



For questions about your policy, please call:  
1-800-926-6012

**Esurance Property and Casualty Insurance Company**  
650 Davis Street  
San Francisco, CA 94111-1904

Fraud Statement: Any person who knowingly and with intent to defraud any insurance company or other person files an application for commercial insurance or a statement of claim for any commercial or personal insurance benefits containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, and any person who, in connection with such application or claim, knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.

**WHEN THIS POLICY IS ISSUED, AND WHEN THIS POLICY IS RENEWED, WE RELY UPON THE TRUTH AND ACCURACY OF THE REPRESENTATIONS MADE IN THE APPLICATION FOR THIS INSURANCE. ANY ENDORSEMENTS ISSUED BY US ARE PART OF, AND FORM, YOUR POLICY.**

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## NEW YORK PERSONAL AUTOMOBILE POLICY

### INSURING AGREEMENT

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When ***“we”*** agree to issue this policy, and when ***“we”*** agree to renew this policy, ***“we”*** rely upon the truth and accuracy of the information ***“you”*** provide to ***“us”*** and the representations made by ***“you”*** in ***“your”*** Application for this insurance and at the time of each renewal. Any Endorsements issued by ***“us”*** are part of, and form, ***“your”*** policy. The duties and obligations imposed by this policy shall be binding upon ***“you”***, ***“family members”***, and all other persons seeking coverage or benefits under this policy.

In return for ***“your”*** premium payment, ***“we”*** agree to insure ***“you”*** subject to all of the terms of this policy as follows:

### GENERAL DEFINITIONS

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The following definitions, in their singular, plural, and possessive forms, apply throughout this policy when printed in ***“boldface italics within quotation marks”***.

1. ***“You”*** and ***“your”*** refer to:
  - A. The named insured(s) shown on the Declarations page;
  - B. The spouse of the named insured if that spouse is a resident of the named insured’s ***“household”*** during the policy period.

If the spouse ceases to be a resident of the named insured’s ***“household”*** during the policy period or prior to the inception of this policy, that spouse will be considered ***“you”*** and ***“your”*** under this policy but only until the earliest of:

  - A. 30 days after the spouse ceases to reside with the named insured;
  - B. The effective date of another policy listing that spouse as an insured;
  - C. The end of the policy period; or
  - D. Cancellation of this policy.
2. ***“We”***, ***“us”***, and ***“our”*** refer to the Company providing this insurance, as shown on the Declarations page.
3. ***“Accident”*** means a sudden, unexpected, and unintended event.
4. ***“Auto”*** means a land motor vehicle:
  - A. Registered under the applicable motor vehicle laws;
  - B. Designed principally for operation upon public roads; and
  - C. With more than three load-bearing wheels.
5. ***“Bodily injury”*** means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
6. ***“Business”*** includes trade, profession, or occupation.
7. ***“Covered auto”*** means the following ***“autos”*** used predominantly for non-business purposes:
  - A. Any vehicle identified on ***“your”*** Declarations page;
  - B. A ***“newly acquired auto”***;

- C. Any *“trailer”* titled to *“you”*; or
  - D. Any *“auto”* or *“trailer”* while used as a temporary substitute for any other *“auto”* or *“trailer”* described in this definition which is out of normal use due to:
    - (1) Breakdown;
    - (2) Repair;
    - (3) Loss; or
    - (4) Destruction.
8. *“Depreciation”* means the decline in value due to wear and tear and/or obsolescence.
9. *“Family member”* means:
- A. Any person related to *“you”* by blood, marriage, or adoption who is a resident of *“your” “household”*; and
  - B. *“Your”* ward or foster child who resides in *“your” “household”*.
10. *“Household”* consists of *“you”*, a *“family member”*, unrelated roomers, boarders, live-in employees, and other people who are not related to *“you”* who live together in the same housing unit. A housing unit includes a house, apartment, condominium, mobile home, trailer, a group of rooms, or a single room that is self-contained and located at the address listed in *“your”* Declarations page.
11. *“Loss”* means:
- A. Sudden, direct, and unintended physical damage; or
  - B. Theft.
12. *“Minimum limits”* refers to the minimum amounts of liability insurance required to be provided under the automobile financial responsibility and insurance laws of New York .
13. *“Newly acquired auto”* means an *“auto”* that *“you”* become the *“owner”* of during the policy period:
- A. If *“you”* pay any applicable additional premium due for coverage under this policy; and
  - B. Subject to the following conditions:
    - (1) If the *“auto” “you”* acquire replaces an *“auto”* shown on the Declarations page, that acquired *“auto”* will have the same coverage as the *“auto”* it replaces. Coverage will begin when *“you”* become the *“owner”* of the acquired *“auto”*. *“You”* must ask *“us”* to insure a replacement *“auto”* within 30 days after *“you”* become the *“owner”* if *“you”* want to continue any coverage *“you”* had under **Part IV: Coverage for Physical Damage to an Auto** after those initial 30 days.
    - (2) If the *“auto” “you”* acquire replaces an *“auto”* shown on the Declarations page, and the replaced *“auto”* did not have coverage under **Part IV: Coverage for Physical Damage to an Auto**, *“you”* may add this coverage for the replacement *“auto”*. The added coverage will not be effective until after *“we”* receive *“your”* request and *“we”* agree to add the coverage.
    - (3) If the *“auto” “you”* acquire is in addition to the *“autos”* shown on the Declarations page, for any coverage as described below to apply:
      - (a) *“We”* must insure all other *“autos” “you” “own”*; and
      - (b) No other valid and collectible insurance policy provides coverage for the *“auto”*.
    - (4) If the *“auto” “you”* acquire is in addition to the *“autos”* shown on the Declarations page, that added *“auto”* will have the same coverage as the *“auto”* on the Declarations page with the broadest coverage if *“you”* ask *“us”* to insure the additional *“auto”* within 30 days after *“you”* become the *“owner”*. If *“you”* ask *“us”* to insure the additional *“auto”* within 30 days after *“you”* became the *“owner”*, coverage will begin when *“you”* became the *“owner”* of the *“auto”*.
    - (5) If the *“auto” “you”* acquire is in addition to the *“autos”* shown on the Declarations page, and *“you”* do not ask *“us”* to insure the additional *“auto”* within 30 days after *“you”* become the *“owner”*, no

coverage will be provided for the additionally acquired **“auto”** until after **“you”** ask **“us”** to insure the additional **“auto”** and **“we”** agree to insure the **“auto”**.

- (6) If no **“auto”** on the policy has coverage under **Part IV: Coverage for Physical Damage to an Auto**, **“you”** may add this coverage for the acquired **“auto”**. The added coverage will not be effective until after **“we”** receive **“your”** request and **“we”** agree to add the coverage.
- (7) If **“you”** ask **“us”** to increase any of **“your”** limits, the increase will not be effective until after **“we”** receive **“your”** request and **“we”** agree to increase the limits.

14. **“Occupying”** means:

- A. In;
- B. Upon; or
- C. Getting in, on, out, or off.

15. **“Own”** and **“owned”**, with respect to a motor vehicle means:

- A. Titled to that person under motor vehicle laws;
- B. Leased under a written agreement for a continuous period greater than 30 days; or
- C. That person has primary legal possession, subject to a lien or written security agreement with an original term greater than 30 days.

16. **“Owner”** means a person:

- A. To whom a motor vehicle is titled under motor vehicle laws;
- B. To whom a motor vehicle is leased under a written agreement for a continuous period greater than 30 days; or
- C. Who has primary legal possession of a motor vehicle, subject to a lien or written security agreement with an original term greater than 30 days.

17. **“Property damage”** means the physical damage of, destruction of, or loss of use of, property.

18. **“Trailer”** means a vehicle designed to be pulled by a private passenger **“auto”** that is not used:

- A. For a **“business”** or commercial purpose;
- B. As an office, store, or for commercial display purposes;
- C. To transport passengers; or
- D. As a primary residence.

## PART I: LIABILITY COVERAGE

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### INSURING AGREEMENT

Subject to the Limits of Liability, **“we”** will pay damages for **“bodily injury”** and **“property damage”** for which any **“insured”** becomes legally responsible because of an auto **“accident”**. Damages include prejudgment interest awarded against the **“insured”**. **“We”** will settle or defend as **“we”** deem appropriate, any claim or lawsuit asking for these damages. However, **“we”** will not pay for punitive or exemplary damages under **Part I**. A defense will be provided even if the claim or lawsuit is or proves to be groundless. In addition to **“our”** limit of liability, **“we”** will pay costs **“we”** incur when **“we”** defend an **“insured”**. **“Our”** duty to settle or defend ends when **“our”** limit of liability for this coverage has been exhausted by payment of judgments or settlements, or the limit is paid into a court that has jurisdiction. **“We”** have no duty to defend any lawsuit or settle any claim for **“bodily injury”** or **“property damage”** not covered under this policy.

## ADDITIONAL DEFINITIONS FOR PART I: LIABILITY COVERAGE

1. **“Insured”** as used in **Part I** means:

- A. **“You”** or any **“family member”** for the ownership, maintenance, or use of any **“auto”** or **“trailer”** provided there is permission from the **“owner”** for any such use;
- B. Any person using a **“covered auto”** with permission from **“you”** or a **“family member”**;
- C. For a **“covered auto”**, any person or organization but only with respect to legal responsibility for acts or omissions of an insured person described in **1.A** or **1.B** above; or
- D. For any **“auto”** or **“trailer”** other than a **“covered auto”**, any other person or organization but only with respect to legal responsibility for the acts or omissions of **“you”** or a **“family member”**. This Provision **1.D.** applies only if the person or organization does not **“own”** or hire the **“auto”** or **“trailer”**.

However, the following are not **“insureds”** under **Part I**:

- A. If the provisions of Section 2679 of Title 28, United States Code, as amended, require the Attorney General of the United States to defend that person or organization in any civil action for **“bodily injury”** or **“property damage”** arising out of the **“accident”**:
  - (1) The United States of America or any of its agencies.
  - (2) Any person with respect to **“bodily injury”** or **“property damage”** resulting from the operation of an **“auto”** by that person as an employee of the United States Government.
- B. Any person, including **“you”** or a **“family member”**, with respect to an **“accident”** arising out of that person's ownership, maintenance or use of an **“auto”**, other than a **“covered auto”**, that is:
  - (1) **“Owned”** by **“you”**, a **“family member”**, or a person who resides with **“you”**; or
  - (2) Furnished or available for regular use to **“you”**, a **“family member”**, or a person who resides with **“you”**.

This does not apply to **“you”** while **“you”** are maintaining or occupying any vehicle which is:

  - (1) **“Owned”** by any **“family member”** or a person who resides with **“you”**; or
  - (2) Furnished or available for the regular use of any **“family member”** or a person who resides with **“you”**.

## SUPPLEMENTARY PAYMENTS

In addition to **“our”** limit of liability, **“we”** will pay on behalf of the **“insured”**:

- 1. Up to \$250 for the cost of bail bonds required because of an **“accident”** or traffic law violation resulting from an **“accident”**. The **“accident”** must result in **“bodily injury”** or **“property damage”** covered under this policy. **“We”** have no duty to apply for or furnish this bond.
- 2. Premiums on appeal bonds and bonds to release attachments in any lawsuit **“we”** defend. **“We”** are not required to apply for or provide these bonds.
- 3. Interest accruing after a judgment is entered in any lawsuit **“we”** defend. **“Our”** duty to pay interest ends when **“we”** offer to pay, or have deposited with the court, that part of the judgment which does not exceed **“our”** limit of liability for this coverage. This does not apply if **“we”** have not been given notice of the lawsuit or the opportunity to defend an **“insured”**.
- 4. Up to \$200 a day for loss of earnings, but not other income, because of attendance at hearings or trials at **“our”** request.
- 5. All costs taxed against the **“insured”** in any lawsuit **“we”** defend and other reasonable expenses incurred at **“our”** request.
- 6. Expenses incurred by the **“insured”** for first aid to others at the time of the **“accident”** involving an **“auto”** insured under **Part I**.
- 7. All expenses incurred by **“us”**.

## EXCLUSIONS FOR PART I: LIABILITY COVERAGE

(Read carefully. If any of the exclusions below apply, coverage will not be afforded under Part I.)

“We” have no duty to defend and do not provide Liability Coverage for any “insured”:

1. Who intentionally causes, or directs another to cause, “bodily injury” or “property damage”.
2. For “property damage” to property owned or being transported by that “insured”.
3. For “property damage” to property:
  - A. Rented to; or
  - B. In the care of;that “insured”, or to property as to which the “insured” is for any purpose exercising physical control.

This Exclusion 3. does not apply to “property damage” to a residence or private garage unless that residence or garage is owned by “you” or another “insured”.

4. For “bodily injury” to an employee of that “insured” during the course of employment. This Exclusion 4. does not apply to “bodily injury” to a domestic employee unless workers’ compensation benefits are required or available for that domestic employee.
5. For that “insured’s” liability arising out of the ownership or operation of any vehicle while it is used as a public or livery conveyance. However, this Exclusion 5 does not apply to shared-expense car pools.
6. Who is a person or organization, or any agent or employee thereof, while employed or otherwise engaged in operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any “accident” arising out of the maintenance or use of a motor vehicle in connection therewith.

This Exclusion 6. does not apply to the ownership, maintenance, or use of a “covered auto” by:

- A. “You”;
  - B. Any “family member”; or
  - C. Any partner, agent, or employee of “you” or any “family member”.
7. For “bodily injury” or “property damage” resulting from the operation of a vehicle as an employee of the United States government and acting within the scope of that employment. This Exclusion 7. applies when the provisions of the Federal Tort Claims Act apply.
  8. Any liability assumed by an “insured” under any contract or agreement.
  9. For “bodily injury” sustained by the spouse of any “insured”. This Exclusion 9. does not apply if:
    - A. “You” have purchased Supplemental Spousal Liability Coverage from “us”; or
    - B. An “insured” is named as a third-party defendant for contribution in a lawsuit brought by his or her spouse against another party.
  10. “Bodily injury” or “property damage” arising out of an “accident” while:
    - A. The “auto” is used for the towing of any trailer or semi trailer:
      - (1) “Owned” or hired by the “insured”; and
      - (2) Not covered under Part I of this policy; or
    - B. Any “trailer” covered by the policy is used with any motor vehicle:
      - (1) “Owned” or hired by the “insured”; and
      - (2) Not covered under Part I of this policy.



11. ***“Bodily injury”*** or ***“property damage”*** due to:
- A. War, whether or not declared;
  - B. Civil war;
  - C. Insurrection;
  - D. Rebellion;
  - E. Revolution; or
  - F. To any act or condition incident to any of the foregoing.

## LIMIT OF LIABILITY

1. Subject to **Clause 2** below of this **Part I** Limit of Liability, the limit of liability shown on the Declarations page for each person for Bodily Injury Liability is ***“our”*** maximum limit of liability for all damages which may arise as a result of ***“bodily injury”*** sustained by or ***“bodily injury”*** resulting in the death of any one person in any one ***“auto”*** ***“accident”***. Subject to this limit for each person, the limit of liability shown on the Declarations page for each accident for Bodily Injury Liability is ***“our”*** maximum limit of liability for all damages for ***“bodily injury”*** or ***“bodily injury”*** resulting in the death resulting from any one ***“auto”*** ***“accident”***.
2. If the limit shown on the Declarations page for ***“bodily injury”*** is:
- A. \$25,000 for each person and \$50,000 for each accident, the following additional coverage will apply in the event of ***“bodily injury”*** that results in death, to the extent required by New York law:
    - (1) ***“Our”*** limit of liability for damages due to ***“bodily injury”*** that results in the death of one person in any one ***“accident”*** is \$50,000; or
    - (2) If two or more persons sustain ***“bodily injury”*** that results in death, ***“our”*** limit of liability for ***“bodily injury”*** that results in the death of two or more persons in any one ***“accident”*** is \$100,000.
  - B. \$50,000 for each person and \$100,000 for each accident, ***“our”*** limit of liability, to the extent required by New York law, will be as follows:
    - (1) For any ***“accident”*** that causes ***“bodily injury”*** that results in the death of one person:
      - (a) The most ***“we”*** will pay for all damages due to the ***“bodily injury”*** that results in death is \$50,000;
      - (b) If only one person sustains a ***“bodily injury”*** that does not result in death, ***“our”*** limit of liability for damages due to the ***“bodily injury”*** to the one person is \$50,000; and
      - (c) Subject to the each person limit, if two or more persons sustain ***“bodily injury”*** that does not result in death, ***“our”*** limit of liability for all damages due to ***“bodily injury”*** that does not result in death is \$100,000; or
    - (2) For any ***“accident”*** that causes ***“bodily injury”*** that results in the death of two or more persons:
      - (a) The most ***“we”*** will pay for all damages due to ***“bodily injury”*** that results in death is \$100,000;
      - (b) If only one person sustains a ***“bodily injury”*** that does not result in death, ***“our”*** limit of liability for damages due to the ***“bodily injury”*** to the one person is \$50,000; and
      - (c) Subject to the each person limit, if two or more persons sustain ***“bodily injury”*** that does not result in death, ***“our”*** limit of liability for all damages due to ***“bodily injury”*** that does not result in death is \$100,000.

These Limits of Liability for ***“bodily injury”*** that results in death are subject to the following reductions:

- A. In the event of the death of one person in any ***“accident”***, the \$50,000 limit of liability will be reduced by any amounts paid to or on behalf of that person for ***“bodily injury”*** under **Part I**; and
- B. In the event of the death of two or more persons in any ***“accident”***, the \$100,000 limit of liability will be reduced by any amounts paid to or on behalf of those persons for ***“bodily injury”*** under **Part I**.

3. The applicable limit of liability described above for each person is **“our”** maximum limit of liability for all damages, including, but not limited to, damages for:
  - A. Loss of society;
  - B. Loss of companionship;
  - C. Loss of services;
  - D. Loss of consortium; and
  - E. Wrongful death;
 which may arise as a result of **“bodily injury”** sustained by or **“bodily injury”** resulting in the death of any one person in any one **“auto” “accident”**.
4. The limit of liability shown on the Declarations page for each **“accident”** for Property Damage Liability is **“our”** maximum limit of liability for all **“property damage”** resulting from any one **“auto” “accident”**.
5. The applicable limit of liability is the most **“we”** will pay regardless of the number of:
  - A. **“Insureds”**;
  - B. Claimants;
  - C. Claims;
  - D. Claims made;
  - E. Lawsuits filed;
  - F. Vehicles or premiums shown on the Declarations page; or
  - G. Vehicles involved in the **“accident”**.
6. No one will be entitled to receive duplicate payments for the same elements of damages under this policy or any other source.
7. An **“auto”** and attached **“trailer”** are considered one **“auto”**. The limit of liability for **Part I** will not be increased for an **“accident”** involving an **“auto”** that has an attached **“trailer”**.

## OUT OF STATE COVERAGE

If an **“accident”** to which this policy applies occurs in any state or province other than the one in which a **“covered auto”** is principally garaged, **“we”** will interpret **“your”** policy for that **“accident”** as follows:

1. If the state or province has:
  - A. A financial responsibility or similar law requiring limits of liability for **“bodily injury”** or **“property damage”** higher than the limit shown in the Declarations page, **“your”** policy will provide the higher specified limit.
  - B. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses an **“auto”** in that state or province, **“your”** policy will provide at least the required minimum amounts and types of coverage.
2. No one will be entitled to duplicate payments for the same elements of damages.

## OTHER INSURANCE

If there is other valid and collectible liability insurance available under one or more policies or provisions of coverage that applies to the **“accident”**, **“we”** will pay only **“our”** share of the damages. **“Our”** share is the proportion that **“our”** limit of liability bears to the total of all valid and collectible limits. However, any insurance **“we”** provide for a vehicle **“you”** do not **“own”**, including any temporary substitutes, shall be excess over any other valid and collectible insurance, self-insurance, or bond.

## **PART II-A: PERSONAL INJURY PROTECTION**

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### **MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT**

(New York)

The Company agrees with the named insured, as follows:

#### **Section I**

##### **Mandatory Personal Injury Protection**

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions, or Canada.

##### **First-party Benefits**

First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

- (a) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings;
- (b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article 9 of the New York Workers' Compensation Law;
- (c) the amount of any applicable deductible, provided that such deductible shall apply to each accident, but only to the total of first-party benefits otherwise payable to the named insured and any relative as a result of that accident.

##### **Basic Economic Loss**

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$50,000, except that any death benefit hereunder shall be in addition thereto.

##### **Medical Expense**

Medical expense shall consist of necessary expenses for:

- (a) medical, hospital (including services rendered in compliance with Article 41 of the Public Health Law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;
- (b) psychiatric, physical and occupational therapy and rehabilitation;
- (c) any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and
- (d) any other professional health services.

These medical expenses will not be subject to a time limitation, provided that, within one year after the date of the accident, it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments hereunder for necessary medical expenses shall be subject to the limitations and requirements of section 5108 of the New York Insurance Law.

## **Work Loss**

Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$2,000 per month for a maximum period of three years from the date of the accident:

- (a) loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle or a motorcycle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and
- (b) reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

## **Other Expenses**

Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$25 per day for a period of one year from the date of the accident causing injury.

## **Death Benefit**

Upon the death of any eligible injured person, caused by an accident to which this coverage applies, the company will pay to the estate of such person a death benefit of \$2,000.

## **Eligible Injured Person**

Subject to the exclusions and conditions set forth below, an eligible injured person is:

- (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;
- (b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle;
- (c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or
- (d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle.

## **Exclusions**

This coverage does not apply to personal injury sustained by:

- (a) the named insured while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the named insured with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) any relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the relative with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New

York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus;

(d) any person while occupying a motorcycle;

(e) any person who intentionally causes his or her own personal injury;

(f) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable; or

(g) any person while:

(1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;

(2) operating a motor vehicle in a race or speed test;

(3) operating or occupying a motor vehicle known to that person to be stolen; or

(4) repairing, servicing or otherwise maintaining a motor vehicle if the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises;

(h) the named insured or relative while not occupying a motor vehicle or a motorcycle when struck by a motorcycle in New York State with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect;

(i) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act;

(j) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect.

## **Other Definitions**

When used in reference to this coverage:

(a) the "insured motor vehicle" means a motor vehicle owned by the named insured and to which the bodily injury liability insurance of this policy applies and for which a specific premium is charged;

(b) "motorcycle" means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;

(c) "motor vehicle" means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;

(d) "named insured" means the person or organization named in the Declarations page;

(e) "occupying" means in or upon or entering into or alighting from;

(f) "personal injury" means bodily injury, sickness or disease;

(g) "relative" means a spouse, child, or other person related to the named insured by blood, marriage, or adoption (including a ward or foster child), who regularly resides in the insured's household, including any such person who regularly resides in the household, but is temporarily living elsewhere; and

(h) "use or operation" of a motor vehicle or a motorcycle includes the loading or unloading of such vehicle.

## Conditions

**Action Against Company.** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

**Notice.** In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 30 days after the date of the accident, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. If an eligible injured person or that person's legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the Company or any of the Company's authorized agents by such eligible injured person or that person's legal representative.

**Proof of Claim; Medical, Work Loss, and Other Necessary Expenses.** In the case of a claim for health service expenses, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or the other necessary services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. Upon request by the Company, the eligible injured person or that person's assignee or representative shall:

- (a) execute a written proof of claim under oath;
- (b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same;
- (c) provide authorization that will enable the Company to obtain medical records; and
- (d) provide any other pertinent information that may assist the Company in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.

**Arbitration.** In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Financial Services.

**Reimbursement and Trust Agreement.** To the extent that the Company pays first-party benefits, the Company is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such settlement or judgment to the extent that the Company has paid first-party benefits. An eligible injured person shall:

- (a) hold in trust, for the benefit of the Company, all rights of recovery which that person shall have for personal injury under section 5104(b) of the New York Insurance Law;
- (b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and

(c) execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law, except:

- (a) with the written consent of the Company;
- (b) with approval of the court; or
- (c) where the amount of the settlement exceeds \$50,000.

**Other Coverage.** Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article 6 or 8 of the New York Vehicle and Traffic Law is available and applicable to an eligible injured person in any one accident, this Company is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover under this coverage, divided by the number of available and applicable sources of required first-party benefits. An eligible injured person shall not recover duplicate benefits for the same elements of loss under this coverage or any other mandatory first-party motor vehicle or no-fault motor vehicle insurance coverage issued in compliance with the laws of another state.

If the eligible injured person is entitled to benefits under any such mandatory first-party motor vehicle or no-fault motor vehicle insurance for the same elements of loss under this coverage, this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amount available under this coverage and the amount available under such other mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or no-fault motor vehicle insurance law provides unlimited coverage available to an eligible injured person for an element of loss under this coverage, the obligation of this Company is to share equally for that element of loss with such other mandatory insurance until the \$50,000, or \$75,000 if Optional Basic Economic Loss (OBEL) coverage is purchased, limit of this coverage is exhausted by the payment of that element of loss and any other elements of loss.

## **Section II**

### **Excess Coverage**

If motor vehicle medical payments coverage or any disability coverages or uninsured motorists coverage are afforded under this policy, such coverages shall be excess insurance over any Mandatory PIP, OBEL or Additional PIP benefits paid or payable, or which would be paid or payable but for the application of a deductible, under this or any other motor vehicle No-Fault insurance policy.

## **Section III**

### **Constitutionality**

If it is conclusively determined by a court of competent jurisdiction that the New York Comprehensive Motor Vehicle Insurance Reparations Act, or any amendment thereto, is invalid or unenforceable in whole or in part, then, subject to the approval of the Superintendent of Financial Services, the Company may amend this policy and may also recompute the premium for the existing or amended policy.

These amendments and recomputations will be effective retroactively to the date that such act or any amendment is deemed to be invalid or unenforceable in whole or in part.

**The following OBEL endorsement applies only if this coverage is shown on your Declarations page and you have paid the premium due:**

**OPTIONAL BASIC ECONOMIC LOSS COVERAGE ENDORSEMENT**

(New York)

The Company agrees with the named insured, subject to all of the provisions, exclusions and conditions of the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) not expressly modified in this Endorsement, as follows:

The definition of Basic Economic Loss contained in the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) is replaced by the following:

**Basic Economic Loss:**

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$75,000, the last \$25,000 of which represents optional basic economic loss coverage, payable after the first \$50,000 of basic economic loss has been exhausted, that the eligible injured person or that person's legal representative may specify will be applied to one of the following four options:

- (a) basic economic loss;
- (b) loss of earnings from work;
- (c) psychiatric, physical or occupational therapy and rehabilitation; or
- (d) a combination of options (b) and (c).

Any death benefit hereunder shall be in addition thereto.

Exclusion (c) set forth in the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) is replaced by the following:

(c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to:

- (1) the Optional Basic Economic Loss coverage provided under this endorsement, unless OBEL coverage is provided by the policy covering the other motor vehicle; or
- (2) to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus.

**Election**

Election of the OBEL option shall be made by the eligible injured person or that person's legal representative after such person has incurred expense aggregating \$30,000 in basic economic loss and after receiving the required notices from the Company that an OBEL election may be made. Failure of the eligible injured person or that person's legal representative to respond to the second notice within 15 calendar days after its mailing shall be considered an election by the eligible injured person to apply OBEL coverage to all elements of basic economic loss. Once made by the eligible injured person or that person's legal representative, an OBEL election cannot be changed. However, if claims payable under OBEL coverage have not yet been



received by the Company, an eligible injured person who has failed to respond to the second notice in a timely manner may make an election.

### **Notice**

If OBEL coverage is payable under this policy, but Mandatory PIP is being paid under a policy covering another motor vehicle, then the named insured or relative shall notify the Company no later than 90 days after Mandatory PIP benefits under that other policy have been exhausted. The Company shall then send its OBEL election notice.

**The following Additional PIP endorsement applies only if this coverage is shown on your Declarations page and you have paid the premium due:**

### **ADDITIONAL PERSONAL INJURY PROTECTION ENDORSEMENT**

(New York)

The Company agrees with the named insured subject to all of the provisions, exclusions and conditions of the Mandatory Personal Injury Protection Endorsement (New York), not expressly modified in this Endorsement as follows:

#### **Additional Personal Injury Protection**

The Company will pay additional first-party benefits to reimburse for extended economic loss on account of personal injuries sustained by an eligible injured person and caused by an accident arising out of the use or operation of a motor vehicle or motorcycle during the policy period. This coverage only applies to motor vehicle accidents within the United States of America, its territories or possessions, or Canada.

#### **Eligible Injured Person**

Subject to the exclusions and conditions set forth below, an eligible injured person is:

- (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;
- (b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle while not occupying a motorcycle;
- (c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle while occupying the insured motor vehicle; or
- (d) any other person who sustains personal injury arising out of the use or operation of any other motor vehicle (other than a public or livery conveyance) while occupying such other motor vehicle, if such other motor vehicle is being operated by the named insured or any relative.

#### **Exclusions**

This coverage does not apply to personal injury sustained by:

- (a) any person while occupying a motor vehicle owned by such person with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) any person while occupying, or while a pedestrian through being struck by, a motor vehicle owned by the named insured with respect to which additional personal injury protection coverage is not provided under this policy;
- (c) any relative while occupying, or while a pedestrian through being struck by, a motor vehicle owned by such relative with respect to which additional personal injury protection coverage is not provided under this policy;

(d) any New York State resident other than the named insured or relative injured through the use or operation of a motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(e) any person while occupying a motorcycle;

(f) any person who intentionally causes his own personal injury;

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable; or

(h) any person while:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;

(ii) operating a motor vehicle in a race or speed test;

(iii) operating or occupying a motor vehicle known to him to be stolen; or

(iv) repairing, servicing, or otherwise maintaining a motor vehicle if such conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises.

### **Additional First-party Benefits**

Additional first-party benefits are payments equal to extended economic loss reduced by:

(a) 20 percent of the eligible injured person's loss of earnings from work, to the extent that the extended economic loss covered by this Endorsement includes such loss of earnings;

(b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits or disability benefits under article 9 of the New York Workers' Compensation law, which amounts have not been applied to reduce first-party benefits recovered or recoverable under basic economic loss;

(c) amounts recovered or recoverable by the eligible injured person for any element of extended economic loss covered by this Endorsement under any mandatory source of first-party automobile no-fault benefits required by the laws of any state (other than the State of New York) of the United States of America, its possessions or territories, or by the laws of any province of Canada.

### **Extended Economic Loss**

Extended economic loss shall consist of the following:

(a) basic economic loss sustained on account of an accident occurring within the United States of America, its possessions or territories, or Canada, which is not recovered or recoverable under a policy issued in satisfaction of the requirements of article 6 or 8 of the New York Vehicle and Traffic law and article 51 of the New York Insurance Law;

(b) the difference between

(i) basic economic loss; and

(ii) basic economic loss recomputed in accordance with the time and dollar limits set out in the Declarations page; and

(c) an additional death benefit in the amount set out in the declarations.

## **Two or More Motor Vehicles Insured Under This Policy**

The limit of liability under this Endorsement applicable to injuries sustained by an eligible injured person while occupying, or while a pedestrian through being struck by, the insured motor vehicle shall be as stated in the Declarations page for that insured motor vehicle. The limit of liability for injuries covered by this Endorsement and sustained by an eligible injured person while occupying, or while a pedestrian through being struck by, a motor vehicle, other than the insured motor vehicle, shall be the highest limit stated for this coverage in the declarations for any insured motor vehicle under this policy.

## **Arbitration**

In the event any person making a claim for additional first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Financial Services.

## **Subrogation**

In the event of any payment for extended economic loss, the Company is subrogated to the extent of such payments to the rights of the person to whom, or for whose benefit, such payments were made. Such person must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing to prejudice such rights.

## **Other Coverage; Nonduplication**

The eligible injured person shall not recover duplicate benefits for the same elements of loss covered by this Endorsement or any other optional first-party automobile or no-fault automobile insurance coverage.

If an eligible injured person is entitled to New York mandatory and additional personal injury protection benefits under any other policy, and if such eligible injured person is not entitled to New York mandatory personal injury protection benefits under this policy, then the coverage provided under this Additional Personal Injury Protection Endorsement (New York) shall be excess over such other New York mandatory and additional personal injury protection benefits.

When coverage provided under this Endorsement applies on an excess basis, it shall apply only in the amount by which the total limit of liability of New York mandatory and additional personal injury protection coverage available under this policy exceeds the total limit of liability for any other applicable New York mandatory and additional personal injury protection coverage.

Subject to the provisions of the preceding three paragraphs, if the eligible injured person is entitled to benefits under any other optional first-party automobile or no-fault automobile insurance for the same elements of loss covered by this Endorsement this Company shall be liable only for an amount equal to the proportion that the total amount available under this Endorsement bears to the sum of the amounts available under this Endorsement and such other optional insurance, for the same element of loss.

The following Exclusion of Medical Expenses from Mandatory PIP Endorsement applies only if shown on “*your*” Declarations page:

**EXCLUSION OF MEDICAL EXPENSE FROM MANDATORY  
PERSONAL INJURY PROTECTION ENDORSEMENT**  
(New York)

In consideration of a reduction in premium, it is agreed that:

If the Medical Expense element of Basic Economic Loss is identified as not applicable in the Declarations page the Company shall not be liable for any items of such loss which would otherwise be covered under the Mandatory Personal Injury Protection Endorsement (New York) with respect to the named insured or named insured and any relative as specified in the Declarations page. Coverage for any such medical expense element of basic economic loss provided to such named insured, or such relative, by a company or corporation in accordance with the provisions of section 5103(g) of the New York Insurance Law shall reduce the \$50,000 aggregate limit of liability for basic economic loss to such person under this policy. This endorsement shall be effective during the term of this policy so long as the medical expense coverage provided by such company or corporation remains in effect, notwithstanding any provisions in the Declarations page of this policy to the contrary, and in the event this endorsement shall no longer be in effect the premium may be adjusted accordingly.

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**PART II-B: MEDICAL AND FUNERAL SERVICES PAYMENTS COVERAGE**

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**INSURING AGREEMENT**

In return for “*your*” premium payment for Medical and Funeral Services Payments Coverage, and subject to the limits of liability specified in “*your*” Declarations page:

1. “*We*” will pay reasonable expenses incurred by an “*insured*” for necessary medical and funeral services because of “*bodily injury*”:
  - A. Caused by a motor vehicle “*accident*”; and
  - B. Sustained by an “*insured*”.“*We*” will pay only those expenses incurred for services rendered within three years from the date of the “*accident*”.
2. “*We*” reserve the right to review, or have another party review on “*our*” behalf, the expenses to determine if they are reasonable and necessary for diagnosis and treatment of the “*bodily injury*”. “*We*” may also use independent sources of information selected by “*us*” to determine if any medical expense is reasonable and necessary. These sources may include, but are not limited to:
  - A. Physical exams paid for by “*us*” and conducted by physicians “*we*” select;
  - B. Review of medical files; or
  - C. Published sources of medical expense information including information available from computer databases.
3. “*We*” may refuse to pay for any medical expense that is unreasonable because the fee for the service is greater than the fee which is usual and customary for the geographic location in which the service is rendered. “*We*” may also refuse to pay for any medical expense because the service rendered is unnecessary for the treatment of the “*bodily injury*” sustained.

If “*we*” refuse to pay for any medical expense because the fee is unreasonable or the service is unnecessary and the “*insured*” is sued for payment of this expense, “*we*” will defend the “*insured*” with an attorney of “*our*” choice. “*We*” will pay defense costs and any judgment against the “*insured*” up to “*our*” limit of liability. The “*insured*” must cooperate with “*us*” in the defense of the lawsuit and attend hearings or trials at

**“our”** request. In addition to our limit of liability, **“we”** will pay the **“insured”** up to \$200 per day for lost wages or salary due to attendance at a hearing or trial, and will pay other reasonable expenses the **“insured”** incurs at **“our”** request as a result of a lawsuit.

#### **ADDITIONAL DEFINITION FOR PART II-B: MEDICAL AND FUNERAL SERVICES PAYMENTS COVERAGE**

1. **“Insured”** as used in **Part II-B** means:
  - A. **“You”** or a **“family member”** while **“occupying”** an **“auto”**;
  - B. **“You”** or a **“family member”** when struck by a land motor vehicle of any type, or a **“trailer”**, while not **“occupying”** a motor vehicle; or
  - C. Any other person while **“occupying”** a **“covered auto”** with the permission of **“you”** or a **“family member”**.

#### **EXCLUSIONS FOR PART II-B: MEDICAL AND FUNERAL SERVICES PAYMENTS COVERAGE** (Read carefully. If any of the exclusions below apply, coverage will not be afforded under Part II-B.)

**“We”** do not provide Medical and Funeral Services Payments Coverage for any **“insured”** for **“bodily injury”**:

1. Sustained while **“occupying”** any motorized vehicle having fewer than four wheels.
2. Sustained while **“occupying”** a **“covered auto”** when it is being used as a public or livery conveyance, or used to carry property for compensation or a fee. This Exclusion 2 applies to, but is not limited to, the delivery of magazines, newspapers, food, or any other products. However, this Exclusion 2 does not apply to shared-expense car pools.
3. Sustained while **“occupying”** any vehicle located for use as a residence or premises, or for office or display purposes.
4. Occurring during the course of employment if workers’ compensation benefits are required or available for the **“bodily injury”**.
5. Sustained while **“occupying”**, or when struck by, any vehicle, other than a **“covered auto”**, which is:
  - A. **“Owned”** by **“you”**; or
  - B. Furnished or available for **“your”** regular use.
6. Sustained while **“occupying”**, or when struck by, any vehicle, other than a **“covered auto”**, which is:
  - A. **“Owned”** by any **“family member”**; or
  - B. Furnished or available for the regular use of any **“family member”**.This Exclusion 6 does not apply to **“you”**.
7. Sustained while **“occupying”** a vehicle without permission of its **“owner”** to do so. This Exclusion 7 does not apply to a **“family member”** using a **“covered auto”** which is **“owned”** by **“you”**.
8. Sustained while **“occupying”** any **“auto”** when it is being used in the **“business”** of an **“insured”**. This Exclusion 8 does not apply to **“bodily injury”** sustained by an **“insured”** if that **“business”** use has been disclosed to **“us”** and all applicable premiums have been paid.
9. Caused by or as a consequence of:
  - A. Discharge of a nuclear weapon (even if accidental);
  - B. War (declared or undeclared);
  - C. Civil war;

- D. Insurrection;
  - E. Rebellion or revolution; or
  - F. Any action taken by any governmental unit or by agents of any governmental unit to respond to, defend against, or otherwise taken to prevent or diminish the likelihood of an attack or perceived threat.
10. From or as a consequence of the following, whether controlled, uncontrolled, or however caused:
    - A. Nuclear reaction;
    - B. Radiation; or
    - C. Radioactive contamination.
  11. Sustained while **“occupying”** any vehicle competing in, or practicing or preparing for, any prearranged or organized racing or speed contest.
  12. Sustained while **“occupying”** any vehicle located inside a facility designed for racing or high performance driving for the purpose of:
    - A. Competing in;
    - B. Practicing or preparing for any prearranged or organized racing or speed contest, or
    - C. Participating in any racing school, driving school, driver training, skills training, race driving experience, or racing adventure program.
  13. Sustained while **“occupying”** a **“covered auto”** when it is being used for the delivery of food or products, including, but not limited to, newspapers and magazines. This Exclusion 13 does not apply to a delivery by an **“insured”** as a volunteer.
  14. While **“occupying”** a **“covered auto”** while it is leased or rented to others or provided in exchange for any form of compensation. This Exclusion 14 does not apply to **“you”** or a **“family member”**.
  15. That is intentional or self-inflicted by the **“insured”** or inflicted on an **“insured”** at the request of that **“insured”**.
  16. If the United States Government is liable under the Federal Tort Claims Act.
  17. When other insurance is afforded, or would have been afforded, under a nuclear energy liability insurance but for the exhaustion of its limit of liability.
  18. Sustained while operating a vehicle while that **“insured”** is under the influence of alcohol or a controlled substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled substances include, but are not limited to, cocaine, LSD, marijuana, and all narcotic drugs. This Exclusion 18 does not apply to the lawful use of prescription drugs by a person pursuant to the orders of a licensed physician.

## LIMIT OF LIABILITY

1. The limit of liability shown on the Declarations page for this coverage is **“our”** maximum limit of liability for each person injured in any one **“accident”**. This is the most **“we”** will pay regardless of the number of:
  - A. **“Insureds”**;
  - B. Claims made;
  - C. Vehicles or premiums shown in the Declarations page; or
  - D. Vehicles involved in the **“accident”**.

There will be no stacking or combining of coverage afforded to more than one **“auto”** under this policy.

2. No one will be entitled to receive duplicate payments for the same expenses under this coverage and:
  - A. **Part I: Liability Coverage;**
  - B. **Part II-A: Personal Injury Protection;**
  - C. Any Uninsured Motorist coverage or Supplementary Uninsured/Underinsured Motorists (SUM) coverage provided in **Part III** by this policy; or
  - D. Any other motor vehicle medical payments or funeral services coverage.

## OTHER INSURANCE

1. If there is other applicable auto medical payment insurance, other than motor vehicle no-fault coverage described in clause 2.B.. below, “*we*” will pay only “*our*” share of the expenses. “*Our*” share is the proportion that “*our*” limit of liability bears to the total of all applicable limits.
2. However, any insurance “*we*” provide shall be excess over:
  - A. Any other collectible auto insurance, self-insurance, or bond providing payments for medical or funeral expenses for any vehicle “*you*” do not “*own*”, including any temporary substitutes.
  - B. Any mandatory personal injury protection, optional basic economic loss, additional personal injury protection benefits paid or payable, or the application of a deductible or co-insurance under such coverage, under this or any other motor vehicle no-fault insurance policy.

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## PART III: UNINSURED AND UNDERINSURED MOTORISTS COVERAGE

### UNINSURED MOTORIST ENDORSEMENT – NEW YORK

We, the Company, agree with you, as the named insured, in return for the payment of the premium for this coverage to provide you with Uninsured Motorist (UM) Coverage, subject to the following terms and conditions:

#### INSURING AGREEMENTS

1. **Damages for Bodily Injury Caused by Uninsured Motor Vehicles.** We will pay all sums which the insured, as defined herein, or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, and caused by accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions of this UM endorsement; provided, for the purposes of this coverage, determination as to whether the insured or the insured's representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or the insured's representative and us or, if they fail to agree, by arbitration.
2. **Definitions.** For purposes of this UM endorsement, the following terms shall have the following meanings:
  - (a) **Insured.** The unqualified term "insured" means:
    - (1) You, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;
    - (2) Any other person while occupying:
      - (i) A motor vehicle owned by the named insured or, if the named insured is an individual, such spouse and used by or with the permission of either, or
      - (ii) Any other motor vehicle while being operated by the named insured or such spouse, except a person occupying a motor vehicle not registered in the State of New York, while used as a public or livery conveyance; and
    - (3) Any person, with respect to damages such person is entitled to recover because of bodily injury to which this coverage applies sustained by an insured under sub-paragraphs (1) or (2) above.

- (b) **Uninsured Motor Vehicle.** The term "uninsured motor vehicle" means a motor vehicle that through its ownership, maintenance or use, results in bodily injury to an insured, and for which:
- (1) No bodily injury liability insurance policy or bond applies to such vehicle (including a vehicle that was stolen, operated without the owner's permission, or unregistered) at the time of the accident; or
  - (2) Neither the owner nor driver can be identified, including a hit-and-run vehicle, and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:
    - (i) The insured or someone on the insured's behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles and shall have filed with us a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and
    - (ii) At our request, the insured or the insured's legal representative makes available for inspection the motor vehicle the insured was occupying at the time of the accident, or
  - (3) There is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but:
    - (i) The amount of such insurance coverage or bond is less than the UM limits of this policy, or
    - (ii) The insurer writing such insurance coverage or bond denies coverage.
  - (4) The term "uninsured motor vehicle" does not include a motor vehicle that is:
    - (i) Insured under the liability coverage of this policy; or
    - (ii) Owned by you, as the named insured and, while residents of the same household, your spouse and relatives of either you or your spouse; or
    - (iii) Self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law, to the extent that the required amount of such coverage is equal to, or greater than, the UM limits of this policy; or
    - (iv) Owned by the United States of America, Canada, a state, a political subdivision of any such government, or an agency of any of the foregoing; or
    - (v) A land motor vehicle or trailer, while located for use as a residence or premises and not as a vehicle, or while operated on rails or crawler-treads; or
    - (vi) A farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.
- (c) **Hit-and-Run Motor Vehicle.** The term "hit-and-run motor vehicle" means a motor vehicle which causes bodily injury to an insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured is occupying at the time of the accident, provided:
- (1) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run motor vehicle";
  - (2) the insured or someone on his behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 90 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and
  - (3) at our request, the insured or his legal representative makes available for inspection the motor vehicle which the insured was occupying at the time of the accident.
- (d) **Bodily Injury.** The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.
- (e) **Occupying.** The term "occupying" means in, upon, entering into, or exiting from a motor vehicle.
- (f) **State.** The term "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.



3. **Territory.** The coverage provided by this UM endorsement applies only to accidents which occur within the State of New York.

## EXCLUSIONS

This UM coverage does not apply:

1. To bodily injury to an insured while operating a motor vehicle in violation of an order of suspension or revocation; or to care or loss of services recoverable by an insured because of such bodily injury so sustained.
2. To bodily injury to an insured, or care or loss of services recoverable by an insured, with respect to which such insured, the insured's legal representatives or any person entitled to payment under this UM coverage shall, without our written consent, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor, but this provision shall be subject to Condition 8 of this UM endorsement.
3. To bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for at least the minimum bodily injury liability limits and UM limits required by law by the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of this policy.
4. So as to inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or any similar law.
5. For non-economic loss, resulting from bodily injury to an insured and arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

## CONDITIONS

1. **Policy Provisions.** None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this UM coverage except "Insured's Duties After an Accident or Loss"; "Fraud or Misrepresentation", and "Termination" if applicable.
2. **Premium.** If during the policy period the number of motor vehicles owned by the named insured or spouse and registered in New York or the number of New York dealer's license plates or transporter plates issued to the named insured changes, the named insured shall notify us during the policy period of any change and the premium shall be adjusted as of the date of such change in accordance with the manuals in use by us. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to us; if less, we shall return to the named insured the unearned portion paid by such insured.
3. **Notice and Proof of Claim.** Within 90 days or as soon as practicable, the insured or other person making claim shall give us written notice of claim under this UM endorsement.

As soon as practicable after our written request, the insured or other person making any claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details we need to determine the UM amount payable hereunder.

The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person named by us and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 days after receiving notice of claim.

4. **Medical Reports.** The injured person shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, such insured's legal representative, or in the event of the insured's death, the insured's legal representative or the person or persons entitled to sue therefor, shall upon our request authorize us, when and as often as we may reasonably require, to obtain relevant medical reports and copies of records.
5. **Notice of Legal Action.** If the insured or such insured's legal representative brings any lawsuit against any persons or organizations legally responsible for the use of a motor vehicle involved in the accident, a copy of

the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.

6. **UM Limit of Liability.** The UM limit payable under this UM endorsement shall be:
  - (a) The limit of our liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident is \$25,000 per person and, subject to this per person limit, the total limit of our liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons, as the result of any one accident is \$50,000.
  - (b) If the bodily injury results in death, the limit of our liability shall be \$50,000 for such bodily injury resulting in death sustained by one person as a result of any one accident and, subject to this limit for each person, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident.
  - (c) Any amount payable under the terms of this UM endorsement, including amounts payable for care or loss of services, because of bodily injury sustained by one person, shall be reduced by (1) all sums paid to one or more insureds on account of such bodily injury by or on behalf of (a) the owner or operator of the uninsured motor vehicle and (b) any other person or persons jointly or severally liable together with such owner or operator for such bodily injury, and (2) all sums paid to one or more insureds on account of bodily injury sustained in the same accident under any insurance or statutory benefit similar to that provided by this UM endorsement.
7. **Other Insurance.** With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, the coverage under this UM endorsement shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such motor vehicle as primary insurance, and this UM endorsement shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if there is other similar insurance available to the insured and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this coverage and such other insurance, and we shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this UM endorsement and such other insurance.
8. **Release or Advance.** In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, release may be executed with such party after thirty calendar days actual written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this UM coverage. Any excess above those amounts shall be paid to the insured.

An insured shall not otherwise settle with any negligent party, without our written consent, such our rights would be impaired.
9. **Non-Duplication.** This UM coverage shall not duplicate any of the following:
  - (a) Benefits payable under workers' compensation or other similar laws;
  - (b) Non-occupational disability benefits under article nine of the Workers' Compensation Law or other similar law;
  - (c) Any amounts recovered or recoverable pursuant to article fifty-one of the New York Insurance Law or any similar motor vehicle insurance payable without regard to fault;
  - (d) Any valid or collectible motor vehicle medical payments insurance; or
  - (e) Any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury insurance policies or bonds.
10. **Arbitration.** If we do not agree with the insured or the insured's representative making claim hereunder that the insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing

under this UM endorsement then, upon written demand of either the claimant or us, the matter or matters upon which we do not agree with such person shall be settled by arbitration in accordance with the rules and procedures of the American Arbitration Association prescribed or approved by the Superintendent of Financial Services for this purpose. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and we each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this UM endorsement.

11. **Subrogation.** If we make a payment under this UM coverage, we have the right to recover the amount of this payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit such payment: was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 8, such person shall do nothing to prejudice this right.
12. **Payment of Loss by Company.** We shall pay any amount due under this UM endorsement to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.
13. **Action Against Company.** No lawsuit shall lie against us unless, as a condition precedent thereto, the insured or the insured's legal representative has first fully complied with all the terms of this UM endorsement.
14. **Assignment.** Assignment of interest under this UM endorsement shall not bind us until our consent is endorsed hereon.
15. **Survivor Rights.** If you or your spouse, if a resident of the same household, dies, this UM coverage shall cover:
  - (a) The survivor as named insured;
  - (b) The decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
  - (c) Any relative who was insured at the time of such death.
16. **Policy Period - Termination.** This UM coverage applies only to accidents which occur on and after the effective date hereof and during the policy period and shall terminate upon (1) termination of the policy of which it forms a part or (2) termination of New York registration on all motor vehicles owned by the named insured or spouse.

### **SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT--NEW YORK**

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

#### **INSURING AGREEMENTS**

- I. **Definitions:** For purposes of this SUM endorsement, the following terms have the following meanings.
  - (a) **Insured.** The unqualified term "insured" means:
    - (1) you, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;
    - (2) any other person while occupying:
      - (i) a motor vehicle insured for SUM under this policy; or
      - (ii) any other motor vehicle while being operated by you or your spouse; and
    - (3) any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1) or (2) above.
  - (b) **Bodily Injury.** The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.

- (c) **Uninsured Motor Vehicle.** The term "uninsured motor vehicle" means a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:
- (1) no bodily injury liability insurance policy or bond applies to such vehicle (including a vehicle that was stolen, operated without the owner's permission, or unregistered) at the time of the accident; or
  - (2) neither owner nor driver can be identified (including a hit-and-run vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:
    - (i) the insured or someone on the insured's behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles and shall have filed with the Company a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and
    - (ii) at the request of the Company, the insured or the insured's legal representative makes available for inspection the automobile the insured was occupying at the time of the accident; or
  - (3) there is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but;
    - (i) the amount of such insurance coverage or bond is less than the third-party bodily injury liability limit of this policy; or
    - (ii) the amount of such insurance coverage or bond has been reduced, by payments to other persons injured in the accident, to an amount less than the third-party bodily injury liability limit of this policy; or
    - (iii) the insurer writing such insurance coverage or bond denies coverage, or such insurer is or becomes insolvent.

The term "uninsured motor vehicle" does not include a motor vehicle that is:

- (1) insured under the liability coverage of this policy; or
  - (2) owned by you, as the named insured, or your spouse residing in your household; or
  - (3) self-insured within the meaning of the financial responsibility law of the State in which the motor vehicle is registered, or any similar state or Federal law, to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or
  - (4) owned by the United States of America, Canada, a state, a political subdivision of any such government, or an agency of any of the foregoing; or
  - (5) a land motor vehicle or trailer, while located for use as a residence or premises and not as a vehicle, or while operated on rails or crawler-treads; or
  - (6) a farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.
- (d) **Occupying.** The term "occupying" means in, upon, entering into, or exiting from a motor vehicle.
- (e) **State.** The term "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

## II. Damages for Bodily Injury Caused by Uninsured Motor Vehicles:

We will pay all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions of this SUM endorsement.

## III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the Declarations; and
2. in the United States, its territories or possessions, or Canada.

## EXCLUSIONS

This SUM coverage does not apply:

1. to bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives, or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, but this provision shall be subject to Condition 10.
2. to bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of this policy.
3. for non-economic loss, resulting from bodily injury to an insured and arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

## CONDITIONS

1. **Policy Provisions:** None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to the SUM coverage except: "Insured's Duties After an Accident or Loss"; "Fraud or Misrepresentation"; and "Termination" if applicable.
2. **Notice and Proof of Claim:** As soon as practicable, the insured or other person making claim shall give us written notice of claim under this SUM coverage.  
As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details we need to determine the SUM amount payable.  
The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 days after receiving notice of claim.
3. **Medical Reports:** The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, such insured's legal representative (or in the event of such insured's death, the insured's legal representative or the person or persons entitled to sue therefor), shall upon each request from us authorize us to obtain relevant medical reports and copies of relevant records.
4. **Notice of Legal Action:** If the insured or such insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.
5. **SUM Limits:** The SUM limits payable under this SUM endorsement shall be:
  - (a) the SUM limits stated in the Declarations; or
  - (b) if the bodily injury results in death, we will provide SUM limits of the higher of the SUM limits stated in the Declarations, or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident.
6. **Maximum SUM Payments:** Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:
  - (a) the SUM limits; and
  - (b) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

(The SUM limit shown on the Declarations for "Each Person" is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under "Each Accident" is, subject to the limit for each

person, the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident).

7. **Non-Stacking:** Regardless of the number of vehicles involved, persons covered, claims made, vehicles or premiums shown in this policy, or premium paid, the limits, whether for uninsured motorists coverage or supplementary uninsured/underinsured motorists coverage, shall never be added together or combined for two or more vehicles to determine the extent of insurance coverage available to an insured injured in the same accident.
8. **Priority of Coverage:** If an insured is entitled to uninsured motorists coverage or supplementary uninsured/underinsured motorists coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one vehicle under any one policy, and the following order of priority shall apply:
  - (a) a policy covering a motor vehicle occupied by the injured person at the time of the accident;
  - (b) a policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and
  - (c) a policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.
9. **Exhaustion Required:** Except as provided in Condition 10, we will pay under this SUM coverage only after the limits of liability have been used up under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.
10. **Release or Advance:** In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, release may be executed with such party after thirty calendar days actual written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.

An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.
11. **Non-Duplication:** This SUM coverage shall not duplicate any of the following:
  - (a) benefits payable under workers' compensation or other similar laws;
  - (b) non-occupational disability benefits under article nine of the Workers' Compensation Law or other similar law;
  - (c) any amounts recovered or recoverable pursuant to article fifty-one of the New York Insurance Law or any similar motor vehicle insurance payable without regard to fault;
  - (d) any valid or collectible motor vehicle medical payments insurance; or
  - (e) any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.
12. **Arbitration:** If any insured making claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the American Arbitration Association, pursuant to procedures prescribed or approved by the Superintendent of Financial Services for this purpose.

If, however, the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by section 3420(f)(1) of the New York Insurance Law and Article 6 or 8 of the New York Vehicle and Traffic Law, then such disagreement shall be settled by such arbitration

procedures upon written demand of either the insured or us. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term "insured" includes any person authorized to act on behalf of the insured.

13. **Subrogation:** If we make a payment under this SUM coverage, we have the right to recover the amount of this payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 10, such person shall do nothing to prejudice this right.
14. **Payment of Loss by Company:** We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.
15. **Action Against Company:** No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.
16. **Survivor Rights:** If you or your spouse, if a resident of the same household, dies, this SUM coverage shall cover:
  - (1) the survivor as named insured;
  - (2) the decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
  - (3) any relative who was an insured at the time of such death.

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#### PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO

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##### INSURING AGREEMENT: COLLISION COVERAGE

1. Subject to the limits of liability, if **"you"** pay the premium for Collision Coverage, **"we"** will pay for a sudden, direct, and accidental **"loss"** to:
  - A. **"Your" "covered auto"** for which Collision Coverage has been purchased, as stated in **"your"** Declarations page;
  - B. A **"non-owned auto"**; or
  - C. A **"trailer"** titled to **"you"**;if it overturns or is in a **"collision"** with another object.
2. If there is a **"loss"** to a **"non-owned auto"**, **"we"** will provide the broadest Collision Coverage applicable to any of **"your" "covered autos"**.
3. In addition, **"we"** will pay the reasonable cost to replace any child safety seat damaged in an **"accident"** to which this coverage applies.

##### INSURING AGREEMENT: COMPREHENSIVE COVERAGE

1. Subject to the limits of liability, if **"you"** pay the premium for Comprehensive Coverage, **"we"** will pay for a sudden, direct, and accidental **"loss"** to:
  - A. **"Your" "covered auto"** for which Comprehensive Coverage has been purchased, as stated in **"your"** Declarations page;
  - B. A **"non-owned auto"**; or
  - C. A **"trailer"** titled to **"you"**.
2. Comprehensive Coverage includes, but is not limited to, a **"loss"** caused by the following:
  - A. Missiles or falling objects;

- B. Fire;
- C. Theft or larceny;
- D. Explosion or earthquake;
- E. Windstorm;
- F. Hail, water, or flood;
- G. Malicious mischief or vandalism;
- H. Riot or civil commotion;
- I. Contact with bird or animal; or
- J. Breakage of glass.

If breakage of glass is caused by a *“collision”*, *“you”* may elect to have it considered a *“loss”* caused by *“collision”*.

#### **TRANSPORTATION EXPENSE COVERAGE**

1. If *“you”* have paid the premium due for Comprehensive Coverage, *“we”* will also reimburse *“you”* up to \$15.00 per day, for up to 30 days, for:
  - A. Transportation expenses *“you”* incur due to the theft of a *“covered auto”* to which Comprehensive Coverage applies; or
  - B. Loss of use damages *“you”* are legally liable to pay after a *“non-owned auto”* is stolen.
2. Payment under Transportation Expense Coverage begins 48 hours after *“you”* report the theft to *“us”* and ends the earliest of:
  - A. When a *“covered auto”* or a *“non-owned auto”* has been recovered and returned to *“you”* or its *“owner”*;
  - B. When a *“covered auto”* or a *“non-owned auto”* has been recovered and repaired;
  - C. When a *“covered auto”* or a *“non-owned auto”* has been replaced; or
  - D. 72 hours after *“we”* make an offer to pay the limit of liability under Comprehensive Coverage if a *“covered auto”* or a *“non-owned auto”* is deemed by *“us”* to be a total loss or unrecoverable. *“Our”* payment will be limited to the period of time reasonably required to repair or replace a *“covered auto”*.
3. In order to receive reimbursement for *“your”* transportation expenses, *“you”* must provide *“us”* with written proof of the transportation expenses or loss of use damages incurred.
4. If transportation costs are payable under both Transportation Expense Coverage and any other coverage under Part IV, *“we”* will pay only under the one coverage in which *“you”* collect the most.

#### **ADDITIONAL DEFINITIONS FOR PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO**

1. *“Collision”* means the upset of a *“covered auto”* or a *“non-owned auto”* or their impact with another vehicle or object.

*“Collision”* does not include *“loss”* caused by the following, which shall be considered as *“loss”* caused by other than *“collision”*:

- A. Missiles or falling objects;
- B. Fire;
- C. Theft or larceny;
- D. Explosion or earthquake;
- E. Windstorm;
- F. Hail, water, or flood;
- G. Malicious mischief or vandalism;
- H. Riot or civil commotion;



- I. Contact with bird or animal; or
- J. Breakage of glass.

If breakage of glass is caused by a **“collision”**, **“you”** may elect to have it considered a **“loss”** caused by **“collision”**.

- 2. **“Custom parts and equipment”** means any equipment, devices, accessories, enhancements, and changes, other than those that are original manufacturer installed, which alter the appearance or performance of a vehicle, and includes, but is not limited to:
  - A. Stereo, sound reproducing, sound recording, and television equipment;
  - B. Radios, citizens band radios and scanners;
  - C. Personal computers, Internet access and navigation systems;
  - D. Telephones, televisions, and video entertainment systems;
  - E. Body, engine, exhaust, or suspension enhancers;
  - F. Winches, anti-roll, or anti-sway bars;
  - G. Custom grilles, louvers, side pipes, hood scoops, or spoilers;
  - H. Custom wheels, tires, or spinners;
  - I. Custom chrome and paint;
  - J. Special carpeting or insulation;
  - K. Furniture or bars;
  - L. Height-extending roofs; or
  - M. Custom murals, paintings, or other decals or graphics.
- 3. **“Diminution in value”** means the actual or perceived loss in market value that results from a direct and accidental **“loss”**.
- 4. **“Non-owned auto”** means any:
  - A. Private passenger **“auto”**; or
  - B. Pickup or van that has a Gross Vehicle Weight Rating (as determined by the manufacturer) of 10,000 lbs. or less;that is not **“owned”** by or furnished or available for the regular use of **“you”** or any **“family member”**, while in the custody of or being operated by **“you”** with permission of its **“owner”**.

## RENTAL REIMBURSEMENT COVERAGE

- 1. Subject to the limits of liability, if **“you”** pay the premium for Rental Reimbursement Coverage, **“we”** will reimburse rental charges incurred when **“you”** rent an **“auto”** from a rental agency or auto repair shop due to a **“loss”** to a **“covered auto”**. This coverage applies only if **“you”** have purchased both Collision Coverage and Comprehensive Coverage for that **“covered auto”** and the **“loss”** is covered under one of those coverages.
- 2. The maximum **“we”** will pay is the daily amount and total incident amount shown on the Declarations page.
- 3. If the **“loss”** is not due to a total theft:
  - A. Reasonable rental charges will be reimbursed beginning:
    - (1) When **“your”** **“covered auto”** cannot be driven due to a **“loss”**; or
    - (2) If **“your”** **“covered auto”** can be driven, when **“you”** deliver **“your”** **“covered auto”** to a vehicle repair shop for repairs due to the **“loss”**.
  - B. Reasonable rental charge reimbursement will end at the earliest of the following:
    - (1) When **“your”** **“covered auto”** has been returned to **“you”**;
    - (2) When **“your”** **“covered auto”** has been repaired or after a reasonable time in which **“your”** **“covered auto”** could have been repaired;
    - (3) When **“your”** **“covered auto”** has been replaced;

- (4) If “*your*” “*covered auto*” is deemed by “*us*” to be a total loss, 48 hours after “*we*” make an offer to pay the applicable limit of liability under this **Part IV**; or
- (5) When “*you*” incur 30 days of rental charges.

- 4. If the “*loss*” is due to a total theft, reasonable rental charges will be reimbursed beginning 48 hours after the total theft, and ends the earliest of:
  - A. When “*your*” “*covered auto*” or “*non-owned auto*” is returned to “*you*” or its “*owner*”;
  - B. When “*your*” “*covered auto*” or “*non-owned auto*” has been recovered and repaired or after a reasonable time in which “*your*” “*covered auto*” could have been repaired;
  - C. When “*your*” “*covered auto*” or “*non-owned auto*” has been replaced;
  - D. If “*your*” “*covered auto*” is deemed by “*us*” to be a total loss, 48 hours after “*we*” make an offer to pay the applicable limit of liability under this **Part IV**; or
  - E. When “*you*” incur 30 days worth of reasonable rental charges.
- 5. “*You*” must provide “*us*” written proof of “*your*” reasonable rental charges to be reimbursed.

### CUSTOM PARTS AND EQUIPMENT COVERAGE

- 1. Subject to the stated limit of liability, if “*you*” pay the premium for Custom Parts and Equipment Coverage , “*we*” will pay for a sudden, direct and accidental “*loss*” to “*your*” “*custom parts and equipment*” that is not otherwise covered by Collision Coverage or Comprehensive Coverage, reduced by any applicable deductible shown in the Declarations page.
- 2. With respect to a vehicle for which the Declarations page indicates that Custom Parts and Equipment Coverage applies, “*our*” limit of liability for “*loss*” for “*custom parts and equipment*” will be the lesser of the following:
  - A. The actual cash value of the stolen or damaged property;
  - B. The amount necessary to repair the property to its pre-loss physical condition;
  - C. The amount necessary to replace the property with other property of like kind and quality; or
  - D. The applicable limits of liability elected by “*you*” and shown in the Declarations page.
- 3. “*You*” are required to provide proof of purchase for all “*custom parts and equipment*”. Examples of proof of purchase include receipts listing the parts and cost, bills of sale listing the parts or cost invoice for the parts listing the cost.

### TOWING AND LABOR COVERAGE

- 1. Subject to the limit of liability, if “*you*” pay the premium payment for Collision Coverage and Towing and Labor Coverage, “*we*” will pay for the following services each time a “*covered auto*” for which these coverages have been purchased, or a “*non-owned auto*”, is disabled:
  - A. Towing;
  - B. Tire changing;
  - C. Gas, oil, and water delivery;
  - D. Battery services; and
  - E. Lockout services.
- 2. “*We*” will only provide Towing and Labor Coverage up to the limit shown in the Declarations page as applicable to that vehicle, and subject to the following:
  - A. “*We*” will only pay for necessary labor performed at the place of disablement; and
  - B. If a “*non-owned auto*” is disabled, “*we*” will provide the broadest coverage applicable to any “*covered auto*” shown in the Declarations page.

3. **“We”** will not pay Towing and Labor Coverage for any of the following:
  - A. Installation of products or material not related to the disablement;
  - B. Labor not related to the disablement;
  - C. Labor or repair work performed at a service station, garage, or repair shop;
  - D. Repeated service calls for a covered disabled vehicle in need of routine maintenance or repair;
  - E. Disablement that results from an intentional or willful act or action by **“you”**, a **“family member”** or the operator of the disabled **“auto”**; or
  - F. A **“trailer”** of any kind.

### **FULL COVERAGE WINDOW GLASS**

**“We”** will pay under Collision or Comprehensive Coverage for window glass breakage on **“your” “covered auto”** without a deductible. **“We”** will pay only if the Declarations page indicates that Full Coverage Window Glass applies to that **“covered auto”**. If only Collision Coverage is afforded with Full Coverage Window Glass, any covered window glass breakage caused by **“collision”** will be considered a **“collision”** loss.

### **EXCLUSIONS FOR PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO (Read carefully. If any of the exclusions below apply, coverage will not be afforded under Part IV.)**

**“We”** will not provide coverage for:

1. **“Loss”** to a **“covered auto”** or any **“non-owned auto”** that occurs while it is being used as a public or livery conveyance, or used to carry property for compensation or a fee. This Exclusion 1 applies to, but is not limited to, the delivery of magazines, newspapers, food or any other products. However, this Exclusion 1 does not apply to a shared expense car pool.
2. Damage resulting from and limited to:
  - A. Wear and tear;
  - B. Freezing;
  - C. Mechanical or electrical breakdown or failure; or
  - D. Road damage to tires.This Exclusion 2 does not apply if the damage results from the total theft of a **“covered auto”** or any **“non-owned auto”**.
3. **“Loss”** due to exposure or as a result of:
  - A. The discharge or release of radioactive materials or contamination;
  - B. A radioactive or nuclear event for which insurance is or can be afforded under a nuclear energy liability insurance policy;
  - C. War (declared or undeclared), including civil war;
  - D. Warlike action by the government or other authority using military personnel or agents. This includes action taken to hinder or defend against an actual or expected attack; or
  - E. Insurrection, rebellion or revolution.
4. **“Loss”** to any electronic equipment that reproduces, receives, or transmits audio, visual, or data signals. This includes, but is not limited to:
  - A. Radios and stereos;
  - B. Tape decks;
  - C. Compact disk systems;
  - D. Navigation systems;
  - E. Internet access systems;

- F. Personal computers;
- G. Video entertainment systems;
- H. Telephones;
- I. Televisions;
- J. Two-way mobile radios;
- K. Scanners; or
- L. Citizens band radios.

This Exclusion 4 does not apply to Custom Parts and Equipment Coverage or to electronic equipment that is permanently installed in a “*covered auto*” or any “*non-owned auto*” by the automobile’s manufacturer.

5. “*Loss*” to tapes, records, disks, or other media used with equipment described in Exclusion 4.
6. “*Loss*” to equipment designed or used for the detection or location of radar or laser.
7. A total loss to a “*covered auto*” or any “*non-owned auto*” due to destruction, confiscation, or seizure by governmental or civil authorities.
8. “*Loss*” to facilities or equipment used with “*your*” “*trailer*” including but not limited to:
  - A. Cooking, dining, plumbing, or refrigeration facilities;
  - B. Awnings or cabanas; and
  - C. Any other facilities or equipment not permanently attached to “*your*” “*trailer*”.
9. “*Loss*” to any “*non-owned auto*” when used by “*you*” or any “*family member*” without permission of the “*owner*” to do so.
10. “*Loss*” to any custom furnishings or equipment in or upon any “*covered auto*” or any “*non-owned auto*”. Custom furnishings or equipment include, but are not limited to equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which alter the appearance or performance of a vehicle. This includes, but is not limited to:
  - A. Body, engine, exhaust, or suspension enhancers;
  - B. Winches, anti-roll, or anti-sway bars;
  - C. Custom grilles, louvers, side pipes, hood scoops, or spoilers;
  - D. Custom wheels, tires, or spinners;
  - E. Custom chrome and paint;
  - F. Special carpeting or insulation;
  - G. Furniture or bars;
  - H. Height-extending roofs; or
  - I. Custom murals, paintings, or other decals or graphics.

This Exclusion 10 does not apply to:

  - A. “*Loss*” to “*custom parts or equipment*” to which Custom Parts and Equipment Coverage applies; or
  - B. To a cap, cover, or bed-liner in or upon any “*covered auto*” that is a pickup.
11. “*Loss*” to any “*non-owned auto*” being maintained or used by any person while employed or otherwise engaged in the “*business*” of:
  - A. Selling or leasing;
  - B. Repairing;
  - C. Servicing;
  - D. Testing;
  - E. Delivering;
  - F. Cleaning;
  - G. Storing;

H. Parking; or  
I. Towing;  
vehicles designed for use on public highways.

12. **“Loss”** to any vehicle located inside a facility designed for racing or high performance driving for the purpose of:
  - A. Competing in;
  - B. Practicing or preparing for any prearranged or organized racing or speed contest; or
  - C. Participating in any racing school, driving school, driver training, skills training, race driving experience, or racing adventure program.
13. **“Loss”** sustained while a **“covered auto”** or **“non-owned auto”** is being used in practicing or preparing for any prearranged, organized, or spontaneous street racing, speed, distance contest, stunting, or demolition contest activity.
14. **“Loss”** to, or loss of use of, a **“non-owned auto”** rented by:
  - A. **“You”**; or
  - B. Any **“family member”**;if a rental vehicle company is precluded from recovering such **“loss”** or loss of use from **“you”** or that **“family member”** pursuant to the provisions of any applicable rental agreement or state law.
15. **“Loss”** to a **“covered auto”** or **“non-owned auto”** for **“diminution in value”**.
16. **“Loss”** to a **“covered auto”**, **“non-owned auto”**, or **“trailer”** that is intended or is caused intentionally by a willful act by **“you”**, a **“family member”**, or its **“owner”**, or at the direction of **“you”**, a **“family member”**, or its **“owner”**. This Exclusion 16 will not apply to the extent of the legal interest of **“you”** or a **“family member”** who sustain the **“loss”** as the result of domestic violence if:
  - A. The applicable state law protects that interest;
  - B. That person has not participated in, contributed to, directed, or consented to the intentional act causing the **“loss”**;
  - C. A family violence complaint has been filed with the appropriate law enforcement authorities; and
  - D. That person cooperates in any investigation relating to the **“loss”**.
17. **“Loss”** to a **“covered auto”**, **“non-owned auto”**, or **“trailer”** while it is leased or rented to others, or provided in exchange for any form of compensation.
18. **“Loss”** to a **“covered auto”** or **“trailer”** while it is in the care, custody, or control of anyone engaged in the **“business”** of selling the **“covered auto”** or **“trailer”**.
19. **“Loss”** to personal property that is not permanently attached to the **“covered auto”**, **“non-owned auto”**, or **“trailer”**.

## LIMIT OF LIABILITY

1. **“Our”** limit of liability for **“loss”** will be the lesser of the:
  - A. Actual cash value of the stolen or damaged property;
  - B. Amount necessary to repair the property to its pre-loss physical condition; or
  - C. Amount necessary to replace the property with other property of like kind and quality.However, the most **“we”** will pay for **“loss”** to:

- A. Electronic equipment that reproduces, receives, or transmits audio, visual, or data signals, and is permanently installed in the *“auto”* but not by the *“auto”* manufacturer or in the factory, is \$1,000, unless increased coverage is purchased.
  - B. A *“trailer”* is \$1,000.
2. An adjustment for depreciation and physical condition, which may also be referred to as betterment, wear and tear, or prior damage, will be made in determining actual cash value in the event of a total loss.
  3. If a repair or replacement results in better than like kind or quality, *“we”* will not pay for the amount of the betterment.
  4. Any payment for damaged property will be reduced by the applicable deductible shown on *“your”* Declarations page and by the salvage value if *“you”* or the *“owner”* retain the salvaged property.
  5. If coverage applies to a *“non-owned auto”*, *“we”* will provide the broadest coverage applicable to any *“auto”* shown on the Declarations page. However, the highest deductible on any *“covered auto”* shall apply.
  6. In determining the amount necessary to repair damaged property, the amount to be paid by *“us”* will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured, or used, including, but not limited to:
    - A. Original manufacturer parts or equipment; and
    - B. Non-original manufacturer parts or equipment.
  7. No one will be entitled to duplicate payments for any elements of damages under this policy or any other source.
  8. Payment under **Part IV** due to theft of an *“auto”* is conditioned upon transfer of the title to *“us”* if *“we”* make a demand for the title.
  9. Payment under **Part IV** will not include any amounts for *“diminution of value”* or any change in market value due to the *“covered auto”*, *“non-owned auto”*, or *“trailer”* having sustained a *“loss”* or damage that has been repaired.

## PAYMENT OF LOSS

1. In the event an *“auto”* to which **Part IV** applies is stolen or abandoned, *“we”* or *“our”* authorized representative shall, when notified of the location of the *“auto”*, have the right to take custody of it for safekeeping. *“We”* may, at *“our”* expense, return any stolen property to:
  - A. *“You”*; or
  - B. The address shown on the Declarations page.
 If *“we”* return stolen property, *“we”* will pay for any damage resulting from the theft. *“We”* may keep all or part of the property at an agreed or appraised value.
2. Payment of a *“loss”* or damage under **Part IV** is not conditioned upon the repair of the *“auto”*. However, *“we”* shall be entitled to the following:
  - A. A completed "Certification of Automobile Repairs" as prescribed by the New York Department of Financial Services;
  - B. If the *“auto”* is repaired, an itemized repair invoice prepared by the automobile repairer; and
  - C. An inspection of the *“auto”*, whether or not the *“auto”* is repaired.

*“We”* may pay for a *“loss”* in money or cost of repair or replace the damaged or stolen property. If *“we”* pay for *“loss”* in money, *“our”* payment will include the applicable sales tax for the damaged or stolen property.

## LOSS PAYABLE CLAUSE

1. A total loss or damage under this policy shall be paid, as interest may appear, to **“you”** and the loss payee shown on the Declarations page. However, with **“your”** consent, **“we”** may pay a repair facility directly for the repair of a partial loss covered under this **Part IV**.
2. If we determine that fraud, misrepresentation, material omission, or an intentional act causing damage was committed by or at the direction of **“you”** or a **“family member”**, the interest of the loss payee will not be protected.
3. **“We”** reserve the right to cancel or nonrenew this policy, and any cancellation or nonrenewal shall terminate all agreements as to the loss payee’s interest. **“We”** will give the same notice of cancellation to the loss payee as **“we”** give to the named insured shown on the Declarations page. When **“we”** pay the loss payee, **“we”** shall, to the extent of payment, be subrogated to the loss payee’s rights of recovery.

## NO BENEFIT TO BAILEE

Coverage provided by this insurance policy shall not directly or indirectly benefit any carrier or other bailee for hire.

## OTHER SOURCES OF RECOVERY

When there are other sources of recovery or applicable insurance, **“we”** will pay only **“our”** share of the **“loss”**. **“Our”** share is the proportion that **“our”** limit of liability bears to the total of all applicable limits. However, any insurance **“we”** provide with respect to a **“non-owned auto”** shall be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by or to the **“owner”** of the **“non-owned auto”**;
2. Any other applicable physical damage insurance or self-insurance; or
3. Any other source of recovery applicable to the **“loss”**.

## APPRAISAL

1. If **“we”** and **“you”** do not agree on the amount of **“loss”**, either party may demand an appraisal of the **“loss”**. If a demand is made, each party will select a competent and impartial appraiser. The two appraisers will select an impartial and qualified umpire. Each appraiser will state separately the actual cash value and the amount of loss. In the event of a disagreement, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:
  - A. Pay its chosen appraiser; and
  - B. Bear the expenses of the appraisal and umpire equally.
2. Neither party waives any rights under this policy by agreeing to an appraisal.

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## PART V: INSURED’S DUTIES AFTER AN ACCIDENT OR LOSS

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**“We”** have no duty to provide coverage under this policy if an **“insured”** fails to comply with the following duties and **“our”** rights or interests are prejudiced:

1. **“We”** must be notified promptly of how, when, and where the **“accident”** or **“loss”** happened. Notice should also include:
  - A. The names and addresses of any injured persons and of any witnesses;

- B. All facts and circumstances, including weather conditions and a description of injuries; and
- C. The license plate numbers and descriptions of the vehicles involved.

Notice given by or on behalf of the **“insured”**, or written notice by or on behalf of the injured person or any other claimant, to any of **“our”** licensed agents in this state, if there are any such agents, with particulars sufficient to identify the **“insured”**, shall be deemed notice to **“us”**.

Failure to give any notice required to be given by this policy within the time prescribed shall not invalidate any claim made by the **“insured”**, injured person or any other claimant, unless the failure to provide timely notice has prejudiced **“us”**, or if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible.

In the event an **“auto”** to which coverage under **Part IV: Coverage for Physical Damage to an Auto** applies is stolen or abandoned, **“we”** or one of **“our”** authorized representative(s) shall, when notified of the location of that **“auto”**, have the right to take custody of that **“auto”** for safekeeping.

- 2. **“You”**, members of **“your” “household”**, and any person seeking any coverage must:
  - A. Cooperate with **“us”** in the investigation, settlement, and defense of any claim or lawsuit.
  - B. Promptly send **“us”** copies of any notices or legal papers received in connection with the **“accident”** or **“loss”**.
  - C. Submit, as often as **“we”** reasonably require, to physical exams paid for by **“us”** and conducted by doctors or medical providers **“we”** select.
  - D. Allow **“us”** to take signed and recorded statements, including statements and examinations under oath, and answer all questions **“we”** ask as often as **“we”** may reasonably require. **“We”** may require that statements and examinations be conducted outside of **“your”** presence or the presence of witnesses or other persons seeking coverage or benefits under this policy.
  - E. Authorize **“us”** to obtain:
    - (1) Medical records and reports;
    - (2) Data relevant to the facts of the **“accident”** or **“loss”** contained in an Event Data Recorder or similar device, with the consent of the **“owner”**;
    - (3) Employment and wage records; and
    - (4) Other relevant records, including, but not limited to:
      - (a) Electronic records;
      - (b) Business and financial records;
      - (c) Audio and video recordings;
      - (d) Phone records including cellular records;
      - (e) Computer records;
      - (f) Current and prior insurance claims records; and
      - (g) Loss payee records.
  - F. Submit a written notice of **“accident”**, claim or suit or proof of loss when required by **“us”**.
  - G. Perform any Additional Duties set forth under **Part II-A** and **Part III** when required by this policy.
- 3. A person seeking Coverage for Physical Damage to an Auto must also:
  - A. Take reasonable steps after the **“loss”** to protect the **“covered auto”** or **“non-owned auto”** and their equipment from further **“loss”**. **“We”** will pay reasonable expenses incurred to do this.
  - B. Promptly notify the police if a **“covered auto”** or **“non-owned auto”** is stolen.
  - C. Permit **“us”** to inspect, photograph, and appraise the damaged property before its repair or disposal.
  - D. Authorize **“us”** to move the damaged **“auto”** and/or **“trailer”** to a storage facility of **“our”** choice at **“our”** expense.



4. Coverage for Physical Damage to an Auto will not be effective until any inspection requirements under New York law, as amended, have been met, including as follows:
  - A. **“You”** must allow **“us”**, or **“our”** authorized representative, to inspect any **“covered auto”** or **“auto”** intended to be insured under the policy, except to the extent that this right is prescribed and limited by New York State Department of Financial Services Regulation No. 79 (11 NYCRR Part 67) implementing section 3411 of the New York Insurance Law, as amended. If permitted by New York law, **“we”** may waive or defer any auto inspection requirements.
  - B. When an inspection is required, **“you”** must cooperate and make the **“auto”** available for inspection.
  - C. If a required inspection is not performed timely, any Coverage for Physical Damage to an Auto will be suspended or terminated for that **“auto”** in accord with New York law.

## PART VI: GENERAL PROVISIONS

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### BANKRUPTCY

Bankruptcy or insolvency of **“you”**, a **“family member”** or any other person who is an insured, or the bankruptcy or insolvency of any such person’s estate, shall not relieve **“us”** of any obligations under this policy. In case judgment against the insured or the insured’s personal representative in an action brought to recover damages for **“bodily injury”** or **“property damage”** occasioned during the life of the policy shall remain unsatisfied at the expiration of 30 days from serving notice of entry of judgment upon the attorney of the insured, or upon the insured, and upon **“us”**, then an action may, except during a stay or limited stay of execution against the insured on such judgment, be maintained against **“us”** under the terms of this policy for the amount of such judgment not exceeding the amount of applicable limit or coverage under this policy.

### CHANGES

1. The terms of this policy and all endorsements may not be changed or waived except by a separate endorsement issued by **“us”**.
2. If there is a change to the information used to calculate the policy premium, **“we”** may adjust **“your”** premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:
  - A. The number, type, or use classification of insured vehicles;
  - B. Operators using insured vehicles;
  - C. The place of principal garaging of insured vehicles; or
  - D. Coverage, deductible, or limits.

If a change resulting from Provision 1 or 2 above requires a premium adjustment, **“we”** will make the premium adjustment in accordance with **“our”** rating rules.

3. If **“we”** make a change which broadens coverage under this edition of **“your”** policy without an additional premium charge, then that change will automatically apply to **“your”** policy as of the date **“we”** implement the change in **“your”** state. This Provision 3 does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:
  - A. A subsequent edition of **“your”** policy; or
  - B. An Amendatory Endorsement.

### FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on **“your”** insurance application. **“We”** may:

1. Terminate this policy;

2. Deny coverage for pending and potential claims under the policy; and
3. Seek reimbursement from “you” for all sums paid for claims under this policy;

if “you” or an “insured” person:

1. Made incorrect statements or representations to “us” with regard to any material fact or circumstance;
  2. Concealed or misrepresented any material fact or circumstance; or
  3. Engaged in fraudulent conduct;
- at the time of application or in connection with any “accident” or “loss” for which coverage or benefits are sought under this policy.

If this policy is issued as proof of financial responsibility, any denial of coverage under this Fraud or Misrepresentation provision shall not affect coverage under **Part I** for claims of injured persons who have not concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct.

#### **LEGAL ACTION AGAINST US**

1. No legal action may be brought against “us” until there has been full compliance with all the terms of this policy. In addition, under **Part I: Liability Coverage**, no legal action may be brought against “us” until:
  - A. “We” agree in writing that the person who is an “insured” under **Part I** has an obligation to pay; or
  - B. The amount of that obligation has been finally determined by judgment after trial.
2. With respect to a claim arising out of death or personal injury of any person, if “we” disclaim liability or deny coverage based on a failure to provide timely notice, then the injured person or other claimant may maintain an action against “us”, in which the sole question is “our” disclaimer or denial based on the failure to provide timely notice, unless “we” or the insured, within 60 days following such disclaimer or denial, initiates an action to declare the rights of the parties under the policy, and names the injured person or other claimant as a party to the action.
3. No person or organization has any right under this policy to bring “us” into any action to determine the liability of a person who is an “insured” under **Part I**.
4. There can be no abandonment to “us” of any “auto” or “trailer”. “We” have no duty to preserve or retain salvage for any purpose, including for use as evidence in any civil or criminal proceeding.

#### **OUR RIGHT TO RECOVER PAYMENT – SUBROGATION**

1. If “we” make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, “we” shall be subrogated to that right. That person shall do:
  - A. Whatever is necessary to enable “us” to exercise “our” rights; and
  - B. Nothing after an “accident” or “loss” to prejudice “our” rights.

However, “our” rights in this Provision 1 do not apply under **Part IV: Coverage for Physical Damage to an Auto**, against any person using a “covered auto” with permission of the “owner” to do so.

2. If “we” seek recovery from a liable party, “we” shall be authorized by “you” to also seek recovery of any applicable deductible, and “you” agree to be bound on a pro rata basis to any compromise settlement

agreement entered into by “*us*” with the liable party or the outcome of any arbitration “*we*” enter into for those sums.

## **POLICY PERIOD AND TERRITORY**

1. This policy applies only to “*accidents*” and “*loss*” that occur:
  - A. On or after the effective date and time shown in the Declarations page;
  - B. After it becomes effective but prior to cancellation, termination or 12:01 a.m. on the expiration date shown on the Declarations page, whichever is earlier; and
  - C. Within the policy territory.
2. Except when otherwise stated in this policy, the policy territory is:
  - A. The United States of America, its territories or possessions;
  - B. Puerto Rico; and
  - C. Canada.

This policy also applies to any “*loss*” and “*accident*” involving a “*covered auto*” while it is being transported between ports within the policy territory.
3. No coverage is provided under this policy for any “*accident*” or “*loss*” arising out of the use or maintenance of any vehicle or “*trailer*” in the Republic of Mexico.

## **TERMINATION**

### **1. Cancellation**

This policy may be cancelled during the policy period as follows:

- A. The named insured shown in the Declarations page may cancel by:
  - (1) Returning this policy to “*us*”;
  - (2) Giving “*us*” advance written notice of the date cancellation is to take effect; or
  - (3) Giving “*us*” advance notice by any other method “*we*” agree to accept.
- B. During the first 60 days of the initial policy period “*we*” may cancel the policy for any reason.
- C. “*We*” may cancel by mailing or delivering to the named insured shown in the Declarations page at the address shown in this policy:
  - (1) At least 15 days notice if cancellation is for nonpayment of premium; or  
or
  - (2) At least 20 days notice in all other cases.

The notice will include the reason why the policy is being cancelled.
- D. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, “*we*” will cancel only:
  - (1) For nonpayment of premium, fees or charges.
  - (2) If “*your*” driver’s license or that of any driver who customarily uses a “*covered auto*” has been suspended or revoked. This must have occurred:
    - (a) During the policy period; or
    - (b) Since the last anniversary of the original effective date if the policy period is other than 1 year.

This shall not apply to a suspension of a driver’s license issued pursuant to Section 510-b(1) of the New York Vehicle and Traffic Law, as amended, or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date of cancellation.

- (3) For discovery of fraud or material misrepresentation in:
  - (a) Obtaining the policy; or
  - (b) Presenting a claim.

(4) If required by a program approved by the Superintendent of Financial Services as necessary because a continuation of the present premium volume would be hazardous to the interests of “our” policyholders or creditors, or the public.

E. Rather than cancelling this policy, “we” may condition continuation of the policy upon:

(1) A change of limits; or

(2) The elimination of any coverage not required by law.

“We” will mail or deliver to the named insured shown in the Declarations page at the address shown in this policy notice of a conditional continuation at least 20 days before the effective date of such action.

## 2. Nonrenewal

If “we” decide:

A. Not to renew or continue this policy;

B. To condition renewal of this policy upon a change of limits or elimination of any coverage not required by law; or

C. To substitute at the annual renewal date another approved policy form for this policy;

“we” will mail or deliver notice, including the reason for the action, to the named insured shown in the Declarations page at the address shown in this policy. Notice will be mailed or delivered at least 45 days, but not more than 60 days, before the end of the policy period.

## 3. Automatic Termination

A. If “you” obtain other insurance on a “covered auto”, any similar insurance provided by this policy will be removed as to that “auto” on the effective date of the other insurance.

B. If a “covered auto” is sold, assigned, gifted or transferred to anyone other than a “family member”, the insurance “we” provide for that “auto” shall automatically terminate at the time it is sold, assigned, gifted or transferred.

## 4. Other Termination Provisions

A. “We” may deliver any notice instead of mailing it. Proof of mailing or delivery of any cancellation notice or nonrenewal notice shall be sufficient proof of notice.

B. As a condition of the issuance of this policy, “you” have consented to all notices and communication from “us” to “you” being sent electronically via e-mail or by other electronic means in lieu of any other method, and that “our” transmittal of any notice or communication to “you” via e-mail or via other electronic means shall have the same force and effect as if provided in writing and sent to “you” via U.S. Mail with proof of mailing.

C. If this policy is cancelled, “we” will send “you” any premium refund due to “you” within a reasonable period of time. “Our” making of a refund is not a condition of cancellation.

D. The effective date of cancellation stated in a notice shall become the end of the policy period.

E. The effective date shown in any notice may be any day of the year, including on a Saturday, Sunday, or public holiday.

F. This policy is neither severable nor divisible for purposes of policy termination. Any termination of the policy will be effective for all coverage for all persons and all “autos”. This applies even when the reason for policy termination is due to a change to one “auto” or the coverage on one “auto”.

## PAYMENT OF PREMIUM AND CONDITION PERFORMANCE

1. “You” must pay premium, fees and charges, as applicable. Fees or charges may include, but are not limited to:

A. Late payment fees;

B. Non-Sufficient Funds (NSF) check fees;

C. Reinstatement fees;

- D. Installment fees if “you” pay premium by way of an installment plan by some means other than electronic funds transfer; and
- E. New York State’s motor vehicle law enforcement fee.

This policy may be canceled due to nonpayment of any premium, fees or charges.

- 2. “You” may pay “your” premium, or any fees or charges, by phone or internet 24 hours per day, 7 days a week.
- 3. “We” do not waive any of “our” rights if “we” process a deposit after the due date so that “we” may issue a refund to “you” when the policy is cancelled.
- 4. The last day of any time period required by this policy to:
  - A. Pay premium, fees or charges;
  - B. Perform a condition; or
  - C. Give notice;may be any day of the year, including on a Saturday, Sunday or public holiday.

#### **TRANSFER OF YOUR INTEREST IN THIS POLICY**

- 1. “Your” rights and duties under this policy may not be assigned without “our” written consent. However, if a named “insured” shown in the Declarations page dies, coverage will be provided for:
  - A. The surviving spouse if a resident in the same “household” at the time of death. Coverage applies to the spouse as if a named “insured” shown in the Declarations page; and
  - B. The legal representative of the deceased person as if a named “insured” shown in the Declarations page. This applies only with respect to the representative’s legal responsibility to maintain or use a “covered auto”.
- 2. Coverage will only be provided until the end of the policy period.

#### **CONFORMITY WITH STATUTE**

Any provision of this policy that conflicts with a statute of the state “you” listed on “your” application as “your” garaging address shall be changed to conform to such law.

#### **TWO OR MORE AUTO POLICIES**

Except for any applicable coverage under **Part I**, if this policy and any other auto insurance policy issued to “you” by “us” apply to the same “accident”, the maximum limit of “our” liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

#### **RENTAL VEHICLE COVERAGE ENDORSEMENT**

This Rental Vehicle Coverage endorsement applies only to, and is part of, every motor vehicle liability insurance policy that covers less than five private passenger motor vehicles.

For each such policy, this endorsement provides coverage for the insured’s obligations in the event of actual damage to, or loss of, any rental vehicle, including loss of use, rented by the insured anywhere in the United States, its territories or possessions, and Canada under a rental agreement with a term no longer than thirty continuous days, regardless of where such rental vehicle may be registered, rented or operated.

Rental Vehicle Coverage shall provide protection regardless of: (a) fault; and (b) whether the rental vehicle is rented or operated for business or pleasure, unless used for transporting persons or property for hire.

**Definitions:**

- (a) "Insured" means named insured or any relative;
- (b) "Relative" means a spouse, child or other person related to the named insured by blood, marriage or adoption (including a ward or foster child), who regularly resides in the insured's household, including any such person who regularly resides in the household, but who is temporarily living elsewhere;
- (c) "Private passenger motor vehicle" means:
  - (1) a motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by an individual or by husband and wife, and is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
  - (2) a motor vehicle with a pick-up body, a delivery sedan, panel truck or van, owned by an individual or by husband or wife who are residents of the same household, or by a family farm co-partnership or a family farm corporation, and not customarily used in the occupation, profession or business of the insured other than farming or ranching, whether or not used in the course of driving to or from work.
- (d) "Long-term contract" means a contract with a term of six months or longer.
- (e) "Rental vehicle" means a vehicle of the type described in (c) above, if:
  - (1) not used for transporting persons or property for hire; and
  - (2) owned by a person engaged in the business of renting or leasing vehicles rented or leased without a driver to persons other than the owner and is registered in the name of such owner.

**Priority of payment**

- (a) In no event shall payment be made under this endorsement duplicating payment made by this policy, another policy or another insurer for the same claim.
- (b) If more than one policy could cover the claim, payment or the claim shall be made in the following order of priority:
  - (1) the policy with respect to which the person is a named insured;
  - (2) if the person is not a named insured on any policy, the policy with respect to which the person is an insured; and
  - (3) where two or more policies provide coverage of equal priority, the policy or insurer with respect to which the claim is first submitted.
- (c) An inquiry about coverage or notification of damage to, or loss of, a rental vehicle shall constitute submission of a claim.

**Exclusions:**

No Rental Vehicle Coverage shall be provided:

- (a) arising beyond the geographic limitations of the policy to which Rental Vehicle Coverage is endorsed;
- (b) to an insured who has committed fraud in connection with damage to, or loss of, a rental vehicle, including loss of use; or
- (c) for damage to, or loss of, a rental vehicle, including loss of use, which the rental vehicle company is precluded from recovering from the insured:
  - (1) pursuant to the terms of the rental agreement; or
  - (2) due to the prohibitions of section 396-z of the General Business Law or similar statutory provisions of other jurisdictions.

**Subrogation:**

- (a) In the event of any payment under this endorsement, the insurer is subrogated to the extent of such payments to the rights of the person to whom, or for whose benefit, such payments were made.
- (b) Such person shall execute and deliver instruments and papers and do whatever else is necessary to secure such subrogation rights, and shall not act in a manner that may prejudice such rights.
- (c) Subrogation shall not be pursued against any person who operated the rental vehicle with the insured's permission.