or Series of Continuous, Repeated or Interrelated **Wrongful Acts** or **Occurrences**") is the most **We** will be liable to pay under Sections I.A. and I.B. for

any single **Claim**.

2. The amount shown in Item 4 (b) of the Declarations (“Costs Related to a **Proceeding**”) is the most **We** will reimburse **You** under Section I.C. for any single **Proceeding**.
3. The amount shown in Item 4 (c) of the Declarations (“Aggregate”) is the most **We** will be liable to pay for all **Claims** and all **Proceedings**, regardless of how many such **Claims** or **Proceedings** there are. This includes **Claims** covered under the “**Sexual Misconduct**” section (Section VI) of this Policy.

If **We** have named more than one Named Insured in Items 1(a) or 1(b) of the Declarations, the Limits of Liability shown in the Declarations will apply separately to each insured **We** have named, but only with respect to the coverage **We** provide under Sections I.A. and I.C.

B. Effect of Paying Limits of Liability:

If **We** have paid the Limit of Liability shown in Item 4 (c) of the Declarations, **We** will have no duty to pay any additional amount(s) in connection with any **Claim** or **Proceeding**, whether or not the Limit of Liability applicable to that particular **Claim** or **Proceeding** has been exhausted. Also, **We** will no longer have any duty to defend any **Claim** or to provide any of the Additional Benefits described in Section II of this Policy.

C. Interrelationship of Claims:

All **Claims** arising from the same **Wrongful Act** or **Occurrence** or from continuous, repeated or related **Wrongful Acts** or **Occurrences** will be treated as one **Claim**. Such **Claim** will be considered to have been first made when the first such **Claim** was made or the earliest such **Wrongful Act** or **Occurrence** was first reported to **Us**, whichever was first.

D. Multiple Mental Health Counselors’ Professional Liability Policies:

Two or more policies of Mental Health Counselors’ Professional Liability Insurance may have been issued by **Us** or an affiliate. These policies may also provide coverage for a **Claim** involving the same or continuous, repeated, or related **Wrongful Acts** or **Occurrences** for which **You** and persons or organizations covered in those other policies are jointly and severally liable. In such an event, and subject to the Limits of Liability shown in the Declarations, **We** shall not be liable under this Policy for a greater proportion of the total loss from that **Claim** than this Policy’s applicable Limit of Liability bears to the total applicable Limits of Liability under all such policies. In addition, the total amount payable under the applicable Limits of Liability under all such policies in connection with that **Claim** will not exceed the highest single per **Claim** Limit of Liability under any of such policies.

VI. **SEXUAL MISCONDUCT:**

\$25,000 is the most **We** will be liable to pay for all **Claims** against **You** involving any **Sexual Misconduct** by **You** or by any person for whom **You** may be legally responsible. If any **Sexual Misconduct** is alleged at any stage during a **Claim**, all allegations in that **Claim** which arise out of the same or related professional treatment or relationship will be subject to that \$25,000 maximum. The \$25,000 maximum is part of, and not in addition to, the limits of coverage shown in Items 4(a) and 4(c) of the Declarations. If **We** have paid this \$25,000 maximum, **We** will no longer have any duty to defend any **Claim** involving any **Sexual Misconduct**.

VII. **OTHER PROVISIONS AFFECTING COVERAGE:**

A. Where Coverage Applies:

**We** cover **Wrongful Acts** and **Occurrences** taking place anywhere in the world. However, **We** cover such **Wrongful Acts** and **Occurrences** only if a **Claim** is made and brought in the United States of America, its territories and possessions, Puerto Rico or Canada.

B. What You Must Do in the Event of a Claim:

In order for a **Claim** to be covered:

1. **You** must give **Us** or **Our** authorized agent written notice of any **Claim** as soon as practicable after it is first made. In no event shall such notice be made more than 60 days after the end of the **Policy Period**, unless **You** have obtained a reporting endorsement pursuant to Section III.C.; and
2. **You** must also, as soon as possible, record and notify **Us** of the specifics of the **Claim** and the date **You** first received notice of it; and
3. **You** must send **Us** or **Our** authorized agent all demands or legal papers **You** receive.

C. What to Do if You Become Aware of a Wrongful Act or Occurrence which Might Give Rise to a Claim:

If, during the **Policy Period**, **You** first become aware of a **Wrongful Act** or **Occurrence** which **You** believe may give rise to a **Claim**, in order for any resulting **Claim** to be covered, **You** must give **Us** or **Our** authorized agent written notice during the **Policy Period** of such **Wrongful Act** or **Occurrence**. In that notice, **You** must state when and where the **Wrongful Act** or **Occurrence** took place, the names and addresses of any witnesses and/or injured people, and the nature and location of any injury or damage. This provision does not apply to the optional reporting endorsement described in Section III.C.

D. Your Assistance and Cooperation:

**You** agree to cooperate with and help **Us** make settlements, enforce any legal rights **You** or **We** may have against anyone who may be liable to **You**, attend depositions, hearings and trials, secure and give evidence, and obtain the attendance of witnesses. **You** will not assume any financial obligation or pay out any money without **Our** prior consent. If **You** do, it will be at **Your** own expense.

E. Lawsuits Against Us:

No one can sue **Us** to recover under this Policy unless **You** have complied with all of its terms. A person or organization may sue **Us** to recover up to the Limits of Liability under this Policy, but only after **Your** liability has been decided by a trial after which a judgment has been entered, or by a written agreement signed by **You**, **Us**, and the party making the **Claim**.

- F. Other Insurance:  
A **Claim** covered under this Policy may also be covered under another policy **You** have. In that event, this Policy will apply only in excess of such other coverage, no matter how such other coverage is described. This clause will not apply to coverage which is expressly stated to apply in excess of this specific Policy.
- G. Recovering Damages From a Third Party:  
**You** may be able to recover all or part of a loss from someone other than **Us**. If **We** make a payment under this Policy to **You** or on **Your** behalf, some or all of **Your** right to recover that loss may then belong to **Us**. **You** must do all that is possible after a loss to preserve any such right of recovery, so **We** will be able to pursue **Our** rights. **You** will do whatever is necessary, including signing documents, to help **Us** pursue **Our** rights.
- H. Policy Changes:  
This Policy contains all the agreements between **You** and **Us** or **Our** authorized agents concerning this insurance. The first Named Insured in the Declarations is authorized to make changes in this Policy, with **Our** consent. This Policy can only be changed by a written endorsement **We** issue and make a part of this Policy.
- I. Assignment:  
**You** cannot assign or transfer **Your** interest in this Policy without **Our** written consent attached to the Policy. If **You** die or are declared legally incompetent, **Your** rights and duties will be transferred to **Your** legal representative while acting within the scope of his or her duties as such. Until **Your** legal representative is appointed, anyone having temporary custody of **Your** property will be covered as to the Premises Liability coverage in Section I.B.
- J. Special Rights and Duties of the First Named Insured:  
**You** agree that when there is more than one person or organization covered under this Policy, the first Named Insured in the Declarations will act on behalf of all of **You** with respect to giving and receiving notice of cancellation, the payment of premiums and receipt of return premiums, and the acceptance of any endorsements to this Policy.
- K. Representations:  
By accepting this Policy, **You** agree that the particulars and statements in the application are true and that they are **Your** agreements and representations. **You** acknowledge that this Policy is issued in reliance upon the truth of those particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy and which are the basis for this Policy.
- L. Bankruptcy:  
**You** or **Your** estate's bankruptcy or insolvency does not relieve **Us** of **Our** obligations under the Policy.

M. Cancellation:

CANCELLATION

1. **You** may cancel this Policy by mailing or delivering to **Us** advance written notice of cancellation.
2. **We** may cancel this Policy subject to the provisions below, by first class mail, or by delivery, of a written notice of cancellation to **Your** last mailing address known to **Us**. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
3. **We** may cancel this Policy only for one or more of the following reasons:
  - a. Nonpayment of premium;
  - b. Criminal acts committed by or at the direction of the insured;
  - c. Suspension or revocation of the applicable license issued to **You** to practice **Your** profession;
  - d. A determination by the commissioner that the continuation of the Policy could place **Us** in violation of the Massachusetts insurance laws.
4. Under Item M.3., **We** will give notice at least:
  - a. 10 days before the effective date of cancellation, if **We** cancel for nonpayment of premium. The cancellation notice shall contain the information regarding the amount of premium due and the due date, and shall state the effect of nonpayment by the due date. Cancellation shall not be effective if payment of the amount due is made prior to the effective date of cancellation; or
  - b. 60 days before the effective date, if **We** cancel for any other reason. The notice of cancellation will state the reason for cancellation.
5. If this Policy is cancelled, **We** will send the first Named Insured any premium refund due. If **We** cancel, the refund will be pro rata. If **You** cancel, the refund may be less than pro rata. The cancellation will be effective even if **We** have not made or offered a refund.

NONRENEWAL

If **We** decide not to renew this Policy, **We** will mail, by first class mail, or deliver written notice of nonrenewal to **Your** last mailing address known to **Us**, at least 60 days before the expiration date.

**We** need not mail or deliver this notice if **You** have:

1. Insured elsewhere;
2. Accepted replacement coverage; or
3. Agreed not to renew this Policy.

N. 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 coverage.

**VIII. DEFINITIONS:**

- A. **Automobile** means a land vehicle (whether or not self-propelled) or trailer or semi-trailer, including any attached machinery or apparatus, whether or not subject to motor vehicle registration or designed for use principally on public roads.
- B. **Bodily Injury** means bodily harm, sickness or disease, including any resulting death.
- C. **Claim** means written notice received by **You** that someone intends to hold **You** responsible for a **Wrongful Act** or for an **Occurrence**. This includes a lawsuit or arbitration proceeding.
- D. **Defamation** means the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy.
- E. **Discrimination** means unfair treatment or denial of services to any person based on his or her race, age, national origin, religion, disability of any kind, sex, sexual orientation, or any other protected status.
- F. **Divorce Mediation Services** means mediation services provided by **You** to facilitate two parties in reaching an agreement in matters relating to the divorce or separation of the parties, including, but not limited to, the division or distribution of tangible or intangible property, including drafting, or assisting in the drafting of, an unbiased written agreement among the parties.
- G. **Household Member** means any person who regularly resides in the home with any of **You**.
- H. **Mental Health Counselor** means an individual who is licensed or certified, as applicable, by the appropriate State Licensing Board or other governmental regulatory body, to engage in professional services as a mental health counselor, social worker, pastoral counselor, hypnotist, psychoanalyst, psychotherapist, life coach or marriage and family counselor, as defined by state laws and regulations, or any individual practicing other mental health disciplines, as approved by **Us**.
- I. **Occurrence** means an accident, including continuous or repeated exposure to the same generally harmful conditions, but does not include the performance of, or failure to perform, any professional service in **Your** profession as a **Mental Health Counselor**; nor does it include **Defamation** or any other **Wrongful Act**.
- J. **Policy Period** means the period commencing on the Effective Date shown in the Declarations. This period ends on the earlier of either the Expiration Date or the effective date of cancellation of this Policy. If **You** become an insured under this Policy after the Effective Date, then with respect to **Your** coverage, the **Policy Period** begins on the date **You** become an insured.
- K. **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.
- L. **Proceeding** means a hearing or disciplinary action before a state or other licensing board or governmental regulatory body involving allegations of unprofessional conduct, or a civil proceeding in which **You** are not a defendant but have been ordered to offer deposition testimony regarding treatment rendered to a patient, or a civil proceeding in which **You** are not a party but have received a subpoena for record production.
- M. **Property Damage** means physical injury to or destruction of tangible property, including loss of use of it, or loss of use of tangible property which has not been physically injured or destroyed.
- N. **Retroactive Date** means the date stated in Item 6 of the Declarations.
- O. **Sexual Misconduct** means any type of actual, alleged, attempted, or proposed physical touching or caressing, or suggestion thereof by **You** or any person for whom **You** may be legally responsible, with or to any of **Your** past or present patients or clients, or with or to any relative or any person whom regularly resides with any such patient or client, or with or to any person with whom such patient or client or relative has an affectionate personal relationship, which could be considered sexual in nature and/or inappropriate to any mental health services being provided.
- P. **We, Us** or **Our** means the Insurer specified in the Declarations.
- Q. **Wrongful Act** means any actual or alleged negligent act, error, or omission, or any actual or alleged **Defamation** solely in the performance of, or actual or alleged failure to perform, professional services for others in **Your** profession as a **Mental Health Counselor**, including **Your** services as a member of a formal accreditation or professional review board of a hospital or professional society, or professional licensing board.
- R. **You** or **Your** means:
1. the individual, partnership, or corporation designated as Named Insured in Item 1 (a) of the Declarations, including any partner, executive officer, director or stockholder thereof, and the individual(s) designated as Additional Named Insureds in Item 1 (b) of the Declarations; and
  2. any present or former employee, partner, executive officer, director or stockholder of the Named Insured designated in Item 1 (a) of the Declarations, but only while acting in his or her capacity as such;
  3. any individual, partnership or corporation designated in Item 2 of the Declarations, but only as to matters for which a Named Insured may be liable; and
  4. any other person or entity insured under this Policy via an Endorsement hereto.

In witness whereof, **We** have caused this Policy to be issued.