



## Uninsured Motorists 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 for the premium for this coverage, to provide Uninsured Motorists (U/M) coverage, subject to the following *terms* and conditions:

### INSURING AGREEMENTS.

We will pay all sums that 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 an *uninsured motor vehicle's* ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions of this Uninsured Motorists Endorsement – New York.

This U/M coverage applies only to *accidents* occurring within the policy period and within the *state*.

The determination as to whether the *insured* or the *insured's* legal representative is legally entitled to recover such damages, or the amount thereof, shall be settled by agreement between the *insured* or the *insured's* legal representative and *us*; should they fail to agree, by arbitration.

**DEFINITIONS:** For purposes of this Uninsured Motorists Endorsement- New York, 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* owned by *you* or *your* spouse and used by or with the permission of either provided it is *insured* for U/M coverage under this policy; or
  - (ii) any other *motor vehicle* while being operated by *you* or *your* spouse, excepting a person occupying a vehicle being used as a public or livery vehicle and such vehicle is not registered in the State of New York;
- (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. *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 U/M limits 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 U/M 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, and *relatives* of either 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 U/M 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.
- c. **Hit and Run Motor Vehicle.** The term *hit and run vehicle* refers to a *motor vehicle* which has caused *bodily injury* to an *insured* resulting from direct contact by the *hit and run vehicle* and the *insured* or with a *motor vehicle* the *insured* is *occupying* at the time of the *accident* causing such *bodily injury*, provided:
- (1) all reasonable efforts have been made to ascertain the identity of the *motor vehicle* and the owner and operator and either the identity of the *motor vehicle* and the owner and operator cannot be established, or the identity of the operator, who was operating the *motor vehicle* without the owner's consent; cannot be established;
  - (2) 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
  - (3) 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*.
- d. **Bodily Injury.** The term *bodily injury* means bodily harm including bodily sickness, bodily 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.

## EXCLUSIONS.

This Uninsured Motorists Endorsement – New York does not apply to:

- a. to *bodily injury* or necessary care and services required by an *insured* as a result of an *accident* sustained while operating a *motor vehicle* in violation of an order of suspension or revocation;
- b. 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 8.
- c. to *bodily injury* to an *insured* incurred while occupying a *motor vehicle* owned by that *insured*, if such *motor vehicle* is not insured for U/ M 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.
- d. 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 Uninsured Motorists 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 U/ M 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 U/ M 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. **Uninsured Motorists Limits:** The U/M limits payable under this endorsement shall be: all sums, not exceeding a maximum amount or limit of twenty five thousand dollars exclusive of interest and costs, on account of injury to and all sums, not exceeding a maximum amount or limit of fifty thousand dollars exclusive of interest and costs, on account of death of one person, in any one *accident*, and the maximum amount or limit, subject to such limit for any one person so injured of fifty thousand dollars or so killed of one hundred thousand dollars exclusive of interest and costs, on account of injury to, or death of, more than one person in any one *accident*, which the *insured* or his legal representative shall be entitled to recover as damages from an owner or operator of an *uninsured motor vehicle*.  
With respect to *bodily injury* sustained, the amount payable will be reduced by:
  - a. all sums payable to any *insured* by or on behalf of the owner or operator of the *uninsured motor vehicle*; and
  - b. all sums payable under another insurance policy or any statutory benefit similar to that provided by this endorsement.
6. **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 for U/M 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*.
7. **Priority of Coverage:** When an *insured* sustains *bodily injury* caused by *accident* while occupying a vehicle owned by someone other than the named *insured*, this coverage shall apply only as excess over other collectible insurance available to the *insured* as primary insurance. This U/M coverage shall apply only to the extent that its limits of liability exceed the applicable limits of such other insurance.  
In the event that this U/ M Endorsement is called upon to pro-rate a covered loss with other policies, *we* will pay in that same proportion that *our* limits bear to the total of all limits at risk.
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, releases 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 U/M 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.
9. **Non-Duplication:** This U/M 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.
10. **Arbitration:** If any *insured* making claim under this U/M endorsement 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 U/M 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 U/M 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 U/M coverage. For purposes of this Condition, the term *insured* includes any person authorized to act on behalf of the *insured*.

11. **Subrogation:** If *we* make a payment under this U/M 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 U/M 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.
13. **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 U/M coverage.
14. **Survivor Rights:** If *you* or *your* spouse, if a resident of the same household, dies, this U/M 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.
15. **Termination:** This endorsement shall terminate:
  - (1) upon termination of the policy to which this U/M endorsement is a part; and
  - (2) upon termination of the New York registration applicable to all *motor vehicles* owned by the named *insured* or spouse.