

Policy Number:
Insured Name:
Number:

VP 00 06 07 07

Effective Date:

PROFESSIONAL LIABILITY INSURANCE POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY SHALL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY PAYMENT OF CLAIM EXPENSES.

PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the **Insured** to pay the Deductible herein and in reliance upon all statements made and information in the **Application**, which is attached hereto and made a part of this Policy, and subject to all the terms and conditions of this Policy, the **Company** agrees with the **Insureds** as follows:

I. INSURING AGREEMENT

The **Company** will pay on behalf of the **Insured** any **Loss** and **Claim Expenses** in excess of the Deductible not exceeding the **Limit of Liability** to which this coverage applies that the **Insured** shall become legally obligated to pay because of **Claims** first made against the **Insured** during the **Policy Period**, for **Wrongful Acts** of an **Insured** which occurred on or after the **Retroactive Date**, provided that:

- 1) written notice of such **Claim** is received by the **Company** during the **Policy Period** or within sixty (60) days thereafter; and
- 2) prior to the inception date of this Policy, no **Insured** knew, nor could have reasonably foreseen, that the **Wrongful Acts** might result in a **Claim**.

II. DEFENSE AND SETTLEMENT

The **Company** has the right and duty to select counsel and to defend any **Suit** covered by this Policy even if any of the allegations are groundless, false or fraudulent.

If applicable law gives the **Insured** the right to select defense counsel, then the **Insured** may select independent defense counsel, subject to the consent of the **Company**. Such counsel shall have at least ten (10) years of experience in the defense of similar **Suits** in the area where the **Suit** is being defended and shall maintain errors and omissions insurance coverage. The **Insured** and independent defense counsel shall provide full information, documentation and cooperation with respect to the defense, investigation and settlement of any **Suit**. The **Company** shall be liable only for reasonable and necessary defense costs at rates customarily paid by the **Company** for the defense of similar **Suits** in the area where the **Suit** is being defended. Any such defense costs shall be considered **Claim Expenses**.

The **Company**, at its option, may investigate and defend any **Claim** which does not constitute a **Suit**, as it deems expedient.

The **Company** is not obligated to appeal from any judgment entered against any **Insured**. The decision to appeal from a judgment entered against any **Insured** is solely at the discretion of the **Company**.

The **Company** is not obligated to pay any **Claim Expenses** or to investigate or defend any **Claims** after the **Limit of Liability** has been exhausted by payment of **Loss** or the **Company** has tendered the **Limit of Liability** to, or on behalf of, the **Insured**, or to a court of competent jurisdiction.

The **Company** has the right to negotiate the settlement of any **Claim** as it deems expedient, with the **Named Insured's** consent, which consent shall not be unreasonably withheld. If the **Named Insured** refuses to consent to any settlement recommended by the **Company**, all **Insureds** shall thereafter be obligated to negotiate and defend such **Claim** independently of the **Company**, and the **Company's** duty to defend and pay **Claim Expenses** ceases. Subject to the **Limit of Liability**, the liability of the **Company** for any such **Claim** is limited to the amount in excess of the Deductible which the **Company** would have contributed to the settlement had the **Named Insured** consented to settlement at that time, plus **Claim Expenses** covered by the Policy incurred up to the date of such refusal to settle.

No **Insured** will make any payment, assume any obligation, incur any expense, or settle any **Claim** without the advance written consent of the **Company**, except at the sole expense of the **Insured**. **Loss** and **Claim Expenses** incurred without the prior written consent of the **Company** are not recoverable under this Policy.

After knowledge of a **Claim**, potential **Claim** or **Loss**, no **Insured** will agree to arbitration, or other form of alternative dispute resolution, without the prior written consent of the **Company**.

All **Insureds** will cooperate with the **Company**, and provide such assistance and information as the **Company** may request. Upon the **Company's** request, all **Insureds** shall submit to examination and interrogation by a representative of the **Company**, under oath if required, and shall attend hearings, depositions, and trials and shall assist in the investigation and defense of **Claims**, including, but not limited to, effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, giving written statements to the **Company's** representatives and meeting with such representatives for the purpose of investigation and/or defense, all of the above without charge to the **Company**. The **Insureds** further agree not to take any action which may increase the **Insureds'** exposure for **Claim Expenses** or **Loss**.

III. DEFINITIONS

- A) "**Application**" means all signed applications, including attachments and other materials submitted therewith or incorporated therein, submitted by any **Insured** to the **Company** for this Policy or for any Policy of which this Policy is a direct or indirect renewal or replacement.
- B) "**Arising Out Of**" means connected to, incidental to, originating from or growing out of, directly or indirectly resulting from.
- C) "**Claim**" means:
1. A written demand for **Loss** or non-monetary relief against an **Insured** because of a **Wrongful Act**;
 2. Any **Suit**.
- D) "**Claim Expenses**" means reasonable costs, charges, fees (including attorney's fees and expert fees) and expenses (but does not include salaries, wages, overhead, benefit, or expenses of any **Insured**), incurred by the **Company** or with the **Company's** prior written consent, resulting from the investigation, defense and appeal of a **Claim**. **Claim Expenses** also includes:

1. premiums on appeal bonds required if the **Company** appeals from any judgment entered in any **Suit** to which this Policy applies, but only for that portion of the judgment which is for **Loss** covered by this Policy and which does not exceed the applicable **Limit of Liability**. The **Company** will also pay the premiums on bonds in amounts up to the applicable **Limit of Liability** to release attachments in any **Suit** defended by the **Company**. The **Company** has no obligation to apply for or furnish any bond;
 2. post-judgment interest on that portion of any judgment which is for **Loss** covered by this policy, and which does not exceed the applicable **Limit of Liability**, which accrues until the **Company** has paid, or tendered to the plaintiff, or deposited in court, the amount of such **Loss** plus post-judgment interest accrued until the time of such payment, tender or deposit.
- E) "**Company**" means the **Insurer** identified in the Declarations Page.
- F) "**Insured**" means:
1. The **Named Insured** as listed on the Declarations Page including any partner, director, officer or employee of the **Named Insured** while rendering **Professional Services** on behalf of the **Named Insured**;
 2. Any former partner, director, officer or employee of the **Named Insured** while rendering **Professional Services** on behalf of the **Named Insured**;
 3. The estate or legal representatives in the event of death, incompetency, insolvency or bankruptcy of any **Insured**.
- G) "**Loss**" means a monetary and compensatory judgment or award which the **Insured** is legally obligated to pay because of any covered **Wrongful Act**, but does not include: punitive or exemplary damages, fines, penalties, the multiplied portion of any judgment or award, or any matter uninsurable under the law pursuant to which this Policy will be construed, nor the return of fees or charges for **Professional Services** rendered or to be rendered.
- H) "**Named Insured**" means the **Named Insured** listed on the Declarations Page.
- I) "**Personal Injury**" means the following offenses: Publication of oral or written material that violates a person's right of privacy or publicity or which libels or slanders a person or organization.
- J) "**Policy Period**" means the time period specified in Item I. of the Declarations Page.
- K) "**Professional Services**" means only those professional services listed in Item III. of the Declarations Page as performed by or on behalf of the **Named Insured** for others for a fee or other form of compensation.
- L) "**Related**" means logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- M) "**Suit**" means any civil judicial, administrative or arbitration proceeding initiated against an **Insured** because of a **Wrongful Act** seeking **Loss** or non-monetary relief against an **Insured**.
- N) "**Wrongful Act**" means any negligent or unintentional breach of duty imposed by law, or **Personal Injury**, committed solely in the rendering of **Professional Services** by an **Insured**.

IV. EXCLUSIONS

This Policy does not apply to any **Claim** or **Claim Expenses Arising Out Of** any actual or alleged:

- A) criminal, fraudulent, dishonest or knowingly wrongful act or omission committed by or with the knowledge of any **Insured**. However, the **Company** agrees that such insurance as would otherwise be afforded under this Policy shall be applicable with respect to an individual **Insured**, other than the **Named Insured**, who did not participate or acquiesce in or remain passive after having knowledge of such conduct.
- B) the gaining by any **Insured** of any personal profit, gain or advantage to which any **Insured** was not legally entitled.
- C) bodily injury, sickness, disease or death of any person, or emotional distress, mental anguish, or other similar injury or damage, or any injury to, or destruction of, any tangible property, or loss of use thereof.
- D) infringement of any copyright, trademark, trade dress, trade name, service mark, service name, title, slogan, patent, or other intellectual property rights.
- E) discrimination, including, but not limited to, violation of any municipal, state or federal civil rights or other law, regulation or ordinance.
- F) violation or alleged violation of the Securities Act of 1933 as amended, or the Securities Exchange Act of 1934 as amended, or any State Blue Sky or securities law or similar state or federal statute and any regulation or order issued pursuant to any of the foregoing statutes.
- G) liability of others assumed by the **Insured** under any oral or written contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such agreement.
- H) breach of any express contract, warranty or guaranty.
- I) failure of any **Insured** to procure or maintain adequate insurance or bonds, or any **Insured's** failure to comply with any law with respect to the **Insured's** employees concerning Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits or any similar law.
- J) violation of or failure to comply with the Employee Retirement Income Security Act of 1974 (ERISA) or similar provisions of any Federal, State or local statutory law or common law.
- K) violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., (RICO) and any amendments thereto, or any rules or regulations promulgated thereunder, or any similar State or local law.
- L) actual or threatened discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, lead, liquids or gases, waste materials, or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, whether or not such actual, alleged or threatened discharge, dispersal, release or escape is sudden, accidental or gradual in nature, or any cost or expense arising out of any governmental direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutants.
- M) fee dispute or suit for fees initiated by any **Insured** against any past or current client or customer of any **Insured**.

N) unsolicited sending of information or advertising by fax, electronic mail (e-mail), or via any other means where prohibited by law.

O) **Claim** by or on behalf of any **Insured**, or any present or former shareholder, partner, officer, director, or employee of any **Insured**, against any other **Insured**.

P) Cost guarantee or estimates of probable costs or cost estimates being exceeded.

V. LIMIT OF LIABILITY AND DEDUCTIBLE

A) The **Company's** maximum limit of liability for all **Loss** from each **Claim** first made during the **Policy Period** shall not exceed the **Each Claim Limit of Liability** set forth in Item IV.B. of the Declarations Page, which amount shall be part of and not in addition to the amount stated in Item IV.A. of the Declarations Page.

B) The **Company's** maximum aggregate limit of liability for all **Loss** from all **Claims** first made during the **Policy Period** shall not exceed the aggregate **Limit of Liability** set forth in Item IV.A. of the Declarations Page, regardless of the number of **Claims**.

C) **Claim Expenses** are part of and not in addition to the **Limits of Liability** set forth in Item IV. of the Declarations Page, and payment by the **Company** of **Claim Expenses** shall reduce and may exhaust such **Limits of Liability**.

D) The Deductible amount stated in the Declarations Page shall apply to **Loss** and **Claim Expenses** and shall apply to each and every **Claim**. The **Company** shall only be liable to pay, subject to the **Limit of Liability** provisions stated above, for **Loss** and **Claim Expenses** in excess of such Deductible and such Deductible shall not be **Insured** under this Policy. In the event that the **Company**, in its sole discretion, decides to pay amounts within the Deductible, the **Named Insured**, and any other **Insureds** against whom the **Claim** is made, shall be jointly and severally liable to repay the **Company** such amounts within (30) thirty days of a request by the **Company**.

E) One or more **Claims Arising Out Of** the same **Wrongful Acts**, or **Related Wrongful Acts**, shall be considered a single **Claim** subject to the **Each Claim Limit of Liability**.

VI. MULTIPLE CLAIMS AND WRONGFUL ACTS

One or more **Claims Arising Out Of** the same **Wrongful Acts**, or **Related Wrongful Acts**, shall be considered a single **Claim**.

All such **Claims**, whenever made, will be deemed first made at the time the earliest such **Claim** was first made. All such **Claims** will be covered, if at all, only under the Policy, if any, in effect if and when the earliest such **Claim** was first made and reported to the **Company**. Subsequent policies will not apply to any such **Claims**.

Two or more **Related Wrongful Acts** shall be deemed one **Wrongful Act** which occurred at the time the earliest such **Wrongful Act** occurred.

VII. TERRITORY

The Insurance afforded applies to **Wrongful Acts** worldwide, provided that **Claim** is made within the United States, its territories, possessions or Canada.

VIII. EXTENDED REPORTING PERIOD

A) If this Policy is either terminated or not renewed for any reason other than nonpayment of premium, any **Insured** shall have the right to purchase an **Extended Reporting Period** for twelve (12) months, for payment of 75% of the Premium stated in Item VII. of the Declarations Page, or twenty four (24) months, for payment of 125% of the Premium stated in Item VII. of the Declarations Page, or thirty six (36) months, for payment of 175% of the Premium stated in Item VII. of the Declarations Page. This right to purchase an **Extended Reporting Period** shall lapse unless written notice of election to purchase the **Extended Reporting Period**, together with payment of the additional premium due, is received by the **Company** within 30 days after the end of the **Policy Period**.

B) If the **Extended Reporting Period** is purchased, then coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made and reported to the **Company** during such **Extended Reporting Period**, but only for **Wrongful Acts** committed before the end of the **Policy Period**. The entire additional premium for the **Extended Reporting Period** shall be deemed fully earned at the inception of such **Extended Reporting Period**. The **Limit of Liability** for the **Extended Reporting Period** shall be part of and not in addition to the applicable **Limits of Liability** for the **Policy Period**.

IX. CLAIM REPORTING PROVISIONS

A) If a **Claim** is made against any **Insured**, the **Insured** shall provide immediate notice to the **Company**, and shall forward, as soon as practicable, every demand, notice, summons, complaint or other process or documents received by the **Insureds** or their representatives.

B) If, during the **Policy Period**, an **Insured** becomes aware of a **Wrongful Act** which may reasonably be expected to subsequently give rise to a **Claim**, and during the **Policy Period**, the **Insured** gives the **Company** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from the **Wrongful Act**, the **Loss** which may result from the **Wrongful Act**, and the circumstances by which the **Insured** first becomes aware of the **Wrongful Act**, and requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**, then the **Company** will treat any such

subsequently resulting **Claim** as if it had been made against the **Insured** and reported during the **Policy Period**, provided that written notice of such **Claim** is immediately given to the **Company** after it is first made.

C) Notice to the **Company** is not effective until received by the **Company**. All notices shall be sent to: Vela Insurance Services, 200 W. Madison Street, Chicago, Illinois 60606, Attn: Claims Department, Fax: (402) 492-3283 or (866) 360-1813, E-Mail: velaclaims@velains.com or manderson@velains.com.

No insurance agent or broker is authorized to act as the **Company's** agent to receive reports or notices hereunder, and any reports or notices to an insurance agent or broker shall not constitute compliance with the terms and conditions of this Policy.

Timely and adequate notice are conditions precedent to coverage, and failure to timely or adequately report a **Claim** or potential **Claim** may result in denial of coverage.

X. CANCELLATION/NON-RENEWAL

A) The **Named Insured** may cancel this **Policy** by surrender thereof to the **Company**, or by mailing to the **Company** written notice stating when thereafter such cancellation shall be effective. 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**. Delivery of such written notice shall be equivalent to mailing.

B) The **Company** may cancel this **Policy** by mailing or delivering to the **Named Insured** written notice stating when, not less than 60 days thereafter, such cancellation shall be effective. However, if the **Company** cancels this **Policy** because the **Insured** has failed to pay a premium when due, this **Policy** may be canceled by the **Company** by mailing or delivering a written notice of cancellation to the **Named Insured** stating when, not less than (10) days thereafter, such cancellation shall be effective. The notice of cancellation shall state the reason for 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**. Delivery of such written notice by the **Company** shall be equivalent to mailing.

C) If this **Policy** is canceled pursuant to Clause A. hereinabove, the **Company** shall retain the customary short rate portion of the premium hereon. If this **Policy** is canceled pursuant to Clause B. hereinabove, the **Company** shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the **Company** shall not be a condition precedent to the effectiveness of cancellation.

D) If the **Company** decides not to renew this **Policy**, the **Company** shall mail or deliver written notice to the **Named Insured** at least sixty (60) days before the end of the **Policy Period**. The notice of non-renewal shall state the reason for non-renewal.

XI. OTHER INSURANCE

This **Policy** is excess over any other applicable insurance whether such insurance is primary, excess, contributory, contingent, or otherwise and whether such insurance is collectible or not; unless such other insurance is written to be specifically excess over the insurance provided by this **Policy**. Other insurance includes other insurance policies, benefits under a risk retention group, any self-insured retention or plan, or indemnification agreement.

XII. REPRESENTATIONS

In issuing this Policy, the **Company** has relied upon the statements, representations and information in the **Application**. All of the **Insureds** acknowledge and agree that all such statements, representations and information are true, and accurate are made or provided in order to induce the **Company** to issue this Policy and are material to the **Company's** acceptance of the risk to which this Policy applies.

XIII. ASSIGNMENT

The interests or rights hereunder of any **Insured** are not assignable. If the **Insured** shall die or be adjudged incompetent, such insurance shall cover the **Insured's** legal representative as the **Insured** as would be permitted by this Policy.

XIV. SUBROGATION

In the event of any payment under this Policy, the **Company** shall be subrogated to all the **Insured's** rights of recovery therefore against any person or organization, or any other insurer which may provide coverage, for any **Loss** or **Claim Expenses**, and the **Insureds** shall execute and deliver instruments and papers and do whatever else is necessary to secure and enforce such rights. The **Insureds** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Loss** and **Claim Expenses** paid by the **Company**, and third to the each **Claim Deductible**. Any additional amounts recovered shall be paid to the **Named Insured**.

XV. CHANGES

Notice to any agent or knowledge by any agent or broker shall not effect a waiver or change in any part of this Policy or stop the **Company** from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except by an endorsement, in writing, issued to and forming a part of this Policy.

XVI. ACTION AGAINST THE COMPANY

A) No action shall lie against the **Company** unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual and contested trial on the merits, or by written agreement of the **Insured**, the Claimant or the Claimant's legal representative, and the **Company**.

B) Any person or the legal representatives 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. No person or entity shall have any right under this Policy to join the **Company** as a party to any action against the **Insured** or their legal representatives. Bankruptcy or insolvency of the **Insured** or their successors in interest shall not relieve the **Company** of its obligations hereunder.

XVII. MERGERS AND ACQUISITIONS

If, during the **Policy Period**, either of the following events occur:

A) The acquisition of any **Named Insured**, or all or substantially all of its assets, by another entity or the merger or consolidation of any **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity;

B) The appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to any **Named Insured**;

Then coverage under this Policy will continue in full force and effect with respect to **Claims for Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims for Wrongful Acts** committed after such event. After any such event, this Policy may not be canceled by the **Named Insured** and the entire premium for this Policy will be deemed fully earned.

XVIII. VALUATION AND CURRENCY

All premiums, limits, deductible, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars or if **Claim Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due or the date such **Claim Expenses** are paid.

XIX. AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XX. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.