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Policy

Professional Liability Insurance for the Members of the Ordre des ingénieurs du Québec

Master Policy *L66000E*

Endorsed by: Ordre des ingénieurs du Québec

The Agreements Between You and the Insurer

This policy is the contract between YOU and the INSURER and was issued in consideration of the premium YOU have agreed to pay.

Part I – Definitions

Throughout this policy certain words have been capitalized to indicate that they have a specific meaning as shown below:

1. **Claim**

- (a) An oral or a written demand for money or PROFESSIONAL SERVICES; or
- (b) an oral or written allegation of breach in the rendering or failure to render PROFESSIONAL SERVICES;

received by YOU and resulting from a single error, omission or negligent act.

All CLAIMS which arise from a single error, omission or negligent act shall be considered a single CLAIM regardless of the number of INSURED(S) or the number of persons or organizations making a CLAIM.

2. **Claim Expense(s)**

All the expenses the INSURER incurs to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this policy. This includes costs and fees for the hiring of investigators, adjusters, experts, consultants, arbitrators, mediators and lawyers, and also court and arbitration costs and costs for the attendance of witnesses other than YOU.

3. **Damages**

Compensatory damages payable to claimants but does not include interest, fines, penalties (whether contractual or other), punitive or exemplary damages, or fees which have either not been paid to YOU or which YOU are asked to return.

4. **Decision Makers**

- (a) Any administrator, director or sole proprietor of an entity; or
- (b) any associate or shareholder who holds more than ten per cent (10%) shares of an entity or shares issued which include voting rights of an entity.

5. **Deductible**

Subject to Part II, the first portion of the payment for DAMAGES payable by YOU for each CLAIM.

It is agreed that the INSURED and INSURER shall contribute equally towards DAMAGES until the INSURED has paid the amount referred to in Item 5 of the Declarations.

In the event of a CLAIM, the applicable DEDUCTIBLE shall be that in effect at the time the CLAIM is made against the INSURED.

In the case of multiple CLAIMS during the POLICY PERIOD, the INSURER agrees that YOU shall not be required to pay more than twice the amount shown as the DEDUCTIBLE in the Declarations of this policy for CLAIMS concerning which the INSURER has paid DAMAGES under this policy.

6. Insured, You, Your

- (a) All members of the NAMED INSURED who presently subscribe to this insurance contract in accordance with the *Regulation respecting professional liability insurance for engineers* in force on the date of the issuance of this policy;
- (b) the NAMED INSURED and the members of its governing body but only for CLAIMS arising out of PROFESSIONAL SERVICES rendered by a member provided that such member is insured under this contract of insurance;
- (c) the legal heirs or trustees of all persons mentioned in paragraphs (a) and (b) above.

7. Insurer

YOUR insurance companies as subscribed.

8. Named Insured

Ordre des ingénieurs du Québec.

9. Policy Period

The period from the Inception Date of this policy to the Expiration Date both as shown in the Declarations or such lesser period as a result of the cancellation of this policy.

10. Professional Services

The PROFESSIONAL SERVICES that YOU render customary to the practice of engineering in the province of Québec.

Part II – Your Insurance Coverage

1. The Insurer's Obligations

The INSURER is formally undertaking to fulfill the following obligations for YOUR benefit. YOUR policy DEDUCTIBLE shall apply to Item (a) below.

(a) Damages

The INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM providing YOUR legal liability is the result of an error, omission or negligent act in the performance of PROFESSIONAL SERVICES for others in YOUR capacity as an engineer.

The maximum amount the INSURER will pay as DAMAGES for each CLAIM, no matter how many INSUREDS there are under this policy, or how many persons or organizations make a CLAIM, and the aggregate amount of liability for all CLAIMS made against YOU during the POLICY PERIOD, are as shown at Item 4 of the Declarations.

The maximum amount the INSURER will pay as DAMAGES for all CLAIMS arising from the performance of PROFESSIONAL SERVICES with respect to one project no matter how many INSUREDS there are under this policy, or how many persons or organizations make a CLAIM, is the amount shown in Item 4 of the Declarations subject always to the CLAIM Limit of Liability for any one CLAIM.

(b) Defence

The INSURER will defend YOU against a CLAIM brought under civil suit or arbitration proceedings for which coverage is provided under the policy even if the allegations against YOU are groundless, false or fraudulent. The INSURER will conduct such investigation and negotiations including mediation as it deems expedient. The INSURER'S obligations to defend YOU cease as soon as its limits of liability have been exhausted.

(c) **Supplementary Payments**

Until YOU have exhausted the INSURER'S limits of liability, the INSURER will pay, for each CLAIM, the following:

- (i) CLAIM EXPENSES;
- (ii) all premiums on appeal bonds and bonds to release attachments. The INSURER has no obligation to furnish such bonds but only to pay the premiums thereon;
- (iii) all costs taxed against YOU, all court and arbitration costs owed by YOU and all interest upon that part of a judgement which falls within the remaining limits of liability at the time;
- (iv) YOUR expenses incurred for emergency medical and surgical relief to others and which YOU deemed necessary following an accident which YOU honestly believed might have been the result of an error, omission or negligent act on YOUR part.

2. **Your Policy Territory**

This policy applies to CLAIMS arising out of actual or alleged errors, omissions or negligent acts which occur worldwide provided CLAIMS are made and proceedings are instituted in Canada.

3. **Your Policy Period**

YOUR policy covers CLAIMS made against YOU for the first time during the POLICY PERIOD or within sixty (60) days following the expiry date of this policy no matter when the actual or alleged error, omission or negligent act took place. There are three conditions which must be met for such a CLAIM to be covered.

Firstly, YOU must have reported the CLAIM to the INSURER during the POLICY PERIOD.

Secondly, YOU must not have received, before this policy came into effect (or the first policy that was issued by the INSURER if this contract is part of an uninterrupted series of renewals), a request for DAMAGES arising from PROFESSIONAL SERVICES or the filing of legal proceedings or arbitration where YOU are named with regard to the CLAIM.

Thirdly, there must not be any other valid and collectible insurance available to YOU concerning such CLAIM.

Also, for YOUR protection, if during the POLICY PERIOD YOU report to the INSURER circumstances of an error, omission or negligent act which any reasonable person or organization would expect to subsequently give rise to a CLAIM, then the INSURER will consider these a CLAIM even if a formal demand is advanced against YOU only after the expiry of this policy.

Any such CLAIM shall be subject to the limit of liability and DEDUCTIBLE in effect at the time the circumstances were reported to the INSURER.

4. **The Insurer's Limits of Liability**

The maximum amounts the INSURER will pay as DAMAGES per CLAIM and for the entire POLICY PERIOD are as shown in the Declarations of this policy no matter how many INSUREDS there are under this policy or how many persons or organizations make a CLAIM.

The INSURER'S obligations to defend and to make supplementary payments are in addition to its limits of liability as spelled out in YOUR policy provided that civil suits or arbitration are brought in Canada and that the civil suits or arbitration are subject to the laws of Canada or one of its jurisdiction.

Part III – The Exclusions to Your Insurance Coverage

- 1. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:
 - (a) YOUR insolvency or bankruptcy or YOUR undergoing receivership or liquidation;
 - (b) YOUR advising or requiring, or failure to advise or require, any form of insurance, suretyship or bond;
 - (c) YOUR failure to complete drawings, plans, specifications, reports, or schedules on time or YOUR failure to act upon shop drawings on time, unless such failure is the result of an error or inaccuracy in the preparation of these documents;
 - (d) the liability of others YOU have assumed under contract or agreement except that the INSURER will cover YOU for YOUR employees, agents, servants and subconsultants;

- (e) express warranties, guarantees and penalty clauses YOU have given for the benefit of others unless YOUR liability would have already existed at law in the absence thereof;
 - (f) the performance of services that would not be PROFESSIONAL SERVICES as defined;
 - (g) estimates of profit, return on capital, economic return or other estimates giving rise to forecasts of economic return;
 - (h) the nuclear energy hazards as defined in the nuclear energy exclusion endorsement forming part of this policy.
2. The INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU:
- (a) by a business enterprise:
 - (i) in which YOU either directly or indirectly have an interest; or
 - (ii) that directly or indirectly has an interest in YOU;
 - (b) by an employee, director, partner or officer of any such business enterprise as defined in paragraph (a).

This exclusion shall not apply where the interest held by the business enterprise in YOU or the interest held by YOU in the business enterprise, whether held at equity, ownership or voting rights, is less than or equal to ten per cent (10%).

3. The INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU by YOUR employer.
4. Where YOU are a DECISION MAKER of an entity that designs and builds, installs, erects or fabricates, the INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of PROFESSIONAL SERVICES that YOU have rendered on behalf of this entity except for the design that YOU have carried out or have personally supervised.
5. Where YOU are a DECISION MAKER of an engineering consulting firm, the INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for claims presented six (6) months following the entry into receivership or bankruptcy of this firm when your liability arises out of PROFESSIONAL SERVICES rendered for this firm.
6. Where YOU are a DECISION MAKER of an engineering consulting firm, the INSURER will not cover YOU, pay any DAMAGES, provide YOU with a defence or make supplementary payments where YOUR liability arises out of PROFESSIONAL SERVICES that you have provided for an entity that has ceased operations for a period of two (2) years following the closure of the operation of this firm.
7. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments where YOUR liability arises out of PROFESSIONAL SERVICES YOU provide for an engineering consulting firm for which YOU are still employed at the time of the CLAIM.
8. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments where YOUR liability arises out of PROFESSIONAL SERVICES YOU provided individually for YOUR own account. The definition of "individually for YOUR own account" refers to the self-employed person, or even the INSURED who works for their own business and not for a company (for example, an incorporated company), including the INSURED who collaborates or works with a consortium or with any other person or company in the provision of their PROFESSIONAL SERVICES.

This exclusion does not apply if one of the following conditions is met:

- (a) For CLAIMS arising from PROFESSIONAL SERVICES rendered before April 1, 2021:

YOU have received fees not exceeding \$10,000 for all of YOUR PROFESSIONAL SERVICES, calculated before applicable taxes, over a period of twelve (12) months. The twelve (12) month period begins on April 1 and coincides with the rendering of the PROFESSIONAL SERVICES that are the subject of a CLAIM.
 - (b) For CLAIMS arising from PROFESSIONAL SERVICES rendered on April 1, 2021 or later:

YOU have received fees not exceeding \$15,000 for all of YOUR PROFESSIONAL SERVICES, calculated before applicable taxes, over a period of twelve (12) months. The twelve (12) month period begins on April 1 and coincides with the rendering of the PROFESSIONAL SERVICES that are the subject of a CLAIM.
9. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for any CLAIMS arising out of the PROFESSIONAL SERVICES YOU provide for which there is other valid and collectible insurance available to YOU.

10. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for any CLAIMS arising out of or attributable to the exemplification of any foreign judgements.

Part IV – General Conditions

1. Your Duties in the Event of a Claim

(a) What You Must Do

(i) Notice

As soon as YOU become aware of a CLAIM, YOU must immediately notify the INSURER, giving all pertinent details as to the circumstances surrounding the CLAIM. As events unfold which may have an effect on the CLAIM, YOU must continue to keep the INSURER informed.

Notwithstanding the aforementioned, any late notice or absence of notice is cause of forfeiture of the rights of the INSURED, if the INSURER sustains injury therefrom.

(ii) Co-operation

YOU must co-operate with the INSURER and, upon request, provide written statements, submit to examinations and questioning, assist in effecting settlement, secure and give evidence and assist in any reasonable way the INSURER deems necessary YOU must give this co-operation at YOUR own cost.

(iii) Deductible

YOU must pay YOUR DEDUCTIBLE promptly upon request.

(b) What You Must Not Do

(i) Admissions

YOU must not admit responsibility, assume any obligation or make any commitment of money or PROFESSIONAL SERVICES without the INSURER'S consent, even if YOU believe there may have been an error, omission or negligent act on YOUR part. Any such admission, obligation or commitment will vitiate this policy as far as that particular CLAIM is concerned. The only exception to this is the cost of emergency medical or surgical relief to others YOU have incurred in good faith.

(ii) Recoveries

YOU must not do anything which will imperil the INSURER'S rights of recovery against any other party.

2. Your Consent to Settle

The INSURER will not settle any CLAIMS without YOUR consent.

If YOU refuse to consent to the settlement of a CLAIM as recommended by the INSURER, then all the INSURER'S obligations with respect to that CLAIM shall cease. If later YOU settle the CLAIM, or if the matter is resolved through arbitration or litigation, then the INSURER'S liability for that CLAIM shall not exceed the amount for which the CLAIM could have been settled including supplementary payments incurred up to the date of refusal of consent.

3. The Insurer's Rights to Recover From Others

After the INSURER has paid DAMAGES under this policy, YOUR rights to recover against any other party are automatically transferred to the INSURER to the extent of the payment it made. YOU shall do everything needed to assist the INSURER and YOU must not prejudice its rights of recovery.

4. Assignment of Policy

The NAMED INSURED cannot assign their rights under this policy to anyone else without the INSURER'S consent.

5. More Than One Insured

If there is more than one INSURED under this policy, then, as far as CLAIMS advanced by others are concerned, this policy must be read as if a separate policy had been issued to each. This will not, however, increase the INSURER'S limits of liability.

6. **The Insurer's Right of Audit**

The INSURER has the right to inspect YOUR premises and operations at any time. Relating to this insurance contract, the INSURER also has the right to examine and audit YOUR books during the POLICY PERIOD and for two (2) years after the expiry or cancellation of the policy.

7. **Premium**

YOUR premium for this policy will be shown in the Declarations.

8. **Cancellation by the Named Insured**

The NAMED INSURED may cancel this policy at any time by giving the INSURER notice in writing stating the date cancellation is to take effect. If possible, the NAMED INSURED must return the policy to the INSURER.

9. **Cancellation or Non-renewal by the Insurer**

If the INSURER decides to cancel this policy, it must notify the NAMED INSURED, in writing, stating the date cancellation is to take effect.

The INSURER may cancel this policy subject to advance notice by mail or hand delivery to the NAMED INSURED. This advance notice must be at least ninety (90) days prior to the expiration of the policy. The ninety (90) days notice will commence from the date of receipt of the notice by the NAMED INSURED to the last known address.

In the case of non-renewal, the INSURER will forward an advance notice by mail or hand delivery to the NAMED INSURED. This advance notice will be ninety (90) days prior to the expiration of the policy.

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

10. **Cancellation for Non-payment**

If the INSURER cancels because the NAMED INSURED has not paid the entire premium, the date of cancellation shall be at least fifteen (15) days after the date on which the notice was mailed.

11. **Premium Adjustment for Cancellation**

If the premium for this policy is a Fixed Premium, the amount of earned premium calculated upon cancellation by the INSURER 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 NAMED INSURED, the amount of earned premium shall be calculated on a short rate basis in accordance with the number of days during which the policy was in force.

If the premium is an adjustable deposit premium, the amount of earned premium shall be calculated by the rate per member by cumulation of members while the policy was in force.

12. **Notice to Each Other**

All notices the INSURER sends to the NAMED INSURED under this policy must be sent to the NAMED INSURED at the address shown in the Declarations.

The NAMED INSURED, INSURED, YOU, YOUR and the INSURER agree that the NAMED INSURED shall be considered the agent of all the INSUREDS under this policy.

All notices YOU send to the INSURER under this policy must be sent to:

Victor Insurance Managers Inc.
500-1400 Blair Towers Place
Ottawa, Ontario K1J 9B8

13. **Policy Conformity With Statutes**

Terms of this policy which are in conflict with the statutes of the province wherein this policy is issued are hereby amended to conform to such statutes.

**Special Endorsement
Nuclear Energy Exclusion
Endorsement No. 1**

YOUR policy does not apply:

1. to liability imposed by or arising under the Nuclear Liability Act; nor
2. 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
3. to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
 - (a) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an INSURED;
 - (b) the furnishing by an INSURED of PROFESSIONAL SERVICES, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
 - (c) 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 policy:

1. The term “nuclear energy hazard” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material.
2. The term “radioactive material” means uranium, thorium, plutonium, neptunium, their respective derivatives and other 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.
3. The term “nuclear facility” means:
 - (a) 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;
 - (b) 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;
 - (c) 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;
 - (d) 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.
4. 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.
5. With respect to property, loss of use of such property shall be deemed to be property damage.



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Endorsement

Endorsement No.: 0002
Standard Form: BNOSIGN
Attached to and forming part
of Policy Number: ENG563352

It is agreed that the inspectors, investigators and corresponding trustees (“syndics”) acting within the scope of their duties for the Ordre des ingénieurs du Québec are added to YOUR policy as NAMED INSUREDS.

It is agreed that for these professionals:

- (a) The limits of liability are increased to \$500,000 per CLAIM. It is further agreed that the limits of liability applying to CLAIMS, potential CLAIMS or circumstances which may give rise to a CLAIM already reported, are those limits in force prior to the issuance of this endorsement.
- (b) Item 8 of Part III – The Exclusions to Your Insurance Coverage of YOUR policy is deleted.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.



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Endorsement

Endorsement No.: 0003
Standard Form: BNOSIGN
Attached to and forming part
of Policy Number: ENG563352

It is agreed that the terms and conditions of the Professional Liability Insurance for the Members of the Ordre des ingénieurs du Québec with respect to deceased members are as follows:

- (a) the deceased must be a member in good standing at the time of death;
- (b) the rights and remedies of the estate of the member cannot exceed the rights and remedies of the deceased members, subject to the terms and conditions of the group plan insurance policy in force at the time when the CLAIM is made;
- (c) only CLAIMS submitted against the deceased member or his estate within five (5) years of the member's death will be considered, subject to the terms and conditions of the group plan insurance policy in effect at the time the CLAIM is submitted.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.



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Endorsement

Endorsement No.: 0004
Standard Form: BNOSIGN
Attached to and forming part
of Policy Number: ENG563352

Whistleblower Coverage

It is agreed that the purpose of this endorsement is to broaden the coverage afforded by YOUR policy.

(a) **Consultation**

The INSURER will reimburse YOU for reasonable legal expenses incurred by YOU for preliminary consultation as well as for any advice with respect to YOUR activity as a WHISTLEBLOWER. In order to take advantage of this reimbursement coverage, YOU must notify the INSURER in advance of YOUR intention to request a consultation during the POLICY PERIOD. The maximum amount payable by the INSURER pursuant to this coverage is \$75,000 for each matter reported to the INSURER during the POLICY PERIOD.

(b) **Defence and Indemnity**

In the event of a written demand, lawsuit or arbitration proceeding brought against YOU during the POLICY PERIOD solely as a direct result of YOUR activity as a WHISTLEBLOWER, the INSURER has the right and duty to defend YOU. Subject to YOUR DEDUCTIBLE where applicable, the INSURER will pay YOUR defence costs and those amounts that YOU become legally obligated to pay as DAMAGES as a result of YOUR activity as a WHISTLEBLOWER. The amount payable as DAMAGES is subject to the limits of liability as shown in the Declarations of YOUR policy.

(c) **Lost Income Replacement**

The INSURER will reimburse YOU for actual income lost by YOU as a result of YOUR employment being terminated due to YOUR activity as a WHISTLEBLOWER. The maximum amount payable by the INSURER pursuant to this coverage is \$75,000 for each matter reported to the INSURER during the POLICY PERIOD.

The term WHISTLEBLOWER refers to a member of the Ordre des ingénieurs du Québec who, in compliance with regulations, in particular the Code of Ethics for Engineers, reports a situation that puts the safety of the public at risk, or reports unprofessional, dishonest or unethical conduct committed by an engineer or by any other person or entity.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.



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Endorsement

Endorsement No.: 0005
Standard Form: BNOSIGN
Attached to and forming part
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Extension of Coverage for Engineers Who Cease Their Membership With the
Ordre des ingénieurs du Québec

It is agreed that Item 3, Your Policy Period, of Part II – Your Insurance Coverage is amended to include the following:

In the event that YOU cease to be a member of the Ordre des ingénieurs du Québec (hereinafter “OIQ”), YOU are entitled to an extension of the coverage granted by this policy. The extension of coverage is for five (5) years and starts on the day YOU cease to be a member of OIQ. The extension of coverage does not apply to CLAIMS that are covered by any other insurance policy held by the INSURED, regardless if the limits of liability of this insurance policy are exhausted or not. In addition, the extension of coverage does not apply to CLAIMS arising from an error, omission or negligent act that is committed after YOU cease to be a member of OIQ.

Any CLAIM that is first made and reported to the Insurance manager during the five (5) year extension of coverage will be deemed to have been reported on the last day of YOUR membership with OIQ and will be subject to the terms of the policy in effect on that date.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.