



SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORIST ENDORSEMENT (NEW YORK)

Refer to Supplemental Declarations if information is not shown on this form.

We provide coverage under this endorsement subject to the *terms* contained in the *Business Automobile* Provisions.

AGREEMENT.

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 bodily sickness, bodily 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 *business 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.

2. 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.

3. 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 *coverage territory*.

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 this SUM coverage except: **What You Must Do In Case Of Loss; Misrepresentation, Concealment, or Fraud; and Cancellation** 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 is the amount of coverage for all damages due in *bodily injury* in any one *accident*. (When split limits are utilized, 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 Insurance 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.