

**LEXINGTON INSURANCE COMPANY  
WILMINGTON, DELAWARE**

ADMINISTRATIVE OFFICES – 200 STATE STREET, BOSTON, MASSACHUSETTS 02109

**INSURANCE AGENTS ERRORS & OMISSIONS COVERAGE FORM**

**Lexington Insurance Company**, hereinafter called the **Company**, agrees with the **Named Insured** as named in the Declarations which are made a part of this policy in consideration of the payment of the premium and in reliance upon the statements in the Declarations and subject to all of the terms of this policy, as follows:

**SECTION I**

COVERAGE. The **Company** does hereby agree to pay on behalf of the **Insured**, such **damages** in excess of the applicable deductible stated and within the limit of liability specified in the **Declarations**, **as are** sustained by the **Insured** by reason of liability imposed by law caused by:

- (a) any **wrongful act** of the **Insured** or any person for whose acts the **Insured** is legally liable arising out of the conduct of the business of the Insured in rendering services for others as a General Insurance Agent, Insurance Agent or Insurance broker, Insurance Wholesaler, Insurance Managing General Agent, Insurance Underwriting Manager, Insurance Program Administrator, Insurance Surplus Lines Insurance Broker, Insurance Consultant, Insurance Claims Administrator, Insurance Appraiser, Insurance Premium Financing of Insureds clients, Notary Public, Seller of Mutual Funds through a registered licensed Broker Dealer, Provider of Services as a Licensed Registered representative in connection with the sale of Variable Life and Variable Life Annuity Products and any advertising activities, as respects **claims first made** against the **Insured** during the **policy period**.

**SECTION II**

**EXTENSIONS**

This Policy affords the following extensions of coverage:

**(A) DISCIPLINARY PROCEEDING EXTENSION.**

Subject to all other terms and conditions of this policy, if **Disciplinary Proceeding** are commenced against the **Insured**, the **Company** will reimburse the **Insured** for reasonable attorney's fees and costs incurred in responding to such **Disciplinary Proceeding**. The maximum payment made by the **Company** pursuant to this extension II (A) shall be \$10,000 for each **Policy Period** regardless of the number of **Disciplinary Proceedings**. Any payment made by the **Company** under this Extension II (A) shall not apply to the Deductible and shall not reduce the limits of liability. The Company shall not pay **Damages** pursuant this Extension II (A).

**B) SPOUSAL EXTENSION.**

If a **Claim** against an **Insured** includes a **claim** against the lawful spouse of such **Insured** solely by reason of (a) spousal status or (b) such spouse's ownership interest in the property or assets that are sought as recovery for such **Claim**, any sums for which the spouse becomes legally obligated to pay on account of such **Claim** shall be deemed **Damages**.

All terms and conditions of this Policy, including the deductible, applicable to **Damages** sustained by an **Insured** in the **Claim** shall also apply to such spousal loss.

This extension II (B) shall not apply to the extent the **Claim** alleges any **wrongful act** by such spouse.

**(C) Confidentiality Coverage Extension**

Subject to all other terms and conditions of this Policy, covers such **Damages** that the **Insured** shall become legally obligated to pay as a result of **Claims** arising out of the **Insured's** unintentional disclosure of confidential or proprietary information.

**(D) Professional Internet Services**

Subject to all other terms and conditions of this Policy covers such **Damages** that the **Insured** shall become legally obligated to pay as a result of **Claims** arising out of the **Insured's** conduct of **Internet Professional Services**.

**(E) Joint Venture Participation Extension**

Subject to all other terms and conditions of this Policy covers such **Damages** that the **Insured** shall become legally obligated to pay as a result of **Claims** arising out the **Insured's** legal liability for its participation in a joint venture with an entity. The extension of coverage afforded by this Extension II (B) applies only to the **Insured's wrongful act** and does not afford coverage to the joint venture itself or any entity that is part of the joint venture.

**SECTION III**

**DEFENSE AND SETTLEMENTS.** The **Company**, in the **Insured's** name and behalf, shall have the right to investigate, defend and conduct settlement negotiations in any **claim** or suit.

The **Company** shall not settle any **claim** without the consent of the **Insured**. Should the **Insured** refuse to consent to any settlement recommended by the **Company** and elect to contest the **Claim**, or continue any legal proceedings in connection with such **Claim**, the **Company's** liability for the **Claim** shall not exceed the amount in excess of the **Insured's** deductible for which the **Claim** could have been so settled, or the applicable limit of liability, whichever is less, plus the defense costs and expenses incurred with the **Insured's** consent up to the date of such refusal.

The **Insured** shall not admit liability for, or make any voluntary settlement, or incur any costs or expenses in connection with any **claim** involving payment by the **Company**, except with the written consent of the **Company**.

#### SECTION IV

**DEFENSE EXPENSES AND SUPPLEMENTARY PAYMENTS.** With respect to such insurance as is afforded by this Policy, the **Company** shall pay, in addition to the applicable limit of liability, provided the limit of liability has not been exhausted:

- (a) all expenses incurred in the defense of any **Claim** or suit against the **Insured** alleging a **wrongful act**, and seeking **damages** on account thereof, even if such **Claim** or suit is groundless, false, fraudulent, or for an amount less than the **Insured's** deductible;
- (b) all premiums on bonds to release attachments and appeal bonds, limited to that portion of such bond that does not exceed the limit of liability of this policy, but without any obligation to apply for or furnish such bonds;
- (c) all costs taxed against the **Insured** in any suit and all expenses incurred by the **Company**;
- (d) all interest accruing after the entry of judgment, but only for that portion of the judgment which does not exceed the applicable limit of liability, until the **Company** has tendered or paid such part of such judgment as does not exceed the **Company's** limit of liability thereon;
- (e) all reasonable Expenses incurred by the **Insured** at the **Company's** request in assisting the **Company** in the investigation and defense of any **claim** or suit, other than loss of earnings.

#### SECTION V

**LIMIT OF LIABILITY AND DEDUCTIBLE.** The liability of the **Company** for **Damages** on account of all **Claims** first made against the **Insured**, (1) during the **policy period**, or (2) during the **policy period** together with the extension period, in either case, irrespective of the number of **Insureds** covered hereunder, shall be limited to the amount stated in Item 3 of the Declarations.

The limit of liability as stated in Item 3 of the **Declarations** shall apply in excess of the **Deductible**.

As respects each **Claim** first made against the **Insured**, the **Insured** shall be responsible for that amount of **damages** indicated in Item 4(a) of the **Declarations** as applicable to "**each claim**". Subject to the immediately preceding provision respecting "**each claim**", the total amount of **damages** for which the **Insured** will be responsible as respects all **claims first made** during anyone **policy period** shall not exceed the amount stated in Item 4 (b) of the **Declarations** as the "**aggregate each policy period**".

Should the **Company**, for any reason, pay the entire amount of **damages** without regard to the **Deductible** the **Insured** will reimburse the **Company**, within 30 days of the **Company's** request for such reimbursement, for that part of the **Deductible** which has been paid.

## SECTION VI

DEFINITIONS. Wherever used in this policy:

- (a) **"Claim"** means a notice received by an **Insured** from a person or entity advising that it is the intention of that person or entity to hold the **Insured** liable for **Damages** for a **Wrongful Act** covered under this policy. The term **"Claim"** includes but is not limited to a demand received by an **Insured** for money or services, the service of suit or institution of arbitration proceedings, or a request received by an **Insured** for a tolling agreement with respect to statutes of limitation or for other extensions to allow the filing or maintenance of **Claims** against the **Insured**.
- (b) the term **"Claims first made"** shall mean that the **Insured** has received notice of legal process, that a demand for money or services has been made against the **Insured**, or that the **Insured** has become aware of a proceeding, event or development which has resulted in or could in the future result in the institution of a **Claim** against the **Insured**. In the event of any such proceeding, event or development, notice must be given to the **Company** during the **policy period**;
- (c) **"Damages"** means a compensatory monetary amount for which the **Insured** may be held legally liable. The Term **"Damages"** includes, but is not limited to, a judgment (inclusive of any pre- or post-judgment interest) awards or settlements negotiated with the approval of the **Company**. **Damages** also includes punitive and/or exemplary damages or the multiple portion of any multiplied damage award unless said damages are uninsurable pursuant to applicable law. The insurability of such **damages** shall be governed by the internal laws of any applicable jurisdiction that permits coverage of such **damages**.

**Damages** do not Include:

?? any return, withdrawal, restitution or reduction of professional fees, profits or other charges:

?? fines, sanctions, taxes, penalties or awards deemed uninsurable pursuant to any applicable law:

?? costs or expenses incurred by the **Insured** to comply with a demand for Equitable Relief even if such compliance was compelled as a result of a judgment, award or settlement

- (d) **"Disciplinary Proceeding"** means any proceeding by a regulatory or disciplinary official, board or agency authorized to investigate charges of professional misconduct in the performance of rendering **Professional Services**.
- (e) **"Professional Internet Services"** means **Professional Services** performed electronically by utilizing the Internet or a network of two or more computers.

- (f) **"Entity"** means any individual, partnership, or corporation other than the **Insured**.
- (g) **"Extended Reporting Period"** means that applicable period of time after the end of the **Policy Period** for the reporting of **Claims** arising out of **Wrongful Acts** committed, or alleged to have been committed, prior to the end of the **Policy Period** and subsequent to the Retroactive Date, and otherwise covered by this Policy.
- (h) **"Insured"** means only the following:

- ?? The **Named Insured** designated in Item 1 of the Declarations or by endorsement to this Policy;
- ?? Any person who is, was or hereinafter becomes a partner, principal, officer, director, or member of the **Named Insured**, but only while acting on behalf of the **Named Insured**;
- ?? Any sub contracted, temporary or leased personnel or retired personnel of the **Named Insured**, but only while acting under the direct supervision of and exclusively on behalf of the **Named Insured**;
- ?? The estate, heirs, executors, administrators, and legal representatives of an **Insured** in the event of such **Insured's** death, disability, incapacity, insolvency, or bankruptcy, but only to the extent such **Insured** would have otherwise been provided coverage under this Policy;
- ?? Any **Subsidiary**.

If during the **Policy Period** the **Named Insured** acquires or creates another entity, other than a joint venture, such entity shall be considered an **Insured** under this Policy but only for **Wrongful Acts** committed after the date of acquisition or creation. The **Named Insured** shall give written notice to the **Company** of its acquisition or creation of another entity as soon as practicable but in no event more than 90 days after the effective date of such acquisition or creation, together with such information that the **Company** may require. Upon receipt of such notice, the **Company** may at its sole option agree to appropriately endorse this Policy subject to any additional premium and/or changed terms and conditions. If the **Named Insured** fails to provide such notice and/or requested information to the **Company**, coverage otherwise afforded under this provision to such newly acquired or created entity shall terminate ninety (90) days after the effective date of such acquisition or creation.

- (i) **"Mediation"** means a non-binding process in which a neutral panel or individual assists the parties in reaching their own settlement. To be considered Mediation under this **Policy**, the process must be of a kind set forth in the Commercial Mediation Rules of the American Arbitration Association. The **Company**, however, at its sole option, may recognize any Mediation process or forum presented for approval.
- (j) **"Personal Injury"** means false arrest, detention or imprisonment or malicious prosecution; the publication or utterance of a libel or slander or other defamatory or disparaging material; invasion, infringement or interference with rights of privacy or publicly wrongful entry or eviction; invasion of the right of private occupancy; infringement of copyright; plagiarism; piracy;

misappropriation of ideas; or infringement of title, slogan or trademark, trade name, trade dress, service mark or service name.

- (k) **"Policy Period"** means the period set forth in Item 2 of the **Declarations** or any shorter period that may occur as a result of cancellation of this Policy, and specifically excludes any **Extended Reporting Period** hereunder.
- (l) **"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
- (m) **"Professional Services"** means those services in the ordinary conduct of the Insured's profession for others for a fee, remuneration or other consideration; or as otherwise defined by endorsement to this Policy.
- (n) **"Retroactive Date"** means the date, if specified in Item 6 of the Declarations or in any endorsement attached hereto, on or after which any **wrongful act** must have occurred in order for **Claims** arising therefrom to be covered under this Policy. **Claims** arising from any **wrongful act** occurring prior to this date are not covered by this Policy.
- (o) **"Subsidiary"** means any entity identified in the application for this Policy in which the **Named Insured** has an ownership interest of greater than 50% at the time of the commission of any **Wrongful Act**. If before or during **Policy Period**, the **Named Insured** ceases to have an ownership interest of greater than 50% in such entity, coverage under this Policy for such entity shall apply only to its **Wrongful Acts** taking place prior to the date the **Named Insured** ceased having greater than 50% ownership interest.
- (p) **"Wrongful Acts"** means any actual or alleged act error, omission committed or **Personal Injury inflicted** by the **Insured**, or by any other person or entity for whom the **Insured** is legally liable in the rendering or failure to render **Professional Services**.

## SECTION VII

**EXCLUSIONS.** This policy does not apply to any **Claim**:

- (a) based on, or directly or indirectly arising out of or resulting from any criminal, fraudulent, dishonest or discriminatory act or omission or any act, error or omission committed with knowledge of its wrongful nature or with intent to cause damage, or the obtaining, by the **Insured** of any personal profit, gain or advantage to which the **Insured** is not legally entitled; however, the **Company** shall reimburse the **Insured** for any **Defense Expenses** that would have been payable under this Policy if, upon final disposition of such **Claim**, the allegations of such conduct were not proven;

- (b) based upon or arising out of any **wrongful act** likely to give rise to a **Claim** that an **Insured** had knowledge of prior to the effective date of this Policy. This Exclusion includes, but is not limited to any prior **Claim** or possible **Claim** referenced in the **Insured's** application;
- (c) bodily injury to, or sickness, disease or death of any person;
- (d) injury to or destruction of any property, including the loss of use thereof;
- (e) any **claim** made against the **Insured** in connection with the placement of insurance on any property in the care, custody or control of the **Insured**;
- (f) any **claims** for any taxes, or the failure to collect, pay or return premiums.
- (g) any **claim** arising out of the involvement or participation of any **Insured** in the administration of any premium financing plan;
- (h) any **claim** arising from services performed by any **Insured** in the administration, sales or servicing of any self-insurance program;
- (i) any **claim** arising out of the negotiation, placement, purchase or maintenance of any reinsurance;
- (j) any **claim** arising out of the performance of services which require a license or certification as an accountant, actuary, attorney, real estate agent or real estate broker;
- (k) any **claim** arising out of any notarized certification or acknowledgment by an **Insured** of a signature on a document wherein the person who is, or claims to be, the person signing the document was not physically present at the time of said notarization or acknowledgement;
- (l) any **claim** arising out of the insolvency, liquidation, receivership, rehabilitation or financial inability of the following:
  - a. any insurance company with an A.M. Best rating of B+ or less, at the time that coverage under this Policy was placed; or
  - b. any reinsurer; or
  - c. any self-insured program; or
  - d. or any trust; or
  - e. any risk retention group; or
  - f. any risk purchasing group.

- (m) based upon or arising out of the actual or alleged theft, conversion, commingling, embezzlement, or misappropriation by any person of any kind of monies, funds, negotiable instruments, securities, or property of any kind, or assets of any kind;
- (n) by or on behalf of any person or entity included within this Policy's definition of **Insured** against any other person or entity included within this Policy's definition of **Insured**.

## SECTION VIII

**PREMIUM.** The **Named Insured** shall pay the **Company** in advance the annual premium in the amount stated in Item 5 of the **Declarations**, and the payment of such premium shall be a condition precedent to any coverage under this Policy.

## SECTION IX

**POLICY PERIOD.** This Policy applies only to **claims first made** against the **Insured** during the **policy period**. This Policy may be continued in force for successive policy periods of twelve months subject to both the **Company** offering to renew by issuing a renewal policy or endorsement and the **Insured** accepting such coverage. Each Policy and extension period, if any, shall begin and end at 12:01 A.M. standard time at the address of the **Named Insured**.

## SECTION X

### A. AUTOMATIC LIMITED REPORTING PERIOD

1. **You** shall have an automatic limited reporting period of ninety (90) days, starting at the end of the **policy period**, during which **claims** arising out of **wrongful acts** may be first made.
2. This automatic limited reporting period shall not extend the **policy period** or change the scope of coverage provided. **We** shall consider any **claim** first made or **suit** brought during the automatic limited reporting period to have been made on the last date on which this Policy is in effect.
3. The automatic limited reporting period shall apply only if this insurance is canceled or not renewed for any reason.
4. The automatic limited reporting period, however, shall not apply to **claims** covered by other insurance purchased by you or claims which would have been covered by such other insurance if such other insurance's Limits of Liability had not been exhausted.
5. The Limits of Liability that apply at the end of the **policy period** are not renewed or increased for **claims** first made or **suits** first brought during the automatic limited reporting period.

### B. EXTENDED REPORTING PERIOD ENDORSEMENT

1. If the **Insured** or the **Company** cancel or shall not renew this Policy, **you** shall have the right to buy an Extended Reporting Period Endorsement. If **we** cancel the policy due to nonpayment of premium, the purchase of the Extended Reporting Period Endorsement is conditioned upon the payment of any earned premium for the expiring **policy period** which is owed and has not yet been paid.
2. The **Insured** may select an Extended Reporting Period Endorsement for periods between one (1) through ten (10) year periods. The endorsement applies only to covered **claims** arising solely out of a **wrongful act** before the end of the **policy period**. The **claim**, however, may first be made against the **Insured** and reported to the **Company** in writing during the extended reporting period after expiration of the **policy period**.
3. To obtain this Extended Reporting Period Endorsement the **Named Insured** shall request this endorsement in writing within sixty (60) days after the **policy period** ends and pay the premium when due. If the **Company** does not receive the written request and payment as required, the **Insured** may not exercise this right at a later date. If the **Insured** cancels the endorsement, **we** shall not pay any return premium.
4. The premium required for each Extended Reporting Period option shall not exceed the following percentages of the full annual premium of the expiring policy:
  - a. 75% for One Year;
  - b. 125% for Two Years.
  - c. 150% for Three Years;
  - d. 175% for Four Years.
  - e. 200% for Five Years.
  - f. 220% for Six Years.
  - g. 240% for Seven Years.
  - h. 260% for Eight Years.
  - i. 280% for Nine Years.
  - j. 300% for Ten Years.
5. Any change in premium or the terms of this Policy shall not be considered a refusal to renew.
6. The Extended Reporting Period Endorsement shall not:
  - a. Extend the **policy period** or in any way change the scope of coverage provided by this Policy;

- b. Increase or reinstate the Limits of Liability. The Limits of Liability for the Extended Reporting Period shall be a part of, and not in addition to, the Limits of Liability stated in the Declarations; and
- c. Be renewable or be canceled once in effect. The **Company** is not obligated to return any portion of paid premium for any reason.

## SECTION XI

### 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 **Company** and which are a part of this policy as if physically attached, constitutes an agreement existing between the **Insured** and the **Company** or any of its agents relating to this insurance.

## SECTION XII

### TERRITORY

This Policy is applicable anywhere in the world; provided however, that any **claim** under or against this Policy is made and suit is brought against the **Insured** in the United States of America, its territories or possessions or Canada.

## SECTION XIII

**NOTICE.** The **Insured** shall give prompt notice to the **Company** of:

- (a) any **claim** made and of any action or suit commenced against the **Insured**, and
- (b) any proceeding, event, or development which in the judgment of the **Insured** might result in a **claim** against the **Insured**;

and shall forward promptly to the **Company** copies of such pleadings and reports as may be requested by the **Company** to.

Attention: Claims Manager  
Lexington Insurance Company  
200 State Street  
Boston, MA 02109

The **Insured** shall cooperate with the **Company**, and, upon the **Company's** request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the general conduct of any lawsuits.

#### SECTION XIV

**OTHER INSURANCE.** This Policy shall be unconditionally excess of the amount of any deductibles, retentions and limits of liability under any and all other applicable policy or policies of insurance, regardless of whether such other policy or policies of insurance are stated to be primary, contributory, retention, excess (except insurance specifically in excess of this policy), contingent or otherwise.

#### SECTION XV

**SUBROGATION.** In case of payment of loss by the **Company** hereunder, the **Company** shall be subrogated to the amount of such payment to the **Insured's** right of recovery against any other person or organization for such loss, and the **Insured** shall execute all papers required, and shall cooperate with the **Company** to secure such rights. However, in no event shall the **Company** be subrogated in a right of action against another **Insured**.

Any recovery (after expenses) shall be used to reduce the **damages**, and so much of such recovery shall be paid to the **Company** as will reduce the loss ultimately borne by the **Company** to what it would have been had the recovery preceded any payment of such **damages** by the **Company**.

#### SECTION XVI

**CHANGES.** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or keep the **Company** 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.

#### SECTION XVII

**ASSIGNMENT.** No assignment of interest under this Policy shall be valid, unless the written consent of the **Company** is endorsed hereon.

#### SECTION XVIII

**ACTION AGAINST COMPANY.** No action shall lie against the **Company** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation 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 **Company**.

Any person or organization or the legal representative thereof who has secured any 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 person or organization shall have any right under this Policy to join the **Company** as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the **Company** be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the **Company** of any of its obligations hereunder.

## SECTION XIX

**CANCELLATION.** This Policy may be cancelled by the **Named Insured** by surrender thereof to the **Company** or any of its authorized representatives or by mailing to the **Company** written notice stating when thereafter the cancellation shall be effective.

This Policy may be cancelled by the **Company** by mailing to the **Named Insured** at the address shown in this Policy written notice stating when, not less than 30 days thereafter, or 10 days in the case of nonpayment of premium, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the **Named Insured** or by the **Company** shall be equivalent to such mailing.

If the **Named Insured** cancels, earned premium shall be the customary short rate amount of the annual premium. If the **Company** cancels, earned premium shall be the pro rata amount of the

annual premium. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The **Company's** check mailed as aforesaid shall be sufficient tender of any refund of premium due to the **Named Insured**, provided that if at the time of cancellation the policy limit for the indemnity period involved has been exhausted, the entire premium shall be considered earned.

## SECTION XX

**DECLARATIONS.** By acceptance of this Policy the **Named Insured** agrees that the statements in the **Declarations** are its agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Named Insured** and the **Company** or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the **Company** has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this Policy to be signed on the **Declarations** page by an authorized representative of the **Company**.