

# **Westport Insurance Corporation**

## **INSURANCE INDUSTRY PROFESSIONAL LIABILITY COVERAGE FOR INSURANCE AGENCIES**

NOTICE — THIS IS A CLAIMS MADE POLICY — PLEASE READ THIS POLICY CAREFULLY TO DETERMINE YOUR RIGHTS AND DUTIES AND WHAT IS AND WHAT IS NOT COVERED. THE COMPANY WILL NOT PAY ANY AMOUNTS OR TAKE ANY ACTION EXCEPT AS PROVIDED IN THIS POLICY.

This insurance is written on a CLAIMS made basis and applies only to CLAIMS first made against the INSURED during the POLICY PERIOD and reported to Westport Insurance Corporation (hereafter referred to as the "Company") as prescribed in the **COVERAGE** section below.

Terms of this POLICY that are in capitalized letters have meanings set forth in the **DEFINITIONS AND EXPLANATION OF TERMS** section. The capitalized and bolded headings are descriptive only and do not create or limit coverage in any way.

Throughout this POLICY the words "you" and "your" refer to the NAMED INSURED shown in the Declarations. The words "we," "us" and "our" refer to the company providing the insurance.

In consideration of the payment of premium, and in reliance upon the statements, representations, attachments and exhibits contained and submitted with the application for this POLICY, and also subject to all the exclusions, conditions and other requirements of this POLICY, we agree as follows:

### **I. COVERAGE**

- A. We will pay on behalf of the INSURED all sums in excess of the DEDUCTIBLE that the INSURED becomes legally obligated to pay as DAMAGES caused by WRONGFUL ACTS resulting in any CLAIM first made against the INSURED during the POLICY PERIOD and reported in writing to us or the producing agent as soon as practicable.
- B. In order to be covered by this POLICY, a CLAIM must seek DAMAGES arising from a WRONGFUL ACT committed either by the INSURED, or by a person for whose WRONGFUL ACTS the INSURED is legally liable, and such WRONGFUL ACT must take place:
  - 1. during the POLICY PERIOD; or
  - 2. prior to the POLICY PERIOD but on or after the RETROACTIVE DATE.
- C. Notwithstanding paragraphs A. or B. above, this **COVERAGE** section does not provide coverage for any CLAIM, if at the time prior to the effective date of this POLICY, or any Employers Reinsurance Corporation or Westport Insurance Corporation policy this POLICY replaces, if you or any owner, officer or partner of the NAMED INSURED:
  - 1. knew of a CLAIM or POTENTIAL CLAIM; or
  - 2. with regard to a BREACH of PERSONAL DATA, was aware of such BREACH.

### **D. ADDITIONAL COVERAGES**

- 1. **CATASTROPHE EXTRA EXPENSE.** We will pay up to \$10,000 per catastrophe subject to a per POLICY PERIOD aggregate limit of \$25,000 for the actual extra expenses incurred by you as a result of a catastrophe during the POLICY PERIOD beginning on the date of a catastrophe and for thirty (30) days thereafter. The extra expense incurred must be incurred by you only to assist in the insurance claims processing needs of your customer(s) who have been affected by the catastrophe. The catastrophe must be a declared catastrophe by the Property Claims Services. A \$500 deductible for each catastrophe shall apply. Limits provided by this paragraph are part of and not in addition to the limits provided by this POLICY.

2. **SUBPOENA.** If, during the POLICY PERIOD you receive a subpoena for documents or testimony relating to your business services and the subpoena is not related to a CLAIM under this POLICY, we will, at your request and upon receipt of a copy of the subpoena, retain legal counsel to advise you regarding the document production or to represent you during testimony. We will pay the expenses incurred in providing advice regarding the production of documents, review of the documents prior to production, your preparation for testifying, and representation during testimony. The maximum amount payable, regardless of the number of subpoenas reported or the number of INSUREDS subject to all subpoenas shall be \$10,000 per POLICY PERIOD. The DEDUCTIBLE shall not apply to this provision, however any payments made by us under this provision will be included within the applicable Limit of Liability and not in addition thereto. Any notification you give us of such subpoena shall be deemed to be notification of a POTENTIAL CLAIM under this POLICY. If this POTENTIAL CLAIM ultimately results in a CLAIM, any expenses we have paid will be included in CLAIM EXPENSE.
3. **PERSONAL DATA PROTECTION.** Notwithstanding **EXCLUSIONS**, paragraph B. BREACHES OF PERSONAL DATA, if during the POLICY PERIOD, PERSONAL DATA of others is compromised as a result of a BREACH of the INSURED'S network security, through hacking, mismanagement, loss or theft due to your negligent act, error or omission, we will pay up to \$10,000 per incident of BREACH subject to a per POLICY PERIOD aggregate limit of \$25,000 for reasonable and necessary expenses incurred by you as a result of any BREACH in connection with your insurance operation. The extra expense must be incurred by you:
- a. to consult with legal counsel on how best to respond to the compromise;
  - b. to consult with Information Technologists to determine the nature and extent of the compromise; or
  - c. to assist in notification of the individuals who have been affected by the PERSONAL DATA compromise.

A \$1,000 deductible applies to each incident of BREACH reported under this paragraph. Limits provided by this paragraph are part of and not in addition to the limits provided by this POLICY. All compromise of PERSONAL DATA that is from the same cause or set of causes will be treated as one incident of BREACH.

4. **REGULATORY DEFENSE.** We will pay on behalf of the INSURED, CLAIM EXPENSES caused by WRONGFUL ACTS committed by an INSURED in connection with your insurance operations, arising from the following:

Responding to a complaint or defending an investigation brought by any state regulatory agency, insurance department, or other government agency arising from your insurance operation. INSUREDS must:

- a. provide prompt written notice to us and obtain our written consent before responding; and
- b. agree to the use of legal counsel that we choose or approve.

This coverage does not apply to salaries of your personnel, loss of income, fines, penalties, return of fees or commissions, or reimbursement of premiums. The most we will pay under this additional coverage is \$25,000 per POLICY PERIOD for CLAIM EXPENSES and such shall be a part of, and not in addition to, the Limit of Liability shown in the Declarations.

## **II. DEFENSE, INVESTIGATION AND SETTLEMENT OF CLAIMS**

As respects such insurance we shall:

- A. have the right and duty to defend, investigate, and conduct any settlement negotiations arising from any CLAIM first made against the INSURED during the POLICY PERIOD based upon alleged WRONGFUL ACTS of an INSURED. We shall have the right to select the attorney to represent and defend an INSURED for any CLAIM that is made against an INSURED. We shall have the right to select arbitrators in the event of any arbitration proceedings.
- B. not settle any CLAIM without your consent. If we recommend a settlement to you which is acceptable to the claimant, and you do not agree with us and would rather contest the matter, our ultimate liability, subject to the DEDUCTIBLE, will be limited to the total of:
  - 1. the amount for which the CLAIM could have been settled at that time, plus
  - 2. the amount of CLAIM EXPENSE that was incurred up to the time we made the recommendation.

We shall not be obligated to pay any DAMAGES or defend or continue to defend any CLAIM after the Per CLAIM Limit of Liability or Aggregate Limit of Liability under this POLICY has been exhausted by payment of DAMAGES or after the deposit in a court having jurisdiction of sums exhausting the Per CLAIM Limit of Liability or Aggregate Limit of Liability.

## **III. REPORTING AND NOTICE**

INSURED'S duties in the event of any CLAIM or any POTENTIAL CLAIM:

- A. The INSURED shall not without our written consent, do any of the following:
  - 1. admit liability;
  - 2. participate in any settlement discussions nor enter into any settlement;
  - 3. incur any cost or expenses; or
  - 4. produce documents, provide a recorded statement, or give any deposition regarding any actual or alleged WRONGFUL ACT.
- B. The INSURED shall:
  - 1. provide written notice of any CLAIM to us or the producing agent shown on the Declarations as soon as practicable.
  - 2. report any POTENTIAL CLAIM to us or the producing agent in writing during the POLICY PERIOD. If, during the POLICY PERIOD, an INSURED first becomes aware of a POTENTIAL CLAIM and gives written notice of such POTENTIAL CLAIM to us during the POLICY PERIOD, any CLAIMS subsequently made against the INSURED arising from the POTENTIAL CLAIM shall be considered to have been made during the POLICY PERIOD that the INSURED first became aware of such POTENTIAL CLAIM.
  - 3. include within any notice of CLAIM or POTENTIAL CLAIM a description of the CLAIM or POTENTIAL CLAIM, the alleged WRONGFUL ACT including the date it was committed, a summary of the facts upon which the CLAIM or POTENTIAL CLAIM is based, the alleged or potential DAMAGES that may result from the WRONGFUL ACT, the names of actual or potential claimants, the names of INSURED and employee against whom the CLAIM was or may be made, and the date and circumstances by which the INSURED, or any owner, officer or partner of the NAMED INSURED first became aware of the CLAIM or POTENTIAL CLAIM.

4. provide notice to us under the POLICY per the Notice to Company Endorsement.

All notices under the POLICY shall be in writing, shall comply with the time requirements as stated in the POLICY, and shall be given by confirmed facsimile, prepaid express courier, or certified U.S. Mail, return receipt requested.

#### IV. DEFINITIONS AND EXPLANATIONS OF TERMS

- A. **ADVERTISING.** ADVERTISING means placing a notice that is broadcast or published to the general public or specific market segments about your products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  1. notices that are published include material placed on the Internet or on similar electronic means of communication; and
  2. regarding websites, only that part of a website that is about your products or services for the purposes of attracting customers or supporters is considered ADVERTISING.
- B. **BREACH.** BREACH means any misappropriation or unauthorized access, use, disclosure, modification, publication, theft, disappearance, or destruction of PERSONAL DATA within the care, custody or control of any INSURED. BREACH does not include any misappropriation or unauthorized access, use, disclosure, modification, publication, theft, disappearance, or destruction of PERSONAL DATA within the care, custody or control of a third party to whom any INSURED has intentionally provided the PERSONAL DATA.
- C. **CLAIM.** CLAIM means:
  1. that an INSURED has received a summons, a subpoena, or any other notice of legal process;
  2. that an INSURED has received notice of any SUIT; or
  3. that an INSURED has received notice of a written demand, or a written demand for money or services.
- D. **CLAIM EXPENSE.** CLAIM EXPENSE means:
  1. all expense incurred in the investigation of any POTENTIAL CLAIM or in the defense of any CLAIM first made against an INSURED seeking DAMAGES for a WRONGFUL ACT, even if a CLAIM or POTENTIAL CLAIM is groundless, false, fraudulent, or for an amount less than your DEDUCTIBLE;
  2. reasonable and necessary fees and disbursements charged by any lawyer designated by us or required by law to defend the interests of an INSURED; and
  3. if authorized by us, all other fees, costs, and expenses, other than loss of earnings, resulting from the investigation, adjustment, defense, or appeal of any CLAIM or POTENTIAL CLAIM, including but not limited to:
    - a. all costs taxed against any INSURED in any SUIT;
    - b. all prejudgment and post judgment accrued interest on that portion of any judgment which does not exceed the applicable Limit of Liability. If we tender or pay DAMAGES on any judgment up to our Limits of Liability, we have no further obligation to pay any additional interest;

- c. all premiums on bonds to release attachments and appeal bonds, limited to that portion of a bond which does not exceed the POLICY Limit of Liability. We will obtain the bond on behalf of the INSURED. You shall reimburse us for the additional cost of the bond we obtain for any exposure in excess of our Limit of Liability;
- d. all reasonable expenses incurred by an INSURED at our request while assisting us in the investigation and defense of any CLAIM or POTENTIAL CLAIM; or
- e. reimbursement for loss of earnings or temporary staff due to an INSURED attending depositions or trials at our request. Such reimbursement is subject to \$500 per INSURED per day and a maximum of \$10,000 per POLICY PERIOD for all INSUREDS.

CLAIM EXPENSE, except as provided in this definition C.3.e, shall not include salaries, loss of earnings, or expenses of regular employees, our officials, or you.

E. **DAMAGES.** DAMAGES means monetary amounts for which an INSURED is held legally liable but does not include:

- 1. punitive damages, exemplary damages or the multiplied portion of any damage award except where permitted as insurable by the law pursuant to which this POLICY will be construed;
- 2. sanctions, fines or penalties imposed by law or matters deemed uninsurable under the law pursuant to which this POLICY will be construed;
- 3. the return of any fees, commissions, profit sharing, or other remuneration, or costs or expenses for PROFESSIONAL SERVICES or OTHER RELATED SERVICES rendered or to be rendered by the INSURED;
- 4. an INSURED'S taxes;
- 5. reimbursement or return of premiums or funds; or
- 6. redress in any form other than monetary relief, including, but not limited to, any form of injunctive or other equitable relief, restitution, replevin, unjust enrichment, declaratory judgments, or an accounting.

F. **DEDUCTIBLE.** DEDUCTIBLE means the amount set forth in Item D. of the Declarations.

G. **FIRST NAMED INSURED.** FIRST NAMED INSURED means the INSURED whose name is listed first on the Declaration Page if there are multiple NAMED INSUREDS, or the NAMED INSURED where only one INSURED is listed.

H. **FRAUDULENT ENTITY.** FRAUDULENT ENTITY means an organization that does not have a legal identity or legal existence, but which is represented to legally exist; or, a legally formed entity that is used as a device to commit fraud or other unlawful acts.

I. **INSURED.**

- 1. **INDIVIDUAL.** If you are an individual, you and your spouse or legal domestic partner, and former spouse or legal domestic partner, are INSUREDS, but only with respect to the conduct of a business of which you are the sole owner.
- 2. **PARTNERSHIP.** If you are a partnership, you, your partners and their spouses or legal domestic partners, and former partners and their spouses or legal domestic partners, are INSUREDS, but only with respect to the conduct of your business.

3. **LIMITED LIABILITY COMPANY.** If you are a limited liability company, you are an INSURED. Your members and former members are also INSUREDS, but only with respect to the conduct of your business. Your managers and former managers are INSUREDS, but only with respect to their duties as your managers, with respect to the conduct of your business.
  4. **OTHER ORGANIZATIONS.** If you are an organization other than a partnership or limited liability company, you are an INSURED. Your officers, directors, and former officers and directors, are INSUREDS, but only with respect to their duties as your officers or directors with respect to the conduct of your business. Your stockholders and former stockholders are also INSUREDS, but only with respect to DAMAGES for which the **COVERAGE** section, Part A. or B., would apply.
  5. **OTHER INSUREDS.** Each of the following is also an INSURED:
    - a. your employees and former employees, leased or temporary employees, but only for acts within the scope of their employment by you and while performing duties related to the conduct of your PROFESSIONAL SERVICES or OTHER RELATED SERVICES.
    - b. any independent contractor or former independent contractor while acting on your behalf within the scope of their duties as your subproducer in connection with insurance serviced by any INSURED.
    - c. the heirs, executors, administrators, or legal representatives of an INSURED in the event of death, incapacity, or bankruptcy of the INSURED, but only to the extent that such INSURED would otherwise be covered by this POLICY.
  6. **NEWLY ACQUIRED.** Any organization you newly acquire or form, and over which you maintain majority interest, will qualify as an additional INSURED if there is no other similar insurance available to that organization. However:
    - a. coverage under this provision is afforded only until the 90<sup>th</sup> day after you acquire or form the organization or the end of the POLICY PERIOD, whichever is earlier;
    - b. coverage does not apply to WRONGFUL ACTS committed before you acquired or formed the organization unless agreed to by us and endorsed to this POLICY; and
    - c. an additional premium may be charged from the date you acquired or formed the organization.
  7. **ADDITIONAL INSURED.** The person or entity which has been specifically added by endorsement to the POLICY.
- J. **NAMED INSURED.** NAMED INSURED means the person or entity listed in the Declarations or any endorsement to this POLICY and PREDECESSOR AGENCY thereof.
- K. **OTHER RELATED SERVICES.** OTHER RELATED SERVICES means the following services:
1. services rendered in teaching a formal insurance course, but we will only cover CLAIMS first made against the INSURED by a student or former student for a WRONGFUL ACT of the INSURED causing such student to incur legal liability;
  2. services rendered as a notary public;

3. an INSURED'S testimony as an expert witness in connection with insurance related litigation;
  4. ADVERTISING activities for the NAMED INSURED; or
  5. services as a claims adjuster pursuant to a written agency/insurer agreement covering the sales and servicing of insurance products placed through the NAMED INSURED'S agency.
- L. **PERSONAL DATA.** PERSONAL DATA means all information, whether written, or electronic:
1. which can be used to distinguish or trace an individual's identity, including but not limited to, their name, social security number, biometric records, alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name;
  2. concerning an individual that would be considered protected health information as defined within the Health Insurance Portability and **Accountability** Act of 1996; or
  3. that would be considered nonpublic personal information within the meaning of the Gramm-Leach Bliley Act or similar state, federal and foreign identity theft and privacy protection legislation applicable to the breach.
- M. **PERSONAL INJURY.** PERSONAL INJURY shall mean:
1. false arrest, detention or imprisonment, malicious prosecution or humiliation;
  2. 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;
  3. the use of another's ADVERTISING idea or the use of another's copyright, trade dress or slogan in ADVERTISING; or
  4. wrongful entry or eviction or other invasion of the right of private occupancy of a premises or dwelling that a person occupies.
- N. **POLICY.** POLICY means the insuring agreement issued by us to the FIRST NAMED INSURED and listed in the Declarations, along with all attached endorsements.
- O. **POLICY PERIOD.** POLICY PERIOD means the period stated in the Declarations, unless terminated earlier pursuant to the TERMINATION OF COVERAGE section of this POLICY.
- P. **POTENTIAL CLAIM.** POTENTIAL CLAIM means that an INSURED has become aware of a proceeding, event, or development, which could in the future result in the institution of a CLAIM against an INSURED.
- Q. **PREDECESSOR AGENCY.** PREDECESSOR AGENCY means any insurance agency to whose financial assets and liabilities the agency listed as the NAMED INSURED in the Declarations is the majority successor in interest.
- R. **PROFESSIONAL SERVICES.** PROFESSIONAL SERVICES means:
1. services rendered as a managing general insurance agent, general insurance agent, insurance agent, or insurance broker;
  2. services rendered as an insurance consultant, including, but not limited to, insurance consulting connected with employee benefit plans.

3. premium financing services provided by the NAMED INSURED to the NAMED INSURED'S clients for insurance products placed through the NAMED INSURED'S agency;
  4. loss control, risk management, or anti-fraud services rendered in connection with insurance placed through the NAMED INSURED;
  5. services as a registered representative rendered in connection with the sale and servicing of variable life and variable annuity products; or
  6. acting as a countersigning agent for out-of-state insurance agencies on policies issued within the state of domicile of the INSURED.
- S. **RETROACTIVE DATE.** RETROACTIVE DATE means the date, as specified in the Declarations or in any endorsement attached hereto, on or after which any WRONGFUL ACT, as defined in the POLICY, must have occurred in order for CLAIMS arising therefrom to be covered under this POLICY.
- T. **STRANGER-OWNED LIFE INSURANCE (STOLI).** STRANGER-OWNED LIFE INSURANCE means an arrangement where a life insurance policy is issued to an insured or an individual who has an insurable interest with the insured, with the resources to purchase the policy provided or guaranteed by a person or entity who has no insurable interest to the insured person and who has the contractual right to repayment or other means of satisfaction of the debt such as obtaining control of the policy rights or benefits.
- U. **SUIT.** SUIT means a civil proceeding alleging DAMAGES against an INSURED because of a WRONGFUL ACT to which this insurance applies. SUIT includes:
1. an arbitration proceeding in which such DAMAGES are claimed and to which the INSURED must submit or does submit with our consent;
  2. any other alternative dispute resolution proceeding in which such DAMAGES are claimed and to which the INSURED submits with our consent; or
  3. an adjudicatory proceeding in a court of law.
- V. **WRONGFUL ACT.** WRONGFUL ACT means:
1. any negligent act, error, or omission of an INSURED in rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES for others;
  2. any PERSONAL INJURY or ADVERTISING INJURY in rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES for others; or
  3. any BREACH of PERSONAL DATA arising out of or in connection with the rendering of PROFESSIONAL SERVICES or OTHER RELATED SERVICES, but only if the INSURED has implemented current and commonly accepted technologies and methodologies designed to secure PERSONAL DATA and appropriate to the size and complexity of the agency and indecipherable to unauthorized individuals and which are in place at the time of the BREACH; provided, however, that any such technologies and methodologies must comply with privacy regulations found within the Health Insurance Portability and Accountability Act of 1996 or any other federal or state law or regulation, governing any industry in which the INSURED is rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES.

## V. EXCLUSIONS

This POLICY shall not apply to any CLAIM based upon, arising out of, attributable to, or directly or indirectly resulting from:

### A. BODILY INJURY, PROPERTY DAMAGE.

1. Bodily injury, sickness, disease, or death of any person; or
2. injury to or destruction of any property, including the loss of use of the property.

This exclusion shall not apply to CLAIMS arising directly out of any actual or alleged failure of the insured to place, effect, maintain, or renew any insurance products for any customer.

### B. BREACHES OF PERSONAL DATA.

1. any BREACH of PERSONAL DATA resulting from any act committed by an individual or individuals acting in an effort to coerce the civilian populations of the United States or to influence the policy or affect the conduct of any federal, state, provincial, or local government;
2. any BREACH of PERSONAL DATA resulting from any failure of the INSURED to implement current and commonly accepted technologies and methodologies designed to secure PERSONAL DATA and appropriate to the size and complexity of the agency; or
3. any BREACH of PERSONAL DATA resulting from any failure of the INSURED to comply with any applicable privacy regulations found in the Health Insurance Portability and **Accountability** Act of 1996 or any other federal or state law or regulation, governing any industry in which the INSURED is rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES.

C. **COBRA ADMINISTRATION.** The INSURED'S administration under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) including any amendments, regulations, or enabling statutes pursuant thereto, or any other similar federal, state or provincial statute or regulation.

D. **ERISA.** Any duties or activities assumed under contract by an INSURED as Named Fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA) or the Pension Benefits Act, including any amendments, regulations, or enabling statutes pursuant thereto, or any other similar federal, state, or provincial statute or regulation.

E. **FRAUDULENT ENTITY.** Or in connection with any FRAUDULENT ENTITY.

F. **INSOLVENCY.** The financial inability to pay, insolvency, receivership, bankruptcy or liquidation of any insurance company, any Individual Practice Association, Health Maintenance Organization, Preferred Provider Organization, Dental Service Plan, Risk Retention Group, Risk Provider Group, self-insured plan or any pool, syndicate, association, or other combination formed for the purpose of providing insurance, or reinsurance, or any healthcare provider or any reinsurer with which the INSURED directly placed the subject risk.

However, this exclusion does not apply if, at the time the INSURED placed the subject risk with any of the above-described entities, such entity or entities were rated by AM Best as B+ or higher, or alternatively, such entities were member insurers of the state guaranty fund or guaranty association in the state or states of domicile of the subject risk, or such entities were guaranteed by a governmental body or bodies and/or operated by a governmental body or bodies, or the coverage was placed with an insurance carrier through a state established residual market insurance program; or the coverage was placed with a County Mutual reinsured by carriers rated by AM Best as B+ or higher.

- G. **INSURED VS. INSURED.** CLAIMS or disputes:
1. between INSUREDS under this POLICY. However, this exclusion does not apply to such CLAIM if the WRONGFUL ACT arises out of PROFESSIONAL SERVICES or OTHER RELATED SERVICES by an INSURED rendered to such other INSURED as a client, provided the INSURED rendering such PROFESSIONAL SERVICES or OTHER RELATED SERVICES does not have an ownership interest in or does not operate, control or manage the risk to be insured;
  2. by an enterprise which one or more INSUREDS has either a total of ten percent (10%) or more equity interest, or the INSUREDS operate, control or manage the enterprise. However, this exclusion does not apply to such CLAIM if the WRONGFUL ACT arises out of PROFESSIONAL SERVICES or OTHER RELATED SERVICES by an INSURED rendered to such other INSURED as a client, provided the INSURED rendering such PROFESSIONAL SERVICES or OTHER RELATED SERVICES does not have an ownership interest in the risk to be insured or does not operate, control or manage; or
  3. by an enterprise which has either a ten percent (10%) or more equity interest in an INSURED, or operates, controls or manages an INSURED.
- H. **INTENTIONAL ACTS.** Any CLAIM for intentional acts, including but not limited to, acts of dishonesty, fraud, criminal conduct, malice, or assault and battery, or intentional BREACH of PERSONAL DATA by any INSURED. CLAIM EXPENSES are recoverable by us against those INSUREDS who, by final judgment, order or determination in a SUIT are found to have committed such intentional acts. CLAIM EXPENSES are also recoverable by us against those INSUREDS who, by their written or oral admission, committed such intentional acts. However, this exclusion does not apply to those INSUREDS who do not personally participate in or ratify the acts identified above and who notify us once such act has been discovered.
- I. **LICENSURE.** Any actual or alleged WRONGFUL ACT arising from the rendering of PROFESSIONAL SERVICES or OTHER RELATED SERVICES for which a license is required and committed while the INSURED'S license was suspended or revoked. However, this exclusion shall not apply if the only reason for such licensure not being in effect was due to an administrative or clerical error.
- J. **MARKET VALUES.** The INSURED'S promises or guarantees as to the effect of market fluctuations, interest rates, or dividends, with respect to future premium payments or market values.
- K. **NAMED FIDUCIARY.** Your status as a Named Fiduciary.
- L. **PERSONAL PROFIT OR PROPRIETARY INFORMATION.**
1. Any INSURED having gained, in fact, any personal profit or advantage to which he or she was not legally entitled; or
  2. any INSURED's misappropriation or unauthorized use of trade secrets or other proprietary information.
- M. **THIRD-PARTY ADMINISTRATOR.** Third-party administrator activities, whether the INSURED performs such activities for a fee or no fee.

- N. **UNSOLICITED ELECTRONIC ADVERTISING.** The unsolicited distribution of marketing materials by telephone facsimile machine, computer, or other device, in violation of the Telephone Consumer Protection Act, 47 USC 227, including any amendments, regulations, or enabling statutes pursuant thereto, or any other similar federal, state, or provincial statute or regulation.
- O. **VIATICALS and STRANGER OWNED LIFE INSURANCE.** The sale or servicing of investments in viaticated policies or of the sale or servicing of investments in STRANGER-OWNED LIFE INSURANCE (STOLI).

## **VI. COOPERATION**

All INSUREDS shall cooperate with us in providing information and documentation requested by us regarding any CLAIM or POTENTIAL CLAIM reported under the POLICY or for any underwriting purpose. All INSUREDS shall cooperate with us in the investigation of any POTENTIAL CLAIM and in the defense, investigation and settlement of any CLAIM. Upon our request, the INSURED shall submit to examination or questioning under oath, attend hearings, depositions and trials and assist in effecting settlements, securing and giving evidence and obtaining the attendance of witnesses in the conduct of SUITS.

All INSUREDS shall assist us in effecting any rights of indemnity, contribution or apportionment available to any INSURED or us, including the execution of such documents as are necessary to enable us to pursue CLAIMS in the INSUREDS' names, and shall provide all other assistance and cooperation which we may reasonably require.

## **VII. LIMITS OF LIABILITY**

- A. All Limits of Liability shall apply in excess of the DEDUCTIBLE. All CLAIM EXPENSES shall be in addition to the applicable Per CLAIM Limit of Liability.
- B. Our liability for the combined total of all DAMAGES for a CLAIM shall not exceed the amount stated in the Declarations as the Per CLAIM Limit of Liability or the sublimit of liability as shown on the Declarations for BREACH of PERSONAL DATA.
- C. Our liability for the combined total of all DAMAGES for all CLAIMS shall not exceed the amount stated in the Declarations as the Aggregate Limit of Liability.

## **VIII. DEDUCTIBLE**

You shall be responsible for the payment of the DEDUCTIBLE indicated on the Declarations. The DEDUCTIBLE applies to DAMAGES and not CLAIM EXPENSES. The total DEDUCTIBLE you shall be responsible to pay during the POLICY PERIOD will not exceed the aggregate amount each POLICY PERIOD, if any, shown on the Declarations.

We will have no obligation whatsoever, to the INSURED to pay all or any portion of the DEDUCTIBLE. We will, however, have the option to do so, in which event the INSURED will repay us any amounts so paid within thirty (30) days of our demand to the FIRST NAMED INSURED.

**DEDUCTIBLE REDUCTION.** If any INSURED generates and maintains contemporaneous written documentation in the agency file of the refusal of any customer to accept any type of coverage or limit recommendation made by the INSURED, and if the INSURED subsequently has a CLAIM alleging the failure to secure such recommended type of coverage or limit, 50% of the INSURED'S DEDUCTIBLE for that CLAIM will be waived up to a maximum of \$12,500, or until dismissal of such allegations, whichever is first.

**IX. SUBROGATION**

If we pay any DAMAGES or CLAIM EXPENSE, we shall be subrogated to the rights of the INSURED against any person or organization. The INSURED shall execute all papers we require and shall do everything that may be necessary to preserve, secure, and pursue our rights, including the execution of such documents as may be necessary to enable us to bring SUIT in the name of the INSURED. All INSUREDS shall cooperate with us and do nothing to jeopardize, prejudice, or terminate such rights. We shall not exercise any subrogation rights against any INSURED, unless the CLAIM arises from any dishonest, fraudulent, or malicious act, error, or omission of such INSURED.

**X. REIMBURSEMENT TO COMPANY**

If we have paid any amounts as DAMAGES in satisfaction of any CLAIM in excess of the applicable Limit of Liability, or have paid DAMAGES ~~or CLAIM EXPENSES~~ within the amount of the applicable DEDUCTIBLE, you shall be liable to us for any and all such amounts and shall pay such amounts to us within thirty (30) days of our demand.

**XI. CHANGES**

No change or modification of this POLICY shall be effective except when made by a written endorsement to this POLICY which is signed by our authorized representative.

**XII. NO ASSIGNMENT**

Neither this POLICY nor any INSURED'S interest in this POLICY may be assigned without our written consent.

**XIII. TERMINATION OF COVERAGE**

The POLICY shall terminate at the earliest of the following:

- A. if the POLICY is terminated for failure to pay a premium when due, the effective date of the cancellation stated in a written notice of cancellation from us to the FIRST NAMED INSURED, provided such notice is sent by us a least ten (10) days prior to the effective date of cancellation. The mailing of such notice to the FIRST NAMED INSURED shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the POLICY PERIOD. Any earned premium shall be computed pro rata;
- B. if the POLICY is terminated by us for any reason other than non-payment of premium, the effective date of the cancellation stated in our written notice of cancellation, provided the FIRST NAMED INSURED receives such notice at least thirty (30) days prior to the effective date of cancellation. The mailing of such notice to the FIRST NAMED INSURED shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the POLICY PERIOD. Any earned premium shall be computed pro rata;
- C. upon the surrender of the POLICY by the FIRST NAMED INSURED to us or upon our receipt of your written notice of termination stating when thereafter such cancellation shall be effective;  
  
Any earned premium shall be computed in accordance with the customary short rate table and procedure; or
- D. upon expiration of the POLICY PERIOD as set forth in the Declarations.

**XIV. EXTENDED REPORTING PERIOD:**

A. **EXTENDED REPORTING PERIOD TERMS.** The following provisions are applicable to all Extended Reporting Periods:

1. The extended reporting periods covers CLAIMS arising out of WRONGFUL ACTS that occurred prior to cancellation or expiration of the POLICY and on or after any RETROACTIVE DATE applicable to the expired or terminated POLICY.
2. If you have obtained a replacement POLICY, the Extended Reporting Period will apply only in the event the replacement POLICY limits have been exhausted for a CLAIM that qualifies for coverage under this section.
3. The Limit of Liability during the final POLICY PERIOD immediately preceding the cancellation or non-renewal of the POLICY shall apply to CLAIMS reported during the final POLICY PERIOD together with CLAIMS reported during the Extended Reporting Period.
4. If any Extended Reporting Period option is exercised, it cannot be terminated or modified by you or us.

B. **AUTOMATIC EXTENDED REPORTING PERIOD.** If we or you choose to cancel or not renew this POLICY, this POLICY will apply to CLAIMS first made against you during the POLICY PERIOD and reported in writing to us during the sixty (60) days immediately following the date of cancellation or expiration.

C. **OPTIONAL EXTENDED REPORTING PERIODS.** Subject to the above-identified terms and conditions, payment of all outstanding premiums or DEDUCTIBLES due, and your electing within sixty (60) days from the date of cancellation or non-renewal of the POLICY. The first sixty (60) days of the Optional Extended Reporting Period, if it is purchased, shall run concurrently with the Automatic Extended Reporting Period. The following Extended Reporting Periods are available:

1. If we or you choose to cancel or not renew the POLICY, you shall have the right to extend the time for reporting CLAIMS made against any INSURED under the POLICY per the following schedule. The additional premium for the Extended Reporting Period shall be:

<b>Extended Reporting Period</b>	<b>Premium (as determined by this Section XIV. C.5.)</b>
1 year	100%
2 years	150%
3 years	185%

The FIRST NAMED INSURED must send us written notice of its intent to purchase the option along with the additional premium for the Extended Reporting Period within sixty (60) days of the cancellation or non-renewal of the POLICY.

2. In addition to the above, we will issue an Extended Reporting Period Endorsement for an unlimited period at no additional premium following the cancellation or non-renewal of this POLICY provided that:
  - a. you are the sole owner and the sole producer; and

- b. you retire from the profession of insurance and your retirement is for reasons other than a suspension, revocation, or surrender of your license; and
  - c. you have reached the age of 62 and have been insured by us for 10 consecutive years prior to the POLICY termination or cancellation.
3. In addition to the above, if you are the sole owner and sole producer, we will issue a 10 year Extended Reporting Period endorsement at no additional premium provided:
- a. cancellation or termination of the POLICY is due to your death or you are totally and permanently disabled during the POLICY PERIOD; and
  - b. in the event of disability, you are continuously totally and permanently disabled from your profession for a minimum of six (6) months after issuance of this POLICY; and
  - c. any death or total and permanent disability does not arise from a self-inflicted injury, suicide, alcohol, or drug abuse; and
  - d. satisfactory written evidence of death or total and permanent disability is provided by you or your legal representative within sixty (60) days of death or total and permanent disability.
4. In addition to the above, if this POLICY is canceled by the FIRST NAMED INSURED, due to your merger, consolidation, or sale to another entity, or death or retirement of the owner, the FIRST NAMED INSURED shall also have the right to purchase an Extended Reporting Period provided:
- a. such merger, consolidation, or sale is not due to suspension, revocation, or surrender of an insured's license; and
  - b. the FIRST NAMED INSURED must send us written notice of its intent to purchase the option along with the additional premium for the Extended Reporting Period within sixty (60) days of the cancellation or non-renewal of the POLICY.

**SCHEDULE:**

<b>Extended Reporting Period for Sale, Merger, Death, or Retirement</b>	<b>Premium (as determined by this Section XIV. C.5.)</b>
1 year	100%
2 years	150%
3 years	185%
4 years	220%
5 years	250%
6 years	260%
7 years	270%
8 years	280%
9 years	290%
10 years	300%

5. The premium for all Optional Extended Reporting Period Schedules against which all Schedule percentages shall apply will be determined as follows:

The premium to be applied in the Schedule will be the average of all the most recent annual premiums assessed against the INSURED for Insurance Agencies Professional Liability policy(ies) issued by Westport or another affiliated company of Westport, back to the date of first continuous coverage, up to a maximum of three years.

Annual premium for purposes of this section is defined as the premium shown in the Declarations combined with any annualized premiums resulting from any endorsements.

**XV. ACQUISITIONS AND MERGERS**

In the event of any merger, consolidation, amalgamation or acquisition of any entity or any material change in your operations, you shall notify us of such change within ninety (90) days of the date of such change.

**XVI. MULTIPLE INSUREDS AND CLAIMANTS**

The inclusion of more than one INSURED in any CLAIM or the making of CLAIMS by more than one person or organization shall not increase the Limits of Liability or the DEDUCTIBLE. Two or more CLAIMS arising out of a single WRONGFUL ACT, or a series of related or continuing WRONGFUL ACTS, shall be a single CLAIM. All such CLAIMS, whenever made, shall be considered first made on the date on which the earliest CLAIM was first made arising out of such WRONGFUL ACT, and all such CLAIMS are subject to one Per CLAIM Limit of Liability and DEDUCTIBLE.

**XVII. LIBERALIZATION**

If, during the POLICY PERIOD we adopt revised provisions for this POLICY in order to afford, without additional premium, broader insurance to all INSUREDS covered by this POLICY, such provision will apply to this POLICY effective the date the provision has been approved by the appropriate regulatory authority and such revision shall apply only to CLAIMS first made, or POTENTIAL CLAIMS of which you first become aware, after the date of such approval.

**XVIII. OTHER INSURANCE**

Except as provided in the EXCLUSIONS in this POLICY, if there is other insurance applicable to a CLAIM covered by this POLICY, this POLICY shall be deemed excess insurance over and above the applicable Limits of Liability of all such other insurance unless such other insurance is specifically written as excess insurance over the Limits of Liability provided in this POLICY.

**XIX. ACTION AGAINST US**

No action shall lie against us unless, as a condition precedent thereto, all INSUREDS shall have fully complied with all the terms and conditions of this POLICY and not until the amount of all INSUREDS' obligations to pay has been finally determined either by judgment against all INSUREDS after actual trial or by written agreement of you, the claimant and us.

Nothing contained in the POLICY shall give any person or organization any right to join us as a co-defendant in any action against any INSURED to determine any INSURED'S liability.

**XX. APPLICABLE LAWS**

Any terms of the POLICY which are in conflict with any laws and regulations governing the POLICY are hereby amended to conform to such laws and regulations.

**XXI. TERRITORY**

This POLICY applies to WRONGFUL ACTS that occur anywhere in the world, but the INSURED'S responsibility to pay DAMAGES must be determined in a SUIT on the merits or in a settlement to which we have agreed.

**XXII. WAIVER**

Our failure to insist on strict compliance with any of the terms, provisions or conditions of this POLICY or the failure to exercise any right or privilege shall not operate or be construed as a waiver thereof or of any subsequent breach thereof or a waiver of any other terms, provisions, conditions, privileges, or rights.

**XXIII. ENTIRE AGREEMENT**

By acceptance of this POLICY, all INSUREDS reaffirm as of the effective date of this POLICY that (a) the statements in the Declarations and your most recent application(s) and all information communicated by the INSUREDS to us are true and accurate and are all INSUREDS' agreements and representations, (b) this POLICY is issued in reliance upon the truth and accuracy of such representations which are material to our issuance of this POLICY and (c) this POLICY embodies all agreements between INSUREDS and us or any of our agents relating to this insurance.

**IN WITNESS WHEREOF**, the Company has caused this POLICY to be signed by its President and Secretary, but the same shall not be binding upon the Company unless it has been countersigned on the Declarations page by a duly authorized representative of the Company.

WESTPORT INSURANCE CORPORATION

*Facsimile signature to be inserted*

President

*Facsimile signature to be inserted*

Secretary