

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT — NEW YORK

This endorsement is a part of the policy. Except for the changes this makes, all other provisions of the policy remain the same and apply to this endorsement.

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 (SYMBOL U), 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 person while acting in the scope of that person's duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:
 - (i) your employee and you are a fire department;
 - (ii) your member and you are a fire company, as defined in General Municipal Law section 100;
 - (iii) your employee and you are an ambulance service, as defined in Public Health Law section 3001; or
 - (iv) your member and you are a voluntary ambulance service, as defined in Public Health Law section 3001;
- (3) 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
- (4) 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), (2) or (3) 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 motor vehicle (including a vehicle that was stolen, operated without the

owner's permission or unregistered) at the time of the accident; or

- (2) the owner and operator cannot be identified (including a hit-and-run motor 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:
 - (a) 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
 - (b) 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 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 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” shall not include a motor vehicle that is:

- (1) insured under the liability coverage of this policy; or
 - (2) owned by you, 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 motor 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" means a state, territory or possession of the United States, the District of Columbia or 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 set forth in 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 to:

1. 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, however this provision shall be subject to Condition 9;

2. 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. non-economic loss resulting from bodily injury to an insured 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; or
4. bodily injury to an insured incurred while the insured motor vehicle is used by a **transportation network company driver** who is logged onto a **transportation network company's digital network** but is not engaged in a **transportation network company prearranged trip** or while the driver provides a **transportation network company prearranged trip** pursuant to article 44-B of the Vehicle and Traffic Law.

CONDITIONS

1. **Policy Provisions:** None of the Insuring Agreements, Exclusions, Insured's Duties, or General Terms of the policy shall apply to this SUM coverage except: "Notice to Us of an Accident or Loss"; "Nonrenewal"; "Cancellation"; and "Concealment or Fraud" if applicable.
2. **Notice and Proof of Claim:** As soon as practicable, the insured or other person making a claim shall give us written notice of claim under this SUM coverage.
 - (i) 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.
 - (ii) 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 calendar 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, the 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 therefore), shall upon each request from us authorize us to obtain copies of relevant medical reports and records.

4. **Notice of Legal Action:** If the insured or the 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 and Maximum Payments:**
- (a) The SUM limits payable under this endorsement shall be determined as follows:
- (1) if an accident results in bodily injury excluding death to one or more persons, then we will provide the SUM limits stated in the Declarations; or
- (2) if an accident results in the death of one or more persons, then we will provide the greater 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; or
- (3) if an accident results in both bodily injury to one or more persons and the death of one or more persons, then we will provide the greater of the SUM limits stated in the Declarations or the limits required by the mandatory uninsured motorists (UM) coverage as follows:
- \$25,000 per injured person and, subject to this per person limit,
- \$50,000 to two or more persons injured as the result of any one accident; and
- \$50,000 per person for bodily injury resulting in death and, subject to this per person limit,
- \$100,000 to two or more persons for bodily injury resulting in death as the result of any one accident.
- (b) Regardless of the number of insured's, our maximum payment under this SUM endorsement shall be the difference between:
- (1) the SUM limits; and
- (2) 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.
- (c) 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.
6. **Non-Stacking:** Regardless of the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown in this policy or premium paid, the limits, whether for UM coverage or SUM coverage, shall never be added together or combined for two or more motor vehicles to determine the extent of insurance coverage available to an insured who was injured in the same accident.
7. **Priority of Coverage:** If an insured is entitled to UM coverage or SUM 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 motor 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.
8. **Exhaustion Required:** Except as provided in Condition 9, we will pay under this SUM coverage only after the limits of liability have been exhausted 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.
9. **Release or Advance:**
- (a) 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, a release may be executed with such party after thirty calendar days from our receipt of your 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.
- (b) 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.

- (c) An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

10. 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 New York Workers' Compensation Law article nine or other similar law;
- (c) any amounts recovered or recoverable pursuant to New York Insurance Law article fifty-one 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.

11. Arbitration:

- (a) If any insured makes a 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 we 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 an organization designated by the Superintendent of Financial Services, pursuant to procedures approved by the Superintendent of Financial Services for this purpose.
- (b) If, the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by New York Insurance Law section 3420(f)(1) and New York Vehicle and Traffic Law Article 6 or 8, 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.

- 12. Subrogation:** If we make a payment under this SUM coverage, then we have the right to recover the amount of the 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 9, such person shall do nothing to prejudice this right.

- 13. 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.

- 14. 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.

- 15. Survivor Rights:** If you or your spouse, if a resident of the same household, dies, then this SUM endorsement 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 an insured at the time of such death.