POSITIVE PHYSICIANS INSURANCE EXCHANGE

PROFESSIONAL LIABILITY INSURANCE

CLAIMS-MADE FORM

Positive Physicians Insurance Exchange, a reciprocal insurance company referred to in this policy as the Company, agrees to provide this insurance in consideration of premium and in reliance on the statements made in application by the insured.

Section One: Insuring Agreement

A. Covered Acts

The Company will pay on behalf of any **insured**, **damages** from **claims** for injury caused by **medical incidents** that take place on or after the **retroactive date** and before the end of the **policy period** that are first made against an **insured** during the **policy period** and reported to the Company within thirty (30) days after the end of the **policy period**.

B. Limits

The limit of insurance for each **medical incident** is the maximum amount the Company will pay as **damages** from all **claims** arising from a **medical incident** to which this insurance applies.

The limit of insurance for each **medical incident** will be shared by an **insured provider** with an **insured entity** and all **additional insureds** when a **claim** is made against an **insured provider** and an **insured entity** or **additional insureds** arising from a **medical incident** to which this insurance applies. This policy does not apply to any other **claims** made against an **insured entity** or **additional insureds**.

The limit of insurance for each **medical incident** will not apply to any **insured entity** or **additional insured** for **claims** arising out of any **professional services** act or omission by any physician, dentist, midwife, nurse anesthetist, nurse practitioner or physician's assistant who is not an **insured provider**.

The aggregate limit of insurance is the maximum amount the Company will pay as **damages** from all **claims** that are first made during the **policy period**.

The applicable limit of insurance for each **medical incident** and the aggregate limit of insurance are stated on the Declarations or on the Schedule of Insureds.

C. Defense

The Company has the sole right and duty to defend any covered **claim** to which this insurance applies and has the sole right to select defense counsel and to investigate or settle any **claim**.

The Company has the sole right to apportion the payment of **damages** among **insureds** against whom a **claim** has been made arising from a **medical incident** to which this insurance applies.

The Company has no obligation to defend any **claim** after either the limit of insurance for each **medical incident** or the aggregate limit of insurance has been exhausted by payment of **damages**.

The Company has the right, but no obligation, to appeal any judgment.

For any **claim** to which this insurance applies, the Company will pay **defense expenses** and **extra expenses** in addition to the limits of insurance.

Section Two: Definitions

In the context of this insurance:

A. Additional Insured means any employee of either the **named insured**, an **insured entity** or an **insured provider**, but not any employee who is a physician, dentist, midwife, nurse anesthetist, nurse practitioner or physician's assistant, except if named on the Schedule of Additional Insureds. **Additional insured** also means any **insured entity** and any person named on the Schedule of Additional Insureds.

B. Claim – if reported to the Company, the following shall be deemed to be a **claim** filed during the term of this policy:

1. The receipt, by the **Insured**, of the notice of legal action for **damages**, or

2. The receipt, by the **Insured**, of a written notification of an intention to hold the **Insured** responsible for **damages**.

C. Claims-Made Policy means a standard un-modified claims-made form, such as this form, which does not include **extended reporting period** coverage.

D. Damages means the amount of money, up to the limit of insurance for each **medical incident**, that an **insured** is legally obligated to pay as the result of a **claim**, including prejudgment interest awarded against an **insured** on that part of any judgment paid by the Company. **Damages** does not mean punitive or exemplary damage awards, the multiplied portion of any multiplied damage award, fines or penalties, restitutionary or return payments or the cost of complying with injunctive, declaratory or administrative orders.

E. Defense expenses means those reasonable and necessary expenses that result from the investigation or defense of a **claim**, including attorney's fees and expenses and the cost of the cost of legal proceedings. **Defense expenses** does not mean salaries, fees, loss of

earnings or any other remuneration, benefit or overhead expense of any **insured** or the cost of legal counsel retained by any **insured**.

F. Extra expenses means:

1. Premiums on appeal bonds or bonds to release attachments but only for bond amounts that do not exceed the lesser of the limit of insurance for each **medical incident** or the remaining amount of the aggregate limit of insurance;

2. Post-judgment interest that accrues on that amount of any judgment that does not exceed the lesser of the limit of insurance for each **medical incident** or the remaining amount of the aggregate limit of insurance;

3. Reasonable expenses incurred by the **insured** at the request of the Company towards investigating or defending any **claim** or suit, including actual loss of earnings for attendance at trial (but not more than $200 per half day), but not including expenses incurred by an **insured** for legal counsel retained by any **insured** for any reason, including, but not only, an **insured's** legal expenses incurred in a declaratory judgment action by or against the Company.

G. Extended reporting period means the time after the end of the **policy period** for reporting to the Company **claims** for injury caused by **medical incidents** that occurred on or after the **retroactive date** and before the end of the **policy period**.

H. Insured means the **named insured**, any **insured entity**, any **insured provider** and any **additional insured** but only to the extent of the insurance provided by this policy**.**

I. Insured entity means any corporation, partnership, or other business organization named on the Declarations, the Schedule of Insureds, or the Schedule of Additional Insureds, and includes any person while acting in the course and scope of his or her duties as a director, officer, shareholder, or partner of an **insured entity**, but not for any **professional services** act or omission of any such person.

J. Insured provider means any person licensed under state, federal, or similar authority to provide **professional services** and who is named on the Declarations or the Schedule of Insureds.

K. Managed care services means **utilizations review**, credentialing or performance evaluation of health care providers, or assessing the quality of patient care for or on behalf of any business organization that is not an **insured entity** and whose principal activity is the administration or management of any health care benefit plan.

L. Medical incident means any act or omission in providing or in failing to provide **professional services** to a person that results in a **claim** or **claims**. All acts or omissions related to, based on, arising out of or resulting from **professional services** to any person (including a female and child or children prior to birth) involved or affected will be

considered one **medical incident** and will be considered to have taken place at the time of the first of those acts or omissions, regardless of whether before or during the **policy period**.

All **claims** that arise from, are based on or are related to the circumstances or facts of a **medical incident** or series of related **medical incidents** will be considered a single **medical incident**, regardless of the number of persons or entities claiming injury from the **medical incident**, and will be considered as having been made on the date that the first of those **claims** was made.

M. Named insured means the **insured** first named on the Declarations.

N. Peer review activities means service as a member of or as a participant in a formal accreditation, standards review, peer review, quality assurance, credentialing, or similar professional board or committee.

O. Policy period means the period of time beginning on the effective date and ending on the expiration date or on any earlier date of cancellation. The effective and expiration dates are stated on the Declarations.

P. Pre-existing relationship means a previously established physician/patient relationship that includes face-to-face encounter when clinically appropriate.

Q. Professional services means:

1. Medical, surgical, dental, mental, nursing, or similar health care services or treatments;

2. The furnishing of medications, medical supplies, or appliances in connection with such services or treatments;

3. The harvesting of organs and postmortem procedures;

4. Peer review activities.

Professional services does not include **managed care services**.

R. Retroactive date is the date shown as such on the Declarations.

S. Sexual misconduct means any conduct, act or expression, either direct or implied, of a sexual nature, whether or not unwelcome, and includes sexual intimacy, contact, abuse, harassment, or molestation.

T. Utilization review means any determination, whether prospective, concurrent or retrospective, of eligibility for payment or coverage for any services or treatments under any health care plan.

Section Three: Exclusions

This insurance does not apply to any **claim**:

A. Arising out of any act or omission by any **insured** that takes place at any time the **insured's** license to practice his or her profession has been suspended, revoked or surrendered, or that violates any restriction or limitation imposed upon or is outside the scope of his or her license.

B. For liability assumed by any **insured** under any contract or agreement unless and only to the extent the **insured** would be liable in the absence of that contract or agreement.

C. Arising out of any act or omission that violates any law, statute, ordinance, or regulation or arising out of a dishonest, intentionally harmful, fraudulent, or malicious act or omission by any **insured**, whether or not in violation of any law, statute, ordinance, or regulation.

D. For injury arising out of any goods or products designed, developed, manufactured, assembled, sold, handled, or distributed by any **insured**, or by others trading under the name of any **insured**.

E. For bodily injury to any employee of an **insured** arising out of and in the course of that person's employment by an **insured** or arising out of any obligation that an **insured** or any insurer may be held liable for under any worker's compensation, unemployment compensation, disability benefits or any other similar law.

F. Arising out of any discrimination, humiliation, harassment, or coercion based on race, color, religion, national origin, marital status, physical or mental handicap, age, sex, sexual orientation, pregnancy, or other status protected by federal or state law.

G. Arising out of any **sexual misconduct** of any **insured**.

H. Arising out of any libel, slander, or disparagement of a person or organization, false arrest, detention, imprisonment, malicious prosecution, invasion of privacy, misappropriation of ideas or the product of research, or infringement of copyright, patent, title, or slogan.

I. Arising from any **medical incident** that occurred before the **retroactive date**.

J. Arising from any **medical incident** that occurred after the **retroactive date** but before the **policy period** that an **insured** knew of and should reasonably have expected would result in a **claim** or had reported to a previous insurer.

K. Arising out of the liability of any **insured** as owner, operator, medical director, administrative or executive officer, of any health care facility or other business enterprise that is not an **insured entity.**

L. Arising out of the publication, electronic transmission or broadcast in any form or by any medium of any advice, information, opinion, statement, diagnosis, prescription, or consultation. However, this exclusion will not apply to a claim made by, or on behalf of an individual, who has established a physician/patient **pre-existing relationship** within accepted standards of patient care and has received this information at the direction of the insured in the ongoing course of professional **services** provided to that patient by the **insured**.

M. Arising out of, based on, either directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged pollution, which means the generation, storage, transportation, discharge, dispersal, escape, treatment, removal or disposal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, soot, odors, vapors, acids, alkalis, toxic chemicals, asbestos, medical or pharmaceutical waste or waste materials.

N. Arising out of, resulting from, in consequence of, or in any way involving nuclear reaction, nuclear radiation or nuclear contamination, regardless of cause. However, this exclusion will not apply to a **claim** made by, or on behalf of a patient of the **insured** in which nuclear radiation or nuclear contamination is the direct result of **professional services** provided to that patient by the **insured**.

O. For **damages** for insurance fraud, restitution, benefit reimbursement, billing or payment claims, or return of fees, profits, charges for products or services rendered or received, capitation payments, premium payments or any other funds alleged to have been wrongfully held or obtained.

P. Where any **insured** creates, alters, modifies or destroys, or causes to be created, altered, modified or destroyed with fraudulent intent, the medical records of any person or has knowingly made a material misrepresentation with respect to a **claim**. However, defense within the terms of this policy will be provided to the **insured** until it is determined through reasonable use of legal processes that the **insured** has committed such act.

Q. Against an **insured entity** or an **additional insured**, except for **claims** made against an **insured provider** and an **insured entity** or an **additional insured** arising from a **medical incident** to which this insurance applies and as to which the limit of insurance applicable to the **insured provider** will be shared with an **insured entity** and all **additional insureds**.

Section Four: Conditions

A. Authority to Act

The **named insured** has the authority to act on behalf of all **insureds** with respect to giving notice of claim or receiving notice of cancellation, reservation of rights or other notice, payment of premium or any deductible, accepting return premium or an endorsement issued to form a part of the policy and is responsible for notifying the Company and all other **insureds** of any changes that are material to the risk assumed under this policy, including employment of licensed persons, changes in licensure status or that otherwise might affect coverage afforded under this insurance.

B. Notice of Claim

If a **claim** to which this insurance applies is first made against any **insured** during the **policy period** or during the **extended reporting period,** if effected, the **insured** must give the Company or its authorized agent, written notice of **claim** by certified mail as soon as reasonably possible, but in no event later than thirty (30) days after the end of the **policy period** or during the **extended reporting period**, if effected. Written notice of **claim** must include every demand or summons and all reasonably obtainable information with respect to the time, place, and nature of the medical facts and circumstances, the identities of any involved health care providers (whether or not **insureds**), patients, potential claimants, and available witnesses.

C. Assistance and Cooperation

The **insured** must cooperate with the Company in conducting defense, defending lawsuits, and enforcing any right of contribution or indemnity against any person or organization who may be liable to any **insured** or claimant because of a **medical incident** with respect to which insurance is afforded under this policy. The **insured** must cooperate in any peer review conducted by or on behalf of the Company and must attend conferences, depositions, hearings, and trials. The **insured** must also assist in securing and giving evidence and obtaining the attendance of witnesses. Except when not within the control of the **insured**, failure to fully comply with the provisions of this condition will render coverage otherwise provided under this policy with respect to that **claim** or suit to which the non-compliance applies voidable at the option of the Company. No **insured** will make any payment, assume any obligation, incur any expense, or settle any **claim** without the written consent of the Company, except at the sole expense of the **insured**.

D. Assignment

The interest of any **insured** under this policy may not be assigned without the Company's written consent.

E. Policy Territory

This insurance applies to **medical incidents** taking place anywhere in the world, provided that any resulting **claim** is first made in the United States of America, its territories or possessions, Puerto Rico or Canada.

F. Non-Stacking of Limits

Only one limit of insurance under this policy or another policy issued by the Company will apply to all **claims** against any **insured** arising from a **medical incident.**

If this policy and another policy issued by the Company apply as primary insurance to the same **claim** for the same **insured provider** then only one limit of insurance will apply. That limit will be the highest primary insurance limit available to the **insured provider**.

If this policy and another policy issued by the Company apply as primary insurance to the same **claim** for the same **insured entity** then only one limit of insurance will apply. That limit will be the lowest primary insurance limit available to the **insured entity**.

If more than one limit of insurance under this policy or another policy issued by the Company applies to an **additional insured**, only the lowest of those limits of insurance will apply to all **claims** arising from a **medical incident** against the **additional insured**.

The limits of insurance afforded to any **insured** under this policy will not stack with or apply in excess of the limits afforded to any other **insured**.

G. Action Against The Company

No action may be taken against the Company unless all of the terms of this policy have been fully complied with and the amount of the **insured's** obligation to pay has been finally determined either by judgment against the **insured** after trial or by the written agreement of the Company.

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 the **insured's** legal representative.

H. Bankruptcy

Bankruptcy or insolvency of the **insured** or of an **insured's** estate will not relieve the Company of any of its obligations under this policy.

I. Other Insurance

This insurance will be excess of, and will not contribute with, any other valid and collectible insurance, self-insurance, retention or indemnity agreement, except for other insurance that is specifically stated to apply in excess of this insurance. The coverage afforded under this policy will not be subject to the terms, conditions or limitations of any other insurance.

J. Subrogation

In the event of any payment under this policy, the Company will be subrogated to all the **insured's** rights of recovery against any person or organization and the **insured** will do whatever is reasonably necessary to secure, and nothing to prejudice, those rights.

K. Changes

Notice to, knowledge possessed by or any action or inaction by the Company or any other person acting on behalf of the Company will not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy.

The terms of this policy cannot be waived or changed, except by written endorsement to the policy.

L. Extended Reporting Period

1. If this policy is cancelled or nonrenewed for any reason, the named **insured** (or any **insured** identified on the Declarations or on a Schedule of insureds, if that **insured's** insurance is cancelled or nonrenewed) will have the right to obtain an unlimited **extended reporting period** by giving written notice to the Company within 30 days of termination, and by paying to the Company the required premium when due.

2. The **extended reporting period** does not extend the **policy period** nor does it reinstate the aggregate limit of insurance nor otherwise increase the limits of insurance payable under this policy.

3. The **extended reporting period** does not extend the scope of coverage provided under this policy and applies only to otherwise covered claims or suits arising from **medical incidents** occurring on or after the **retroactive date** stated on the Declarations and before the end of the **policy period**.

4. The **extended reporting period** may not be cancelled if the premium is paid when due. The premium will be considered fully earned when the **extended reporting period** takes effect.

M. Death, Disability, or Retirement Extended Reporting Period

The Company will provide an **extended reporting period** without payment of additional premium to the **Named Insured** or to any **insured** named on the Schedule of Insureds whose insurance is cancelled or non-renewed because the **insured**:

1. Fully retires from the practice of medicine and surgery during the **policy period**, is at least sixty (60) years of age, has been insured by the Company under a claims-made policy for a minimum of one (1) year and has been insured on a claims-made policy for 48 months;

2. Dies during the **policy period**, and his or her estate submits proof of the date of death along with a written request for the coverage;

3. Becomes permanently disabled during the **policy period** and is unable to practice medicine (or for an **insured provider** who is a dentist, dentistry). The **insured** must submit proof of disability, including certification by an independent physician, mutually agreed upon by the **insured** and the Company.

If any **insured** who has obtained an **extended reporting period** because of retirement or disability later returns to the practice of medicine or surgery, (or for an **insured provider** who is a dentist, dentistry), he or she must notify the Company and pay the premium as required for the **extended reporting period**. Failure to do so voids the **extended reporting period** as of the original effective date of the **extended reporting period**.

N. Reservation of Rights and Non-Waiver Agreement

The Company may require an **insured** to execute and deliver a reservation of rights and non-waiver agreement as a condition of defending a **claim** or suit against an **insured**, when the Company, in its sole discretion, determines that some or all of the claims asserted against the **insured** may not be within the coverage of this policy. This agreement will evidence the **insured's** understanding that the defense of the **claim** or suit by the Company and the Company's payment of any of the fees, costs or expenses of such defense, is not a waiver of any of the Company's rights under this policy, including its right to decline payment of **damages** awarded regarding **claims** against the **insured** that are not within the coverage of this policy.

O. Cancellation and Non-Renewal

This policy may be cancelled or nonrenewed only in compliance with applicable state law or regulation, as provided in the Amendatory Endorsement – New Jersey Cancellation and Non-Renewal that is attached to and forms a part of this policy.

P. Application and Representation

In underwriting this insurance, the Company has relied on the information provided by the **insureds** in the application along with any related information submitted in support of the application. By acceptance of this policy, each **insured** intends that the information provided is true and correct and agrees that all statements and representations are considered material to the risk assumed by the Company.

This insurance will be voidable as of the effective date at the option of the Company if its agreement to issue this insurance was materially based on information supplied by any **insured** that was later found to be false or fraudulent, but this condition does not apply to any inadvertent or unintentional error or omission made by an **insured** in applying for this insurance.

Q. Headings

Section and paragraph headings are included for ease of reference and have no meaning in the context of this policy.

In witness whereof, Positive Physicians Insurance Exchange has caused this policy to be issued, but it shall not be valid unless the Declarations are signed by a duly authorized representative.

Lewis Sharps, M.D.
President & CEO
Positive Physicians Insurance Exchange