

**Lexington Insurance Company**  
**MANAGED CARE RISK SOLUTIONS<sup>SM</sup>**  
**CLAIMS MADE POLICY**

In consideration of the premium and in reliance on the representations made in the **Application** provided to us, which will be considered part of this Policy and incorporated herein by reference, Lexington Insurance Company (hereinafter “we”, “us” or “our”) and each **Insured** (hereinafter “you” or “your”) agree as follows:

**I. INSURING AGREEMENT**

This is a claims made and reported insurance policy. It affords coverage for **claims** first made against you and reported to us in writing during the period that this Policy is in effect or within ninety (90) days following its termination. Terms appearing in boldface type shall have the meanings set forth in the Section II, DEFINITIONS. Our mutual obligations under this Policy are at all times subject to the Limits of Liability and all of the other terms and conditions set forth below.

This Policy covers:

All **claims** made against you by any person, entity or governmental agency resulting from an act, error, or omission in the performance of: (1) any health care or managed care financial, management or insurance service you perform in your business, (2) the design, development and marketing of any such service, and (3) your **vicarious liability** for the conduct of others performing any such service on your behalf.

If a **claim** falls within the foregoing, we will defend you, and we will also pay:

- A.** all compensatory damages for any tortious conduct, breach of contract or breach of duty;
- B.** all compensatory damages for the violation of any civil statute, ordinance or regulation;
- C.** all compensatory damages for any civil **antitrust activity**;
- D.** all compensatory damages for the failure to protect the confidentiality of any medical information;
- E.** a part of punitive, multiple and exemplary damages where punitive, multiple and exemplary damages are insurable under the law of the **most favorable jurisdiction**; that part will be calculated by dividing the amount of compensatory damages payable under this policy by the total amount of compensatory damages determined in a settlement we agree to or by final adjudication, whichever is applicable, subject to the limits of liability under this policy; and

F. all attorneys fees of another party awarded against you.

Although we will defend you, we will not pay:

G. any amount you owe under any contract, insurance policy, benefit plan or provider agreement;

H. any amount you wrongfully withhold or are obligated to disgorge, or any profit or advantage to which you are not legally entitled;

I. any taxes, sanctions or fines;

J. any amount necessary to comply with any declaratory, equitable, injunctive or administrative relief, or to correct any error or to modify any of your practices, policies or procedures; or

K. any cost or expense incurred in pursuing any claim, counterclaim, cross-claim or other proceeding brought or maintained by you or on your behalf.

## II. DEFINITIONS

A. **Antitrust activity** means any actual or alleged price fixing, price discrimination, predatory pricing, monopolization, restraint of trade, unfair competition, unfair or deceptive trade practice, or violation of any federal or state antitrust law;

B. **Application** means all applications, including all attachments, and all other written information and material submitted to us in applying for this Policy;

C. **Claim** means a written communication received by an Named Insured's Risk Management or Legal Department seeking damages or other civil, administrative or injunctive relief, or threatening suit or arbitration, including service of suit or institution of arbitration proceedings;

All **claims** arising out of the same act, error, omission, course of conduct or transaction shall constitute a single **claim** and shall be deemed to have been made at the time the first such **claim** is made against any **Insured**;

D. **Claims expenses** means:

1. all reasonable and necessary fees and expenses incurred in the investigation and defense of any **claim**, including all fees and expenses incurred in complying with court mandated electronic discovery; but excluding any loss of income, earnings or revenue, or the salaries, fees, costs, expenses or overhead or your employees, officers or directors;

2. all costs awarded against you and prejudgment interest awarded against you on that part of the judgment we pay; and,

3. All interest on the amount of any judgment we pay that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment we pay subject to the applicable Limit of Liability, and;

4. all premiums on appeal bonds required to be furnished in any suit.

**E. Insured** means the Named Insured, each of its present or former directors, trustees, officers, medical directors, committee persons, volunteers, interns, employees, or any other individual duly authorized to perform a service covered under the Insuring Agreement on behalf of the Named Insured but only while acting in such capacity, and, in the event of death or incapacity, the estate, heirs, or legal representatives of any of them; and any other person or entity added to this policy as an **Insured** by endorsement;

**F. Medical service** means any medical, surgical, mental health, dental, nursing or chiropractic examination, treatment or therapy, the furnishing or dispensing of blood, drugs or medical, surgical, dental, or chiropractic supplies or appliances, or the handling of, or performing post-mortem examination on, a human body;

**G. Most favorable jurisdiction** means the jurisdiction where either the act, error or omission giving rise to liability took place, the relief was awarded, you are incorporated or have your principal place of business, or we are incorporated or have our principal place of business; and

**H. Vicarious liability** means liability imposed upon you under a theory of agency, ostensible agency, apparent agency or respondeat superior.

### III. CLAIMS THAT ARE EXCLUDED

We will neither defend you nor pay any **claim** arising out of:

**A.** any act, error or omission which the Named Insured's Risk Management or Legal Department knew or reasonably should have known was likely to lead to a **claim**, or was reported to another insurer, prior to the commencement of the policy period of the earliest consecutive policy issued by us immediately preceding this Policy;

**B.** the insolvency, receivership, bankruptcy, liquidation or financial inability to pay of any **Insured**;

**C.** any dishonest, fraudulent, criminal or malicious act, error or omission committed by you or at your direction; provided, however, that our obligations under this Policy shall apply to any allegation otherwise within the scope of this exclusion until your liability has been admitted or finally adjudicated, at which time all of our obligations under this Policy with respect to such **claim** shall cease. For the purposes of this exclusion, no act of any **Insured** shall be imputed to any other **Insured**;

- D. any dispute between you and any of your officers, directors, employees, trustees, subsidiaries or affiliated entities; provided, however, that this exclusion will not apply to any **claim** arising out of any service you perform as described in the **Application** made by an individual who is a recipient of that service;
- E. any act, error or omission in the conduct of any of any partnership or joint venture that is not designated in the Declarations;
- F. any act, error or omission in your performance of a **medical service**; provided, however, that our obligations under this Policy will apply until such time as we have determined that the **medical service** in question was performed by a health care professional who, at the time of the performance of the **medical service**, was an **Insured**. At that time, all of our obligations under this Policy with respect to such **claim** shall cease. This exclusion will not apply, however, to the voluntary performance of an emergency **medical service** by an **Insured** without receipt or expectation of remuneration;
- G. any act, error or omission occurring before the Retroactive Date shown in the Declarations;
- H. the licensing, infringement, misappropriation or misuse of any patent, copyright, trademark, service mark, trade name, computer software, trade dress, or other intellectual property or trade secret; or
- I. the unauthorized use or destruction of any computer data, software, hardware, system, or network. This exclusion will not apply to **claims** arising out of (1) the failure to protect the confidentiality of medical information obtained in the performance of health care or managed care services and (2) information you maintain for purposes of credentialing, selecting, or deselecting providers of **medical services**.

#### IV. LIMITS OF LIABILITY

Regardless of the number of (1) **Insureds**, (2) persons or entities that make a **claim**, or (3) **claims** that are made under this Policy, our liability under this Policy and all other parts and endorsements to this Policy combined, except as expressly provided therein, is limited as follows:

##### A. AGGREGATE LIMIT:

Our total monetary obligation for all settlements, judgments and **claims expenses** as a result of all **claims** for which coverage is afforded under this Policy shall not exceed the Limit of Liability stated in the Declarations to be the Aggregate Limit.

## **B. PER CLAIM LIMIT:**

Subject to the foregoing provision concerning the Aggregate Limit, the Limit of Liability stated in the Declarations to be applicable to each **claim** shall be the total limit of our liability for all settlements, judgments and **claims expenses** as a result of any one **claim** for which coverage is afforded under this Policy.

## **C. DEDUCTIBLE OR SELF INSURED RETENTION:**

As set forth in the Declarations, you have elected to make the per **claim** Limit of Liability under this Policy subject either to a Deductible or a Self Insured Retention.

If you have selected a Deductible, the amount designated in the Declarations as the Deductible will be deducted first from the Limit of Liability applicable to each covered **claim**. You will reimburse us promptly for any portion of the Deductible we advance in payment of judgments, settlements or **claims expenses** resulting from each such **claim**.

If you have selected a Self Insured Retention, you will pay that amount toward all judgments, settlements or **claims expenses** resulting from each covered **claim**. Our obligation under this Policy to pay judgments, settlements or **claims expenses** applies only to amounts in excess of the Self Insured Retention, and we will not be obligated to pay any amount under this Policy until you have paid the full amount of the Self Insured Retention. No portion of the Self Insured Retention may be insured without our prior written consent. Irrespective of whether there may be insurance available to fund any portion of the Self Insured Retention, you will be responsible for the full amount of the Self Insured Retention. Your bankruptcy, insolvency, inability to pay, failure to pay, or refusal to pay the Self Insured Retention will not alter or increase our obligations under this Policy.

## **V. HOW A CLAIM WILL BE DEFENDED**

If you have selected a Deductible, we will have the right and the duty to defend you even if the allegations are groundless, false or fraudulent. We will pay all reasonable and necessary **claims expenses** incurred in the defense of the **claim**, and we will have the right to appoint defense counsel.

If you have selected a Self Insured Retention, until the Self Insured Retention has been fully exhausted it is your obligation to pay all judgments, settlements and **claims expenses**, including, reimbursing us for any amount we have advanced on your behalf. You may settle or compromise any **claim** without our consent so long as the amount of the settlement or compromise, together with the amount of all **claims expenses**, does not exceed the Self Insured Retention or otherwise result in any cost to us. If, in our sole discretion, we determine that a **claim**, including **claims expenses**, may ultimately exceed the Self Insured Retention, we will have the right to appoint defense counsel. When you have paid the full amount of the Self Insured

Retention, we will then have the right and the duty to defend the **claim** even if the allegations are groundless, false or fraudulent; and we will pay all reasonable and necessary **claims expenses** incurred in the defense of the **claim**. You may not incur any cost or **claims expense** or settle any such **claim** that would involve payment in excess of the Self Insured Retention without our prior written consent.

Irrespective of whether the Per Claim Limit of Liability is subject to a Deductible or a Self Insured Retention, we will have the right to investigate any **claim** and you will be obligated to cooperate with us as provided below. We will not settle or compromise any **claim** without obtaining your prior consent. If, however, you refuse to consent to a settlement or compromise we recommend and elect to continue legal proceedings, then our liability for the **claim** shall not exceed the amount for which the **claim** could have been settled, plus **claims expenses** incurred up to the date of the refusal, subject to the Limits of Liability.

We will not be obligated to make any payment under this Policy after the Limits of Liability have been exhausted by the payment of judgments, settlements or **claims expenses**. If the Aggregate Limit of Liability is exhausted, we notify you of all outstanding **claims** so that you can assume control of the defense of all such **claims**.

## VI. CONDITIONS

### A. YOUR DUTIES IN THE EVENT OF A CLAIM:

It is a condition precedent to this insurance and any Extended Reporting Period that you must do all the following:

1. As soon as practicable, and in no event later than ninety (90) days after your Risk Management or Legal Department becomes aware of a **claim**, forward to Lexington Insurance Company, 100 Summer Street, Boston, MA 02110, to the attention of the Managed Care Claims Unit, a copy of the **claim** together with any summons or other process received, full information concerning the claimant, the date, place and circumstances of the event(s) complained of, and the names and addresses of all known participants and available witnesses;
2. Cooperate with us in the defense of the **claim**;
3. Promptly provide us with information we request;
4. Attend hearings, depositions, arbitrations, mediations and trials;
5. Assist us in effecting settlement;
6. Secure and provide us with evidence to support the defense of the **claim**, and obtain the attendance of witnesses; and,

7. Provide written statements to our representatives and meet with them for the purpose of investigation or defense, and, if requested, submit to examination under oath.

Except as otherwise required by law, you may not enter into any tolling agreement or agree to, or reject, arbitration or mediation without our written consent.

#### **B. POTENTIAL CLAIMS REPORT:**

If, during the effective period of the Policy or any Extended Reporting Period, you become aware of any act, error or omission that may be reasonably likely to give rise to a **claim** for which coverage may be afforded under this Policy, and if you immediately give us written notice of (1) the specific act, error or omission, (2) the resulting damages, if known, (3) how, when, and where the act, error, or omission took place and (4) the names and addresses of all known participants and available witnesses, then any **claim** that may subsequently be made arising out of that act, error or omission will be deemed to have been made on the last day of the effective period of the Policy; provided, however, that the act, error or omission must have occurred after the Retroactive Date stated in the Declarations and before the termination of this Policy.

#### **C. SUBROGATION:**

To the extent of all payments we make under this Policy, we will be subrogated to your rights of recovery against any person or entity. You must execute and deliver such instruments and papers and do whatever else may be necessary to secure such rights, and do nothing following the act, error or omission to prejudice those rights.

#### **D. INSUREDS' REPRESENTATIVE:**

It is understood that the first Named Insured identified in the Declarations is authorized and agrees to act on behalf of all **Insureds** for all purposes in connection with this Policy, including the giving and receiving of notice of any **claim** or cancellation, the payment of premiums and the receipt of any return premiums that may become due under this Policy. A communication by us to the first Named Insured will be deemed a communication to all **Insureds** unless you advise us otherwise in writing.

#### **E. ACTION AGAINST US:**

No action shall be brought against us unless as a condition precedent thereto there shall have been full compliance with all of the terms and conditions of this Policy and not until the amount of your obligation to pay has been finally determined whether by judgment against you after actual trial or by written agreement between you and the claimant consented to by us. No person or

organization will have any right under this Policy to join or implead us as a party to any action against you.

**F. APPLICATION:**

By acceptance of this Policy, you agree that the statements in the **Application** are your true representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of those representations and that this Policy embodies all agreements existing between you and us, or any of our respective representatives, relating to this insurance.

**G. ASSIGNMENT:**

This Policy will be void if assigned or transferred without our prior written consent.

**H. FALSE OR FRAUDULENT CLAIM:**

If you refer any **claim** to us which any **Insured** knows to be false or fraudulent, all insurance hereunder shall be immediately forfeited.

**I. CHANGES:**

Notice to our authorized representative or knowledge possessed by any broker or other person shall not effect a waiver or a change of any provision of this Policy or estop us from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except by endorsement issued to form a part of this Policy.

**J. INSPECTION:**

We will be permitted, but not obligated, to inspect your property and operations at any time. Neither our right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on your behalf or for your benefit, or that of others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule, regulation or professional standard. We may review your books and records at any time during the effective period of this policy or any Extended Reporting Period, or within three years thereafter, as far as they relate to the subject matter of this insurance.

**K. PREMIUM:**

All premiums for this Policy shall be computed in accordance with our rules and rates applicable to such insurance. You must maintain records of such information as is necessary for premium computation, and must send copies of such records to us at the end of the effective period of this Policy as we may direct.

#### **L. CANCELLATION:**

You may cancel this Policy by surrendering it to us or by mailing written notice to us stating when thereafter the cancellation will be effective. If you cancel the Policy, we will retain the customary short rate proportion of the premium, subject to the Minimum Earned Premium set forth in the Declarations.

We may cancel the Policy by mailing written notice to you at the address shown in the Declarations stating when, not less than ninety (90) days thereafter, the cancellation will be effective. However, if we cancel the Policy because you have failed to pay a premium or Deductible when due, we may cancel by mailing a written notice of cancellation stating when, not less than ten (10) days thereafter, the cancellation will be effective. The mailing of notice will constitute notice and the effective date of cancellation stated in the notice shall become the end of the effective period of this Policy.

Delivery of written notice by either of us as described shall be equivalent to mailing. If we cancel, the earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

#### **M. OTHER INSURANCE:**

This insurance is excess of any other insurance whether provided on a primary, contingent, excess, or any other basis, unless such other insurance is written to be specifically excess of this policy. When this insurance is excess, we will have no duty to defend any **claim** until all such other insurance has been exhausted in accordance with its terms and conditions.

#### **N. POLICY TERRITORY:**

The policy territory is the United States, its territories and possessions and Puerto Rico.

Payment of loss under this Policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

#### **O. MERGERS, ACQUISITIONS, OR NEWLY CREATED ENTITIES:**

If, during the effective period of this Policy you form, acquire or merge with another entity such that after the effective date of the transaction you hold a majority ownership interest in the newly formed, acquired or merged entity, then for a period of ninety (90) days after the effective date of the transaction or so long as this Policy remains in effect, whichever is less, the newly formed, acquired or merged entity will be included within the definition of **Insured** with

respect to any **claim** arising solely out of acts, errors or omissions occurring after the effective date of the transaction. Thereafter, all coverage under this Policy will cease unless prior to the cessation of coverage:

1. you provide us with such information regarding the transaction and the newly formed, acquired or merged entity as we request; and
2. we agree by written endorsement to this Policy to provide coverage, and you accept any terms, conditions, exclusions or limitations, including payment of additional premium, as we, in our sole discretion, impose on continued coverage.

**P. SALE OR DISSOLUTION OF INSURED ENTITIES; CESSATION OF BUSINESS:**

If, during the Policy Period:

1. any person or any entity that is not an **Insured** obtains:
  - a. the right to elect or appoint more than fifty percent (50%) of an **Insured** entity's directors, trustees or member managers, as applicable; or
  - b. more than fifty percent (50%) of an **Insured** entity's equity or assets; or
2. you cease to do business for any reason;

then so long as this Policy remains in effect thereafter, there will be no coverage under this Policy with respect to any **claim** arising out of any act, error or omission you commit on or after the date thereof unless prior to any transaction stated in Subparagraphs 1 or 2 above, you provide us with such information regarding the transaction and any surviving entity as we may request, and we agree by written endorsement to this Policy to provide coverage subject to terms, conditions, exclusions or limitations, including payment of additional premium, as we may, in our sole discretion, impose on such coverage.

**Q. AUTOMATIC EXTENDED REPORTING PERIOD**

1. If this Policy is canceled or not renewed for any reason other than non-payment of premium or failure to comply with the terms and conditions of the Policy, and if the Optional Extended Reporting Period Endorsement is not purchased, we will provide an Automatic Extended Reporting Period of ninety (90) days commencing at the end of the Policy Period. During the Automatic Extended Reporting Period, any **claim** first made against an **Insured** resulting from an act, error or omission that took place on or after the Retroactive Date in the Declarations but before the end of the Policy Period will be deemed to have been first made on the last day of the Policy Period.

2. The Automatic Extended Reporting Period does not extend the Policy Period, nor alter the Limits of Liability or any other term or condition of this Policy.
3. The Automatic Extended Reporting Period will not be effective if any other insurance provides coverage to the **Insured** whether the other insurance applies on a primary, excess, contingent, or any other basis.
4. Our offer of terms, conditions or premium different from the expiring Policy will not be considered a refusal or failure to renew this insurance.

#### **R. OPTIONAL EXTENDED REPORTING PERIOD**

1. If this Policy is canceled or not renewed for any reason other than non-payment of premium or failure to comply with the terms and conditions of the Policy, the first Named Insured may purchase an Optional Extended Reporting Period Endorsement commencing at the end of the Policy Period. The additional premium for, and the period of, the Optional Extended Reporting Period Endorsement will be as stated in the Declarations.
2. During the Optional Extended Reporting Period, any **claim** first made against an **Insured** resulting from an act, error or omission that took place on or after the Retroactive Date in the Declarations but before the end of the Policy Period will be deemed to have been first made on the last day of the Policy Period. The Optional Extended Reporting Period does not extend the Policy Period, nor alter the Limits of Liability or any other term or condition of this Policy.
3. To obtain an Optional Extended Reporting Period Endorsement, the Named Insured must make a request in writing within ninety (90) days after the end of the Policy Period and pay the premium due. The premium will be fully earned and the Optional Extended Reporting Period Endorsement cannot be canceled.
4. The insurance provided under the Optional Extended Reporting Period Endorsement will be excess of any other insurance providing coverage to the **Insured**, whether the other insurance applies on a primary, excess, contingent, or any other basis.
5. Our offer of terms, conditions or premium different from the expiring Policy will not be considered a refusal or failure to renew this insurance.

#### **S. ARBITRATION:**

In the event of a disagreement as to the interpretation of this policy (except with regard to whether this policy is void or voidable), it is mutually agreed that the dispute shall be submitted to binding arbitration before a panel of three arbitrators consisting of two party-nominated (non-impartial) arbitrators and a

third (impartial) arbitrator (hereinafter "umpire") as the sole and exclusive remedy.

The party desiring arbitration of a dispute shall notify the other party, including the name, address and occupation of the Arbitrator nominated by the demanding party. The other party shall, within 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 arbitrators so selected shall, within 30 days of the appointment of the second arbitrator, select an umpire. If the arbitrators are unable to agree upon an umpire, the selection of the umpire shall be submitted to the Judicial Arbitration and Mediation Services (hereinafter, "JAMS"). The umpire shall be selected in accordance with Rule 15 (as may be amended from time to time) of the JAMS Comprehensive Arbitration Rules and Procedures for the selection of a sole arbitrator.

The parties shall present their respective cases to the panel by written and oral evidence at a hearing time and place selected by the umpire. 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 of the three 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 30 days of the close of the hearings. Each party shall bear the fees and expenses of its designated arbitrator and shall jointly and equally share with the other the fees and expenses of the umpire and the arbitration.

The arbitration proceeding shall take place in the vicinity of Boston, Massachusetts or such other place as may be mutually agreed by you and us. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the JAMS Comprehensive Arbitration Rules and Procedures.

#### **T. SERVICE OF SUIT:**

Subject to the provisions of Condition S, ARBITRATION, if we fail to pay any amount due under this policy, at your request we will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Condition constitutes or should be understood to constitute a waiver by us of any right 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 within or outside of a jurisdiction 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, Legal Department, Lexington Insurance Company, 100 Summer Street, Boston, Massachusetts, 02110. We will abide by the decision of such court or of any appellate court in the event of any appeal.

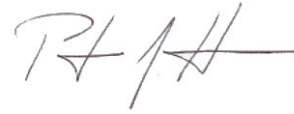
We designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose under any statute of any state, territory, or district of the United States which makes provision therefor, as our attorney upon whom any lawful process in any action, suit, or proceeding instituted by or on your behalf or any beneficiary hereunder arising out of this Policy, may be served and also hereby designate the above named Counsel as the person to whom the officer is authorized to mail the process.

By signing below, the President and the Secretary of the Insurer agree on behalf of the Insurer to all the terms of this Policy.

Secretary



President



This Policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.

---

Authorized Representative