

# **Westport Insurance Corporation**

(hereinafter called "the Company")

## **MASSACHUSETTS CUSTOMIZED PRACTICE COVERAGE®**

### **GENERAL TERMS & CONDITIONS**

These terms and conditions shall constitute the GENERAL TERMS & CONDITIONS of the POLICY and shall apply to all COVERAGE UNITS issued by the Company as part of the POLICY:

#### **I. NOTICE**

Notice to the Company under the POLICY shall be given to:

**Westport Insurance Corporation  
525 W. Van Buren  
Suite 500  
Chicago, Illinois 60607  
Attention: Professional Liability Division**

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

Except as provided in Section V.D. of these GENERAL TERMS & CONDITIONS, any notice shall be effective on the date of receipt by the Company at the above address.

#### **II. SUBROGATION**

The Company shall be subrogated to all INSUREDS' rights of recovery against any person or organization. The INSURED(S) shall execute all papers required by the Company and shall do everything that may be necessary to preserve, secure and pursue such rights for the Company, including the execution of such documents as may be necessary to enable the Company to bring suit in the name of the INSURED(S). All INSUREDS shall cooperate with the Company and do nothing to jeopardize, prejudice or terminate such rights.

#### **III. 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 an authorized representative of the Company.

#### **IV. NO ASSIGNMENT**

Neither this POLICY nor any INSURED'S interest in this POLICY may be assigned.

#### **V. 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 cancellation stated in a written notice of termination from the Company to the NAMED INSURED, provided such notice is received by the NAMED INSURED at least thirty (30) days prior to the effective date of cancellation. The mailing of such notice 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 in accordance with the customary short rate table and procedure;

- B. if the POLICY is non-renewed by the Company for any reason, the effective date of non-renewal stated in a written notice of termination from the Company to the NAMED INSURED, provided such notice is received by the NAMED INSURED at least sixty (60) days prior to the effective date of non-renewal. The mailing of such notice shall be sufficient notice and the effective date of non-renewal stated in the notice shall become the end of the POLICY PERIOD. Any earned premium shall be computed pro rata;
- C. upon the receipt by the Company of the POLICY surrendered by the NAMED INSURED. Any earned premium shall be computed in accordance with the customary short rate table and procedure;
- D. upon the transmittal to the Company of written notice of termination from the NAMED INSURED stating when thereafter such termination shall be effective. Any earned premium shall be computed in accordance with the customary short rate table and procedure; or
- E. upon expiration of the POLICY PERIOD as set forth in the Declarations.

Individual COVERAGE UNITS may not be terminated separately.

**VI. EXTENDED REPORTING PERIOD OPTION**

If the Company or the NAMED INSURED shall cancel or non-renew the POLICY, the NAMED INSURED 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:

<u>Extended Reporting Period</u>	<u>Additional Premium</u>
12 months	125% of the last annual premium of this POLICY
24 months	185% of the last annual premium of this POLICY
36 months	225% of the last annual premium of this POLICY
Unlimited	285% of the last annual premium of this POLICY

If the NAMED INSURED exercises the Extended Reporting Period option, the coverage shall apply only to CLAIMS for WRONGFUL ACTS, as defined in each of the attached COVERAGE UNITS, which occurred prior to the end of the POLICY PERIOD and on or after the RETROACTIVE DATE, if any, which are otherwise covered by the POLICY and which are first made against any INSURED and reported to the Company during the Extended Reporting Period.

This right to purchase the Extended Reporting Endorsement is subject to the following conditions:

1. the POLICY was cancelled or non-renewed for reasons other than non-payment of premium;
2. any deductible amounts due the Company have been paid;
3. the INSURED(S), as defined in each of the COVERAGE UNITS, have complied with all of the GENERAL TERMS & CONDITIONS of the POLICY and the terms and conditions of all attached COVERAGE UNITS;

4. the NAMED INSURED must send written notice to the Company of the intention to purchase the Extended Reporting Endorsement accompanied by the additional premium. Written notice and premium payment must be received by the Company no later than sixty (60) days after the termination date of the POLICY PERIOD.

Separate or new limits do not apply to the Extended Reporting Period. This option to extend the reporting period does not extend the POLICY PERIOD. The purchase of the Extended Reporting Period shall not in any way increase the limit of liability stated in the Declarations. If the Extended Reporting Period option is exercised, then such period shall be part of and not in addition to the last POLICY PERIOD. Any CLAIM made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding POLICY PERIOD. The entire premium for this option shall be deemed fully earned at the commencement of the Extended Reporting Period.

## **VII. NON-PRACTICING EXTENDED REPORTING PERIOD OPTIONS**

- A. Subject to the conditions stated below and in Paragraph E of this Section VII., any individual owner, partner, officer, director, stockholder, shareholder or employee of the NAMED INSURED who, during the POLICY PERIOD, retires or voluntarily ceases, permanently and totally the private practice of law, shall be entitled, at no additional premium, to an unlimited period for reporting CLAIMS first made against this INSURED. The right to this retirement Non-Practicing Extended Reporting Period is subject to the following conditions:
  1. the INSURED has been continuously insured by the Company for at least three full consecutive years;
  2. the POLICY was not cancelled for non-payment of premium or non-renewed;
  3. the INSURED, as defined in each of the COVERAGE UNITS, exercising this option has complied with all of the GENERAL TERMS & CONDITIONS of the POLICY and all terms and conditions of all attached COVERAGE UNITS; and
  4. the INSURED gives written notification of retirement or the termination of the private practice of law, within sixty (60) days after the termination date of the POLICY PERIOD.

This Non-Practicing Extended Reporting Period option is provided until the INSURED resumes the private practice of law.

Under this option only, the deductible requirement of the POLICY will be waived for CLAIMS first made against the INSURED during this Non-Practicing Extended Reporting Period option.

The per claim and aggregate limit of liability of this Non-Practicing Extended Reporting Period option shall be one hundred percent (100%) of the POLICY'S per claim and aggregate limit of liability as shown on the Declarations on the inception date of the expiring POLICY.

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- B. Subject to the conditions stated below and in Paragraph E of this Section VII, any individual partner, officer, director, stockholder, shareholder or employee of the NAMED INSURED who, during the POLICY PERIOD, retires or otherwise ceases the private practice of law, shall have the right to extend the time for reporting CLAIMS first made against this INSURED per the following schedule. The additional premium for this Non-Practicing Extended Reporting Period shall be:

<u>Extended Reporting Period</u>	<u>Additional Premium</u>
12 months	125% of per lawyer annual premium of this POLICY
24 months	185% of per lawyer annual premium of this POLICY
36 months	225% of per lawyer annual premium of this POLICY
Unlimited	285% of per lawyer annual premium of this POLICY

If an INSURED exercises this Non-Practicing Extended Reporting Period option, the coverage shall apply only to CLAIMS for WRONGFUL ACTS, as defined in each of the attached COVERAGE UNITS, which occurred prior to the end of the POLICY PERIOD and on or after the RETROACTIVE DATE, if any, which are otherwise covered by the POLICY and which are first made against this INSURED and reported to the Company during this Non-Practicing Extended Reporting Period.

This right to purchase this Non-Practicing Extended Reporting Endorsement is subject to the following conditions:

1. the POLICY was not cancelled for non-payment of premium or non-renewed;
2. the INSURED, as defined in each of the COVERAGE UNITS, exercising this Non-Practicing Extended Reporting Period option has complied with all of the GENERAL TERMS & CONDITIONS of the POLICY and all terms and conditions of all attached COVERAGE UNITS;
3. the INSURED exercising this Non-Practicing Extended Reporting Period option must send written notice to the Company of the intention to purchase this Non-Practicing Extended Reporting Endorsement accompanied by the additional premium. The Company must receive written notice and premium payment no later than sixty (60) days after the termination date of the POLICY PERIOD.

The per claim and aggregate limit of liability of this Non-Practicing Extended Reporting Period option shall be one hundred percent (100%) of the POLICY'S per claim and aggregate limit of liability as shown on the Declarations on the inception date of the expiring POLICY.

Under this Non-Practicing Extended Reporting Period option only, fifty percent (50%) of the deductible requirement of the POLICY will be waived up to a maximum of \$12,500 for CLAIMS first made against the INSURED during the Non-Practicing Extended Reporting Period.

- C. Subject to Paragraph E of this Section VII, if an INSURED dies during the POLICY PERIOD as a result of reasons other than self-inflicted injury, suicide, or alcohol or drug abuse, then the period for reporting CLAIMS is extended at no additional premium until the executor or administrator of the estate is discharged, provided that the estate, heir or administrator gives written notification and written proof of the date of death to the Company within nine (9) months of the death of the INSURED.

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- D. If an INSURED becomes TOTALLY AND PERMANENTLY DISABLED during the POLICY PERIOD, and has been continuously insured by the Company for at least two (2) consecutive years, then the period for reporting CLAIMS is extended at no additional premium until the death of the INSURED or until the INSURED is no longer TOTALLY AND PERMANENTLY DISABLED, provided that:
1. the INSURED or the INSURED'S legal guardian provides written notice of the disability to the Company no later than sixty (60) days after the termination date of the POLICY PERIOD;
  2. the INSURED or the INSURED'S legal guardian provides a physician's written certification of the disability including the date the disability commenced; and
  3. the INSURED agrees to submit to a medical examination at the Company's expense by any physician(s) designated by the Company.
- E. The provisions in A, B, C, & D above that extend the reporting period do not extend the POLICY PERIOD. Any Non-Practicing Extended Reporting Period option shall be part of and not in addition to the last POLICY PERIOD. Non-Practicing Extended Reporting Period shall not in any way increase the limit of liability stated in the Declarations. Any CLAIM made during this Non-Practicing Extended Reporting Period shall be deemed to have been made during the immediately preceding POLICY PERIOD. The entire premium for this option shall be deemed fully earned at the commencement of this Non-Practicing Extended Reporting Period.

The additional premium and deductible requirement for this Non-Practicing Extended Reporting Period will be waived for an INSURED who is leaving the private practice of law to become either a state or federal judge.

## VIII. LIMITS OF LIABILITY

All limits of liability shall apply in excess of the deductible. All CLAIMS EXPENSES and amounts paid in satisfaction of CLAIMS are subject to the applicable limit of liability.

All CLAIMS EXPENSES shall first be subtracted from the applicable "Per Claim Limit of Liability," with the remainder, if any, being the amount available to pay LOSS, as defined in each of the attached COVERAGE UNITS.

The liability of the Company for the combined total of all LOSS, as defined in each of the attached COVERAGE UNITS, and CLAIMS EXPENSES for a CLAIM covered by a COVERAGE UNIT shall not exceed the amount stated in the Declarations as "Per Claim Limit of Liability" for that COVERAGE UNIT.

**There shall be no stacking of COVERAGE UNIT limits.** If more than one COVERAGE UNIT covers a CLAIM, the Company's liability for the combined total of all LOSS and CLAIMS EXPENSES for the CLAIM shall not exceed the highest single "Per Claim Limit of Liability" as stated in the Declarations for the COVERAGE UNIT(S) which cover the CLAIM.

The liability of the Company for the combined total of all LOSS and CLAIMS EXPENSES for all CLAIMS covered by a COVERAGE UNIT shall not exceed the amount stated in the Declarations as "Aggregate Limit of Liability" for that COVERAGE UNIT.

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The liability of the Company under the POLICY for the combined total of all LOSS and CLAIMS EXPENSES for all CLAIMS covered by any and all COVERAGE UNIT(S) shall not exceed the amount stated in the Declarations as "Policy Aggregate Limit of Liability."

#### **IX. DEDUCTIBLE**

The deductible, as stated in the Declarations, for the COVERAGE UNIT providing the limit of liability shall apply to each CLAIM and Aggregate and shall be paid by the NAMED INSURED. The deductible shall be first applied to all CLAIMS EXPENSES with the remainder, if any, being applied to LOSS, as defined in each of the attached COVERAGE UNITS. CLAIMS EXPENSES shall be included within the deductible and the limit of liability and not in addition thereto. Payment of the deductible shall be made by the NAMED INSURED within thirty (30) days of receipt of demand by the Company.

This deductible requirement will be waived for any CLAIM which is resolved through the use of formal arbitration or mediation proceedings within 120 days of written notice of such CLAIM.

#### **X. MULTIPLE INSUREDS, CLAIMS 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, as defined in each of the attached COVERAGE UNITS, 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, as defined in the applicable COVERAGE UNIT, and all such CLAIMS are subject to one "Per Claim Limit of Liability" and deductible.

#### **XI. OTHER INSURANCE**

Except as provided in the Exclusions to the COVERAGE UNITS, if there is other insurance applicable to a CLAIM covered by the POLICY, the 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 the POLICY.

#### **XII. ACTION AGAINST THE COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, the INSUREDS shall have fully complied with all the GENERAL TERMS & CONDITIONS of the POLICY and the terms and conditions of all attached COVERAGE UNITS, and not until the amount of all INSUREDS' obligations to pay has been finally determined either by judgment against the INSUREDS after actual trial or by written agreement of the NAMED INSURED, the claimant and the Company.

Any person, organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this POLICY to the extent of the insurance afforded by this POLICY.

Nothing contained in the POLICY shall give any person or organization any right to join the Company as a co-defendant in any action against any INSURED to determine any INSURED'S liability. Bankruptcy or insolvency of any INSURED or any INSURED'S estate shall not relieve the Company of any of its obligations hereunder.

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### **XIII. 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.

### **XIV. EXCLUSIONS**

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

- A. any criminal, dishonest, malicious or fraudulent act, error, omission or PERSONAL INJURY committed by an INSURED. This exclusion does not apply to any INSURED who is not so adjudged;
- B. any violation or breach by any INSURED of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, the amendments thereto, the rules and regulations promulgated thereunder, or any similar provision of any federal, state or local statute, regulation or ordinance or common law. This exclusion shall not apply to the LAWYERS PROFESSIONAL LIABILITY COVERAGE UNIT if any INSURED is liable solely by reason of legal services rendered to clients;
- C. injury to, or destruction of tangible property or loss of use thereof;
- D. any INSURED having gained in fact any personal profit or advantage to which he or she was not legally entitled;
- E. the discharge, escape, dispersal or release by any INSURED of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, including ground water sources, whether gradual or sudden, intentional or accidental;
- F. the use, handling, sale, distribution, transport, shipment, dispersal, storage or disposal by an INSURED of any nuclear, radioactive or fissionable material, or any alleged violation of any environmental statute, regulation or ordinance with respect to such material; and
- G. The planning, construction, maintenance, operation or use by any INSURED of any nuclear reactor, nuclear waste storage facility or disposal site or any other nuclear facility, or nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to the forgoing.

### **XV. DEFINITIONS**

As respects such insurance as is afforded by the POLICY, the following definitions shall apply:

- A. **"CLAIM" MEANS** a demand made upon any INSURED for LOSS, as defined in each of the attached COVERAGE UNITS, including, but not limited to, service of suit or institution of arbitration proceedings or administrative proceedings against any INSURED;

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**B. "CLAIMS EXPENSES" MEANS:**

1. fees charged by any lawyer, designated by the Company or required by law, to defend the INSUREDS; and
2. if authorized by the Company, all other fees, costs and expenses resulting from the investigation, adjustment, defense or appeal of any CLAIM, including but not limited to:
  - a. all costs taxed against any INSURED and all interest which accrues after the entry of any judgment and before the Company has tendered or deposited, in court or otherwise, such judgment amount for which any INSURED is liable; and
  - b. premiums on appeal bonds, in an amount not to exceed the Company's Limits of Liability, which are required for the appeal of a covered CLAIM. The Company shall have no obligation to apply for, guarantee or furnish any such bonds.

"CLAIMS EXPENSES" shall not include salaries and expenses of regular employees or officials of the Company or the NAMED INSURED;

**C. "COVERAGE UNIT" MEANS** the terms, conditions, definitions and exclusions as stated in each attachment hereto for each of the coverages selected by the INSUREDS and listed in the Declarations including endorsements thereto. Each COVERAGE UNIT is a separate and distinct coverage;

**D. "DISCIPLINARY PROCEEDING" MEANS** any proceeding by a disciplinary official or agency to investigate charges alleging professional misconduct;

**E. "PERSONAL INJURY" MEANS** assault, battery, false arrest, detention, imprisonment, wrongful entry, eviction or other invasion of private occupancy, or abusive litigation (criminal or civil), abuse of process, libel, slander, defamation and violations of the right of privacy;

**F. "POLICY" MEANS** the combination of (1) all COVERAGE UNITS issued by the Company to the NAMED INSURED and listed in the Declarations, (2) these GENERAL TERMS & CONDITIONS, and (3) all applications for insurance submitted by the NAMED INSURED with all supplements;

**G. "POLICY PERIOD" MEANS** the period stated in the Declarations, unless terminated earlier pursuant to Section V. of these GENERAL TERMS & CONDITIONS;

**H. "PREDECESSOR" MEANS** a sole proprietor, partnership, professional corporation, professional association, limited liability corporation or limited liability partnership engaged in legal services and:

1. to whose financial assets and liabilities the firm listed as the NAMED INSURED in the Declarations is the majority successor in interest; and
2. of which the NAMED INSURED retained 50% or more of the lawyers.

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- I. **"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 each of the attached COVERAGE UNITS, must have occurred in order for CLAIMS arising therefrom to be covered under this POLICY. CLAIMS arising from any WRONGFUL ACT, as defined in each of the attached COVERAGE UNITS, occurring prior to this date are not covered by this POLICY;
- J. **"TOTALLY AND PERMANENTLY DISABLED" MEANS** the INSURED is wholly prevented from working in his or her profession and the disability has continued for at least six (6) months, and an independent medical examiner opines that the disability will be continuous and permanent, and the disability did not result from self-inflicted injury, attempted suicide or alcohol or drug abuse.

#### **XVI. WAIVER**

The Company's failure to insist on strict compliance with any of the terms, provisions or conditions to coverage of these GENERAL TERMS & CONDITIONS or the attached COVERAGE UNITS 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.

#### **XVII. ENTIRE AGREEMENT**

By acceptance of this POLICY, all INSUREDS reaffirm as of the effective date of this POLICY that (a) the statements in the application(s) attached hereto and made a part hereof, and all information communicated by the INSUREDS to the Company, and all INSUREDS' agreements and representations, are true and accurate (b) this POLICY is issued in reliance upon the truth and accuracy of such representations which are material to the Company's issuance of this POLICY and (c) this POLICY embodies all agreements between all INSUREDS and the Company or any of its agents relating to this insurance. No representations by any person shall have any force or effect, except as included within this written agreement.

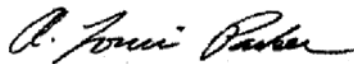
#### **XVIII. LIBERALIZATION**

If the Company adopts any revision that would broaden coverage under this POLICY without additional premium at any time during the POLICY PERIOD, the broadened coverage will immediately apply to this POLICY except that it will not apply to CLAIMS that were first made against the INSURED prior to the effective date of such revision.

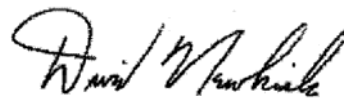
**This POLICY is not valid unless completed by the attachment of the Declarations signed by an authorized representative and these GENERAL TERMS & CONDITIONS.**

IN WITNESS WHEREOF, the WESTPORT INSURANCE CORPORATION has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this policy to be countersigned by its duly authorized representative.

#### **WESTPORT INSURANCE CORPORATION**



President



Secretary

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