LawPRO®

Policy 2009

Excess Professional Liability Insurance for LAWYERS/ Law Firms

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Throughout this POLICY certain words have been capitalized to indicate that they have a specific meaning as defined in the POLICY or as set out in the POLICY Declarations.

Lawyers' Professional Indemnity Company in consideration of the payment of the premium and in reliance upon the INSUREDS' completed excess liability insurance application(s), individual members' DESIGNATED UNDERLYING POLICY application(s), exemption form(s), and related law society filings, if any, subject to the LIMITS OF LIABILITY and all other provisions of this POLICY and Declarations, agrees with the INSURED, as follows:

Part I
INSURANCE COVERAGE

A. Insuring agreement:

To pay on behalf of the INSURED all sums in excess of the UNDERLYING AMOUNT which the INSURED shall become legally obligated to pay as the ULTIMATE NET LOSS arising out of a CLAIM first made against the INSURED during the POLICY PERIOD, provided that:

(i) the liability of the INSURED is the result of an error, omission or negligent act in the performance of or the failure to perform PROFESSIONAL SERVICES for others, and

(ii) the CLAIM is covered by the DESIGNATED UNDERLYING POLICY or other UNDERLYING INSURANCE (or would have been covered had any such insurance not been exhausted by the payment of CLAIMS).

For clarity, nothing in this POLICY shall require the INSURER to assume the defence of any CLAIM under the POLICY, however, the INSURER shall have the right and be given the opportunity to associate with the INSURED, as well as any insurer charged with the defence of the CLAIM, in the control and defence of any CLAIM.

The INSURER shall not be obligated to pay any (further) CLAIM amount(s) or to continue to participate in the defence of any CLAIM, upon exhaustion of the POLICY limits through CLAIM payments and/or payment(s) into any court of competent jurisdiction in regard to one or more CLAIMS hereunder.

B. Incorporation of DESIGNATED UNDERLYING POLICY provisions:

This POLICY is intended to provide coverage that is similar in scope to that provided under the DESIGNATED UNDERLYING POLICY, subject to:

(i) the objects of this POLICY, as an excess policy of insurance;

(ii) the express terms, conditions, exclusions and other provisions of this POLICY; and that

(iii) no coverage be provided under this POLICY for CLAIMS in relation to coverages afforded on a sublimit basis to any of the INSUREDS under the DESIGNATED UNDERLYING POLICY, except as expressly provided under Part III, Exclusion (c)(ii) of this POLICY.

All terms, conditions, exclusions and other provisions of the DESIGNATED UNDERLYING POLICY that are consistent with the foregoing, are hereby incorporated and shall form part of this POLICY.

C. Changes in UNDERLYING INSURANCE:

This POLICY is issued in reliance upon the existence of the DESIGNATED UNDERLYING POLICY and other UNDERLYING INSURANCE. If any such UNDERLYING INSURANCE is not maintained in full force and effect, or is altered in any manner, no obligation of the INSURER under the POLICY shall be increased in any way, and any obligation of the INSURER to pay amounts shall be limited to that which the INSURER would have been obligated to pay had the UNDERLYING INSURANCE been maintained as at (or represented at) POLICY inception, in full force and effect, and without alteration.

To the extent that any UNDERLYING INSURANCE is reduced or exhausted by the payment of CLAIMS within the scope of both the DESIGNATED UNDERLYING POLICY and this POLICY, then, subject to all other POLICY provisions, this POLICY shall operate to respond to such CLAIMS in excess of the reduced UNDERLYING INSURANCE.

Part II
Special Provisions

A. POLICY PERIOD:

The insurance afforded by this POLICY covers only those CLAIMS made against the INSURED for the first time during the POLICY PERIOD, no matter when the actual or alleged error, omission or negligent act took place, provided that the INSURED shall have:

(i) reported the CLAIM to the INSURER during the POLICY PERIOD;

(ii) not known and ought not to have known prior to the POLICY PERIOD of such CLAIM or of the circumstances giving rise to such CLAIM; and

(iii) no other valid and collectible insurance, other than the UNDERLYING INSURANCE available under this POLICY or any insurance specifically acquired and stated to be in excess of this POLICY, concerning such CLAIM.

Further, if during the POLICY PERIOD, the INSURED first reports to the INSURER a CLAIM or circumstances of an error, omission or negligent act which any reasonable person or LAW FIRM would expect to subsequently give rise to a CLAIM, the INSURER shall consider these a CLAIM first reported during this POLICY PERIOD, even if a CLAIM is only advanced as against the INSURED after the POLICY PERIOD, and even if a related CLAIM or related circumstances of an error(s), omission(s) or negligent act(s) are reported after the POLICY PERIOD.

Part III
Exclusions to the Insured's Coverage

This POLICY does not apply:

(a) to any CLAIM or part thereof which is not covered or is excluded from coverage pursuant to the terms, conditions, exclusions or other provisions of any UNDERLYING INSURANCE policy under which the CLAIM has been reported, unless due solely to the exhaustion of the policy limits;

(b) to any CLAIM or part thereof which would not have been covered or which would have been excluded from coverage, pursuant to the terms, conditions, exclusions or other provisions of the DESIGNATED UNDERLYING POLICY, had the particular INSURED been included in like fashion as an insured under the DESIGNATED UNDERLYING POLICY as under such other UNDERLYING INSURANCE, unless this would have been due solely to the exhaustion of the DESIGNATED UNDERLYING POLICY limits;

(c) (i) to any CLAIM in any way relating to or arising out of any dishonest, fraudulent, criminal or malicious act or omission of an INSURED; however,

(ii) upon exhaustion of the stated limit amount (as opposed to any lesser sublimit amount) of the applicable UNDERLYING INSURANCE, or of $1,000,000 per CLAIM and $2,000,000 in the aggregate over the POLICY PERIOD, whichever is greater, this exclusion as described in c(i) shall not apply to any INSURED who is not the author of the act, a party to the act nor an accomplice;

(d) to any CLAIM in any way relating to or arising out of an INSURED acting in his or her capacity as a director and/or an officer of any company or organization;

(e) to any CLAIM in any way relating to or arising out of an INSURED acting as a MORTGAGE BROKER, or to any CLAIM in any way relating to or arising out of circumstances in which an INSURED provided before July 1, 2008 PROFESSIONAL SERVICES in conjunction therewith;

(f) to the nuclear and pollution hazard, and any other exclusions, as endorsed.

Part IV
General Conditions

A. LIMIT OF LIABILITY:

The INSURER'S LIMIT OF LIABILITY, per CLAIM, shall be governed by this Condition.

The total limit of the INSURER'S liability pursuant to this POLICY, for each CLAIM, regardless of the number of INSUREDS who may be covered under this POLICY, shall be the amount stated as the INSURER'S LIMIT OF LIABILITY in ITEM 5 of the Declarations.

The inclusion of more than one INSURED under this POLICY shall not operate to increase the insurer's LIMIT OF LIABILITY.

B. AGGREGATE LIMIT OF LIABILITY:

The INSURER'S AGGREGATE LIMIT OF LIABILITY, per POLICY PERIOD, shall be governed by this Condition.

The total limit of the INSURER'S liability pursuant to this POLICY, for all CLAIMS to which this POLICY is applicable, regardless of the number of INSUREDS who may be covered under this POLICY, shall be the amount stated as the AGGREGATE LIMIT OF LIABILITY in ITEM 6 of the Declarations.

C. Maintenance of UNDERLYING INSURANCE:

The INSURED agrees to maintain all UNDERLYING INSURANCE in full force and effect throughout the entirety of the POLICY PERIOD of this POLICY, and shall promptly advise the INSURER of any cancellation, termination or failure to renew or replace any UNDERLYING INSURANCE with at least reasonably equivalent insurance coverage.

D. Reduction or exhaustion of the aggregate limit of the UNDERLYING INSURANCE:

In case of reduction or exhaustion of the aggregate limit of liability of the UNDERLYING INSURANCE due to the payment of CLAIMS thereunder, this POLICY shall:

(a) in the case of reduction, become excess over the reduced aggregate amount; or

(b) in the case of exhaustion, become primary insurance; subject to the terms, conditions, exclusions, limits and other provisions of this POLICY.

E. Concurrent policies issued by the INSURER:

(a) In the event that the INSURED is insured under any other excess policy(ies) issued by the INSURER which will also respond to the CLAIM (or may have responded had the limits of such excess policy not been exhausted due to the payment of CLAIMS), then only the excess policy with the larger(est) stated LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY, as set out in the excess policy Declarations, shall apply, and then only to the extent of the LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY available after reduction for CLAIMS payments already incurred under the excess policy.

(b) Where in (a) above the stated LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY, as set out in the Declarations of such excess policies, are instead equal in amount, the excess policy with the greater(est) LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY after reduction for CLAIMS payments, expenses, costs and other such amounts already incurred under the excess policy shall apply; and where still equal, such remaining LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY under the one of such excess policies as the INSURER(S) may elect, shall apply, and shall only apply to the extent of the LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY available after reduction for CLAIMS payments already incurred under the excess policy.

F. Other insurance:

This POLICY shall be in excess of all UNDERLYING INSURANCE as well as all other valid and collectable insurance, other than any policy of insurance specifically acquired and stated to be in excess of this POLICY, and shall not be called upon in contribution. The only insurance afforded by this POLICY shall be to the extent that this POLICY affords coverage over and above the policy limits of all such other insurance.

G. Renewal and extended reporting period:

The INSURED has no right of renewal or replacement coverage in regard to this POLICY, however, in the event:

(a) of the dissolution, retirement or death of the INSURED hereunder; or

(b) that the INSURER cancels the POLICY (for reasons other than the failure of the INSURED to pay the required amount of the POLICY premium when due) or refuses to offer terms for renewal or replacement coverage upon expiry of this POLICY;

the POLICY PERIOD may be extended, but solely for the purpose of the reporting of CLAIMS (or notice of any circumstances of an error, omission or negligent act which any reasonable person or law firm would expect to subsequently give rise to a CLAIM), for a further 12 months, for an additional premium of 75 per cent of the last annual POLICY premium; or 24 months, for an additional premium of 125 per cent of the last annual POLICY premium, beyond the expiry or cancellation date of the POLICY.

This extension of coverage may only be exercised provided that:

(a) written notice is given to the INSURER by the INSURED (or the INSURED'S legal representative) requesting that the reporting period be extended pursuant to this condition, and is received along with payment of the full additional premium amount by registered mail within 30 days of the expiry or cancellation date of the POLICY, whichever occurs first; and

(b) the error, omission or negligent act giving rise to the CLAIM, or circumstances which any reasonable person or firm would expect to subsequently give rise to a CLAIM, occurred prior to the dissolution, retirement, death, cancellation or expiry, whichever occurs first.

In no case, however, shall this Condition operate to reinstate or increase the amount of the POLICY limits.

H. Notice of CLAIM:

If during the POLICY PERIOD the INSURED first becomes aware of any CLAIM or circumstances of an error, omission or negligent act which any reasonable person or law firm would expect to subsequently give rise to a CLAIM hereunder, such INSURED shall immediately give notice thereof or cause notice to be given to:

Lawyers' Professional Indemnity Company ("LawPRO")
250 Yonge Street
Suite 3101, P.O. Box 3
Toronto, Ontario
M5B 2L7

Phone: (416) 598-5899 or 1-800-410-1013
Fax: (416) 599-8341 or 1-800-286-7639

The INSURED shall furnish promptly thereafter to the INSURER all information on the CLAIM which is in the INSURED'S possession or knowledge.

If a CLAIM is brought against the INSURED, such INSURED shall immediately forward to the INSURER every demand or originating process received by the INSURED.

I. Assistance and cooperation of the INSURED:

The INSURED shall cooperate with the INSURER, and upon the INSURER'S request, shall give written statements to, meet with, and submit to examination under oath by a representative of the INSURER, as well as attend hearings, pretrial proceedings, trials and appeals, and disclose to such representatives all books and records requested by the INSURER, all without charge to the INSURER.

The INSURED shall cooperate with the INSURER and any insurer charged with the defence of any CLAIM hereunder, and shall not voluntarily assume any liability or settle any CLAIM except at the INSURED'S own cost, nor interfere in the investigation and defence of any claim, including without limitation any negotiations or settlement, but, when requested by the INSURER, shall aid in securing information and evidence and the attendance of any witness, and shall cooperate with the INSURER in the defence of any CLAIM.

The INSURED shall cooperate with the INSURER in enforcing any right of contribution, indemnity or apportionment against any person or organization. The INSURED shall not demand or agree to the arbitration of any CLAIM without the written consent of the INSURER.

J. Subrogation:

In case of payment or liability for payment of a CLAIM under the POLICY by the INSURER, the INSURER shall be subrogated to all related rights of recovery of the INSURED in regard thereto. The INSURED shall execute all papers and shall cooperate with the INSURER to secure such rights, and the INSURED shall do nothing to prejudice such rights.

The INSURER'S obligation to pay amounts under the POLICY is net of all recoveries available to the INSURED. In the event that the INSURER is called upon to pay any amount and a recovery is subsequently effected, the amount of recovery shall be remitted to the INSURER except to the extent necessary to reimburse the INSURED or any insurer for amounts paid in excess of the POLICY.

The INSURER shall not, by way of subrogation to the rights of an INSURED, seek to recover from another INSURED, except to the extent that the INSURER has been prejudiced by the failure of such other INSURED to comply with the terms of the POLICY, or in the event of any dishonest, fraudulent, criminal or malicious act on the part of another INSURED.

K. Entirety of contract, changes and assignment:

This POLICY, subject to Part I Provision B, constitutes the whole of this agreement. The terms of this POLICY shall not be waived or changed except by endorsement issued to form part of this POLICY, signed by the INSURER and accepted by the INSURED.

The interest hereunder of any INSURED is not assignable. If the INSURED shall die, be adjudged incapable of managing the INSURED'S own affairs or become bankrupt or insolvent, this POLICY shall cover the INSURED'S legal representative as an INSURED with respect to coverage provided by this POLICY. Bankruptcy or insolvency of the INSURED or of the INSURED'S estate shall not relieve the INSURER of any of its obligations hereunder.

L. Cancellation:

This POLICY may be cancelled by the INSURED by giving at least sixty (60) days prior notice in writing to the INSURER. This POLICY may be cancelled by the INSURER by giving at least sixty (60) days prior notice in writing to the INSURED, or by giving at least ten (10) days prior notice in writing to the INSURED where the INSURED has failed to pay any POLICY premium amount when due or has failed, after demand, to reimburse the INSURER for such amounts as the INSURER had paid in settlement or satisfaction of any CLAIM in excess of the POLICY limits.

Such notice shall be delivered or sent by registered mail to the INSURER at the address set out under General Condition H of the POLICY, and to the INSURED at the address set out in the Declarations, or such other address indicated in the records of the INSURER at the time of given notice of cancellation. The mailing of such notice shall be sufficient proof of notice. Delivery of such notice shall be equivalent to mailing.

In the event of cancellation by the INSURER, the amount of earned premium calculated upon cancellation shall be computed on a *pro rata* basis in accordance with the number of days during which the POLICY was in force. In the event of cancellation by the INSURED, the amount of earned premium calculated upon cancellation shall be computed on a short rate basis in accordance with the number of days during which the POLICY was in force.

Where upon cancellation of the POLICY there is a return of premium payable to the INSURED, the INSURER'S cheque will be sent to the NAMED INSURED as soon as possible, but the cancellation shall not be contingent upon this.

M. Law, Jurisdiction and currency:

The POLICY is issued in Ontario, and is subject to the laws of the Province of Ontario and any applicable federal laws of Canada. The parties irrevocably attorn to the jurisdiction of the courts of Ontario in the interpretation and enforcement of this POLICY. Any reference to dollar amounts or monies payable in this POLICY shall only be in the lawful currency of Canada.

Part V
DEFINITIONS

(a) **CLAIM(S)** means:

(i) a written or oral demand for money or services; or

(ii) a written or oral allegation of breach in the rendering or failure to render PROFESSIONAL SERVICES;

received by the INSURED and resulting from a single or related error(s), omission(s) or negligent act(s) in the performance of or failure to perform PROFESSIONAL SERVICES.

All CLAIMS, or circumstances of an error, omission or negligent act which any reasonable person or LAW FIRM would expect to subsequently give rise to a CLAIM, which arise from a single or related error(s), omission(s) or negligent act(s), shall be considered a single CLAIM regardless of the number of INSUREDS or the number of persons or organizations making a CLAIM or the time or times the error(s), omission(s) or negligent act(s) took place.

(b) **DAMAGES** means compensatory damages that the INSURED is legally obligated to pay arising out of a CLAIM, provided the INSURED'S liability is a result of an error, omission or negligent act in the performance of PROFESSIONAL SERVICES for others to which the insurance applies, and shall include, subject to the INSURER'S LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY, pre-judgment and post-judgment interest, but shall exclude fines or penalties, legal fees, punitive damages, exemplary damages, or aggravated damages, and any interest thereon.

(c) **DESIGNATED UNDERLYING POLICY** means that policy of insurance as described in ITEM 7 of the Declarations.

(d) **INSURED(S)** means:

(i) the firm and former firm(s) listed under ITEM 1 "NAMED INSURED(S)" of the Declarations;

(ii) the management company(ies) listed under ITEM 1 "NAMED INSURED(S)" of the Declarations, but only in respect of services rendered or that should have been rendered by a firm or former firm also listed as a NAMED INSURED;

(iii) any current or former partner, employed associate, "of counsel", employed LAWYER, sole practitioner, LAWYER in association (but only as indicated in the Declarations, endorsements and/or other POLICY documentation), of the firm or former firm(s) listed under ITEM 1 "NAMED INSURED(S)", or any person to become such during the POLICY PERIOD, but each solely in their own capacity as such, and solely with respect of PROFESSIONAL SERVICES rendered or that should have been rendered by the firm or former firm listed under ITEM 1 "NAMED INSURED(S)" of the Declarations;

(iv) any current or former officer, director or stockholder of the management company(ies) listed under ITEM 1 "NAMED INSURED(S)" of the Declarations, or any person to become such during the POLICY PERIOD, but each solely in their own capacity as such, and solely with respect of PROFESSIONAL SERVICES rendered or that should have been rendered by a firm or former firm also listed under ITEM 1 "NAMED INSURED(S)" of the Declarations;

(v) the heirs, executors, administrators, assigns and legal representatives of each INSURED in the event of death, incapacity or bankruptcy, but solely to the extent of coverage afforded such INSURED hereunder.

(e) **INSURER** means Lawyers' Professional Indemnity Company.

(f) **LAWYER(S)** means each person who holds a Class L1 license pursuant to the by-laws of the *Law Society Act*, R.S.O. 1990, c.L.8.

(g) **MORTGAGE BROKER** means:

(i) in respect of services performed before July 1, 2008, a person who lends money on the security of real estate, whether the money is the person's money or that of another person, or holds himself, herself or itself out as or who by an advertisement, notice or sign that indicates that the person is a mortgage broker, or a person who carries on the business of dealing in mortgages, or who acts as an intermediary arranging any financial transaction usual to mortgage lending; and

(ii) in respect of services performed on or after July 1, 2008, a person performing services for which a licence is required under the *Mortgage Brokerages, Lenders and Administartors Act, 2006, S.O. 2006, c.29*, or under similar legislation where such services are performed in respect of another jurisdiction.

(h) **POLICY** means this 2009 Excess Professional Liability Insurance for LAWYERS/Law Firms Policy wording, together with the Declarations issued by the INSURER to the INSURED, and including any endorsements thereto, as well as all excess liability insurance application(s) provided by the INSURED to the INSURER, including attachments, and the individual INSURED LAWYERS' UNDERLYING INSURANCE application(s) and exemption form(s), if any.

(i) **PROFESSIONAL SERVICES** means the practice of the Law of Canada, its provinces and territories, and specifically, those services performed, or which ought to have been performed, by or on behalf of an INSURED in such INSURED'S capacity as a LAWYER or member of a law society of a RECIPROCATING JURISDICTION, as more fully described in the DESIGNATED UNDERLYING POLICY.

(j) **RECIPROCATING JURISDICTION(S)** means as defined in the DESIGNATED UNDERLYING POLICY.

(k) **ULTIMATE NET LOSS** means amounts paid as DAMAGES in settlement of a CLAIM or satisfaction of a judgment for which the INSURED is liable, after making proper deductions for all recoveries and salvages collectible, and shall include expenses incurred in the investigation and defence of the CLAIM, costs awarded against the INSURED, premiums on required appeal bonds and bonds

to release attachments for amounts relating to the POLICY limits, and other supplementary payments, but each only to the extent that they relate to DAMAGES covered under the POLICY, they are incurred by the insurer of the applicable UNDERLYING INSURANCE, and they fall within the scope of coverage under the DESIGNATED UNDERLYING POLICY.

(l) **UNDERLYING AMOUNT** means, in respect of any CLAIM covered under the POLICY, the greater of:

(i) the stated limit amount of the DESIGNATED UNDERLYING POLICY or other applicable UNDERLYING INSURANCE with policy limits of at least $1 million per CLAIM and $2 million in the aggregate, as reduced by the CLAIM payments and expenses, costs and other such amounts already incurred thereunder; or

(ii) where no UNDERLYING INSURANCE applies, unless due solely to the exhaustion of the UNDERLYING INSURANCE policy limits, or where the stated amount of the UNDERLYING INSURANCE policy limits is less than $1 million per CLAIM and $2 million in the aggregate, then the amount of $1 million per CLAIM and $2 million in the aggregate.

(m) **UNDERLYING INSURANCE** means the DESIGNATED UNDERLYING POLICY and all insurances affording professional liability insurance coverage to any INSURED hereunder which are considered to be primary to this insurance, including without limitation, any such mandatory insurance coverage afforded any INSURED by any law society or other program, and any such non-mandatory insurances purchased as coverage or primary to (beneath) this POLICY coverage, but in no case shall include any insurance specifically acquired and stated to be in excess of this POLICY.

Signed on behalf of Lawyers' Professional Indemnity Company

President and Chief Executive Officer

Endorsement No. 1

POLLUTION EXCLUSION

This POLICY, subject to all its terms and conditions not in conflict with this endorsement, and further to Part III Exclusion (f), shall include the following:

This insurance does not apply to:

(a) damage arising out of the actual, alleged or threatened discharge, seepage, dispersal, release or escape of pollutants:

(1) at or from premises, at any time, owned, rented or occupied by an INSURED;

(2) at or from any site or location used, at any time, by or for an INSURED or others for handling, storage, disposal, processing or treatment of waste;

(3) which are, or were, at any time transported, handled, stored, treated, disposed of, or processed as waste by or for an INSURED or any person or organization for whom an insured may be legally responsible; or

(4) at or from any site or location on which an INSURED or any contractors or sub-contractors working directly or indirectly on behalf of an INSURED are performing operations:

(i) if the pollutants are brought on or to the site or location in connection with such operations; or

(ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

Sub-paragraphs (1) and (4)(i) of this exclusion do not apply to damage caused by heat, smoke or fumes from a "hostile fire." As used in the exclusion, a "hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

(b) any loss, cost or expense arising out of any request or order that any INSURED test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to, or assess the effects of pollutants.

Wherever used in the present clause, pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Provided this exclusion does not apply to any PROFESSIONAL SERVICES rendered by the INSURED.

Endorsement No. 2

NUCLEAR EXCLUSION

This POLICY, subject to all its terms and conditions not in conflict with this endorsement, and further to Part III Exclusion (f), shall include the following:

This POLICY does not apply:

(a) to liability imposed by or arising under the *Nuclear Liability Act*; nor

(b) to bodily injury or property damage with respect to which an INSURED under this POLICY is also insured under a contract of nuclear energy liability insurance (whether the INSURED is unnamed in such contract and whether or not it is legally enforceable by the INSURED) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an INSURED under any such policy but for its termination upon exhaustion of its limit of liability; nor

(c) to bodily injury or property damage resulting directly or indirectly from the NUCLEAR ENERGY HAZARD arising from:

(1) the ownership, maintenance, operation or use of a NUCLEAR FACILITY by or on behalf of an INSURED;

(2) the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY; and

(3) the possession, consumption, use, handling, disposal or transportation of FISSIONABLE SUBSTANCES, or of other RADIOACTIVE MATERIAL (except radioactive isotopes, away from a NUCLEAR FACILITY, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an INSURED.

As used in this Endorsement:

(a) The term **NUCLEAR ENERGY HAZARD** means the radioactive, toxic, explosive or other hazardous properties of RADIOACTIVE MATERIAL;

(b) The term **RADIOACTIVE MATERIAL** means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;

(c) The term **NUCLEAR FACILITY** means:

(1) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

(2) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;

(3) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the INSURED at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste RADIOACTIVE MATERIAL;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

(d) The term **FISSIONABLE SUBSTANCE** means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

(e) With respect to property, loss of use of such property shall be deemed to be property damage.

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