

New York Commercial Policy



PERSONAL



COMMERCIAL



MOTORCYCLE



RV



HOMEOWNERS



FLOOD



HEALTH & LIFE

10954 05/16

National General 
Auto, Home & Health Insurance

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Integon National Insurance Company
New South Insurance Company

THESE POLICY PROVISIONS WITH THE DECLARATIONS PAGE,
YOUR APPLICATION AND ENDORSEMENTS, IF ANY, ISSUED TO
FORM A PART THEREOF, COMPLETE THIS POLICY.

NEW YORK
COMMERCIAL
AUTOMOBILE POLICY

Please read your contract carefully. Provisions of this contract and its endorsements (if any) restrict coverage. Be certain you understand all of the coverage terms, the exclusions, and your rights and duties.

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POLICY AGREEMENT

We agree with **you**, in return for **your** premium payment, to insure **you** subject to all the terms of this policy.

We will insure **you** for the coverages and Limits of Liability for which a premium is shown in the Declarations of this policy.

WHAT TO DO IN CASE OF AN AUTO ACCIDENT OR LOSS

GENERAL DUTIES

In the event of an **accident** or **loss**, **you** must report it to **us** as soon as possible by contacting **our** nearest authorized claims office or **your** Agent. The report must give the time, place and circumstances of the **accident** or **loss**, including the names and addresses of any injured persons and of any witnesses to the extent possible.

Failure to give notice as required herein may affect coverage provided under this policy but, shall not invalidate a claim made by the insured, an injured person or any other claimant under this policy unless the failure to provide timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

If we deny a claim arising out of death or personal injury based upon the failure to provide timely notice, then the injured person or other claimant may maintain an action directly against us, in which the sole question is our disclaimer or denial based on the failure to provide timely notice, unless within sixty days following such disclaimer or denial, you or we: (A) initiate an action to declare the rights of the parties under the insurance policy; and (B) name the injured person or other claimant as a party to the action.

A person claiming any coverage under their policy must:

1. Cooperate with **us** in the investigation, settlement or defense of any claim or lawsuit.
2. Promptly send **us** copies of any notices or legal papers filed or received in connection with the **accident** or **loss**.
3. Submit, as often as **we** reasonably require, to physical examinations by physicians we select. **We** will pay for these examinations.
4. Authorize **us** to obtain:
 - a. medical reports; and
 - b. other pertinent records.
5. Submit a written proof of **loss** when required by **us**.

6. Attend hearings and trials as required.
7. Give statements and submit to examinations under oath as **we** may reasonably require.

ADDITIONAL DUTIES FOR COVERAGE FOR DAMAGE TO YOUR AUTO

A Person seeking coverage for damage to **your insured auto**, must also:

1. Take reasonable steps after loss to protect **your insured auto** and its equipment from further **loss**. **We** will pay reasonable and necessary expenses incurred to do this. Keep a record of **your** expenses for consideration in the settlement of a claim.
2. Promptly notify the police if **your insured auto** or any of its equipment is stolen or vandalized; and
3. Permit **us** to inspect and appraise the damaged property before its repair or disposal.

DEFINITIONS USED THROUGHOUT THIS POLICY

The following words and phrases have special meaning when used throughout this policy, unless specifically modified in the endorsements:

1. "**We**," "**us**" and "**our**" mean the Company providing this insurance.
2. "**You**" and "**your**" mean the person or organization shown in the Declarations as the named insured.
3. "**Bodily injury**" means **bodily injury**, sickness, disease or death of any person.
4. "**Property damage**" means damage to tangible property, including loss of its use.
5. "**Auto**" means a land motor vehicle designed for travel on public roads. It does not include mobile equipment.
6. "**Mobile Equipment**" means any of the following types of land vehicles, including any attached machinery and equipment:
 - a. Equipment such as: Bulldozers, power shovels, cranes, rollers, graders, diggers, mixers, compressors, generators, drills, welders, pumps, farm implements and machinery, forklifts, street sweepers or other cleaners and other similar specialized equipment.
 - b. Vehicles **you** use solely on premises **you** own or rent and on accesses to public roads that adjoin these premises.
 - c. Vehicles designed for normal use off public roads or which do not require licensing.
 - d. Vehicles which travel on crawler treads.

- e. Non-self-propelled vehicles used primarily to provide mobility to the following permanently attached equipment. Air compressors, pumps, generators, spraying, welding, cleaning, lighting, geophysical exploration and well servicing equipment, cherry pickers or other devices used to raise or lower workers, snow removal, or road maintenance.
- f. Vehicles used primarily for purposes other than transportation of persons or cargo. However, self-propelled vehicles with permanently attached equipment listed below are not mobile equipment but will be considered autos:
 - 1) Snow removal, road maintenance and street cleaning equipment.
 - 2) Any equipment listed in Definition 6, Part e.
- 7. "**Accident**" includes continuous or repeated exposure to the same conditions causing **bodily injury** or **property damage** the **insured** neither expected nor intended.
- 8. "**Loss**" means direct and **accidental** damage or loss.
- 9. "**Your Insured Auto**" means:
 - a. Any **auto** described in the Declarations and any **auto you** replace it with.
 - b. Any additional **auto** which **you** acquire during the Policy period provided we already insure all **autos** that **you** own.
 - c. Any **auto** not owned by **you** while **you** are temporarily driving it as a substitute for any other **auto** described in this definition because of its withdrawal from normal use due to breakdown, repair, servicing, **loss**, or destruction. Coverage for **Damage to Your Auto** does not apply to these temporary substitute **autos**.
- 10. "**Occupying**" means in, on, getting into, off, or getting out of.
- 11. "**State**" means the District of Columbia, any state, territory or possession of the United States and any province of Canada.
- 12. "**Relative**" means, if **you** are an individual, a person living in **your** household related to **you** by blood, marriage or adoption, including a ward or foster child.
- 13. "**Insured**" means any person or organization qualifying as an insured under the coverage wording of each separate coverage section of this Policy.
- 14. "**Pollutant**" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- 15. "**Trucker**" means any person or entity engaged in the business of transporting property by auto for hire.

PART I > LIABILITY TO OTHERS

INSURING AGREEMENT

COVERAGE FOR BODILY INJURY / PROPERTY DAMAGE

We will settle or defend as we consider appropriate, any claim or suit asking for damages, except punitive or exemplary damages, for which an **Insured** is legally liable because of **bodily injury** and **property damage** caused by **accident** and arising out of the ownership, maintenance or use of **your insured auto**. In addition to our limit of liability, **we** will pay all defense costs **we** incur. Defense must be provided even if claim is groundless.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this part, "**Insured**" means:

1. **You** while driving **your insured auto**.
2. Any other person or organization with respect only to legal liability of that person or organization for acts or omissions of any person covered under this part while driving **your insured auto**. However, the owner or anyone else from whom **you** hire or borrow **your insured auto** is an **insured** only if that **auto** is a trailer connected to **your insured auto you** own.
3. Anyone else driving **your insured auto** with **your** expressed permission and within the scope of that expressed permission. However, the owner or anyone else from whom **you** hire or borrow **your insured auto** is an **insured** only if that **auto** is a trailer connected to **your insured auto you** own.

When used in **PART I - LIABILITY TO OTHERS**, "**autos**" include:

1. Trailers with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. **Mobile Equipment** but only while being carried or towed by **your insured auto**.

ADDITIONAL PAYMENTS

We will pay, in addition to **our** limit of liability:

1. All costs **we** incur in the settlement of a claim or defense of a lawsuit seeking damages payable under the terms of this policy.
2. Interest accruing after a judgment is entered in any lawsuit **we** defend where damages are payable under the terms of this policy. **Our** duty to pay interest ends when **we** offer to pay that part of the judgment which does not exceed **our** limit of liability. If there is an excess liability policy, **we** will only pay interest on that portion of the judgment that does not exceed **our** limit of liability.

3. Premiums on appeal and attachment bonds required in a lawsuit **we** defend. **We** will not pay the premium for an attachment bond that is more than our limit of liability. **We** must apply for or furnish bonds at the request of an **insured**.
4. Up to \$250 for a bail bond required due to an **accident**-related traffic law violation resulting in **bodily injury** or **property damage** covered by PART I - LIABILITY TO OTHERS.
5. Reasonable expenses, other than loss of earnings, when **we** ask **you** to attend trials or hearings.
6. Expenses incurred by **you** for first aid rendered to others at the time of the **accident**.
7. Any other expenses incurred at **our** request.

OUT-OF-STATE COVERAGE EXTENSIONS

While **your insured auto** is away from the **state** where it is licensed **we** will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where **your insured auto** is being used.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where **your insured auto** is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

EXCLUSIONS

PLEASE READ THE EXCLUSIONS CAREFULLY. IF ANY EXCLUSION APPLIES, **YOU** WILL NOT HAVE COVERAGE FOR A **LOSS** THAT OTHERWISE WOULD BE COVERED UNDER THIS POLICY.

PART I - LIABILITY TO OTHERS does not apply to:

1. **Bodily injury** or **property damage** either expected or caused intentionally by or at the direction of an **insured**.
2. Any liability assumed by an **insured** under any contract or agreement.
3. Any obligation for which an **insured** or the insurer of that **insured** may be held liable under a Worker's Compensation, Unemployment Compensation, Disability Benefits law or any similar law.
4. **Bodily injury** to a fellow employee of the **insured** arising out of and in the course of his employment. This does not apply to injuries for which the **insured** or his employee are legally responsible, or for which Workers Compensation coverage is not available to the injured party.

5. **Bodily injury** or **property damage** arising out of **auto** business operations, including, but not limited to, the selling, repairing, servicing, storing or parking of **autos**.
6. Damage to property owned or being transported by an **insured**, or in the care, custody, or control of the **insured**, including damage to **autos** being towed by the **insured**.
7. **Bodily injury** or **property damage** resulting from the loading of property before it has been accepted by the **insured** for loading in or on **your insured auto** or the unloading of property after it has been taken off or out of **your insured auto** and deposited at the place of final delivery.
8. **Bodily injury** to **you** or an **insured** while operating **your insured auto**.
9. **Bodily injury** to **you**, or an **insured**.
10. **Bodily injury** or **property damage** due to war (declared or undeclared), civil war, insurrection, rebellion, revolution, or to any act or condition incidental to these with respect to expenses for immediate medical and surgical treatment under the Additional Payments section.
11. **Bodily injury** or **property damage** caused when **your insured auto** is used as a public or livery conveyance. This exclusion does not apply to shared-expense car pools whose members are on the way to or from the same place of employment.

LIMITS OF LIABILITY

Regardless of the number of **your insured autos**, separate premiums paid, **insureds**, claims made, vehicles involved or lawsuits brought, we will pay up to the limits of liability shown on the Declarations Page subject to the following:

1. The limit for "each person" is the maximum **we** will pay for **bodily injury** sustained by any one person in any one **accident**, and includes all derivative claims which include but are not limited to loss of society, loss of companionship, loss of services, loss of consortium and wrongful death.
2. Subject to the **bodily injury** limit for "each person," the limit for "each accident" is the maximum **we** will pay for **bodily injury** sustained by two or more persons in any one **accident** and includes all derivative claims which include but are not limited to loss of society, loss of companionship, loss of services, loss of consortium and wrongful death.
3. The **property damage** liability limit for "each accident" is the maximum **we** will pay for all damage to property in any one **accident**.

All **bodily injury** and **property damage** resulting from continuous and repeated exposure to substantially the same conditions will be considered as resulting from one **accident**. Any amount payable under this coverage to or for an **insured** will be reduced by any payment made to that person under any Uninsured/Supplementary Uninsured Motorists Coverage of this Policy.

LIMITS OF LIABILITY AMENDATORY ENDORSEMENT

With respect to PART I - LIABILITY TO OTHERS, if the **bodily injury** results in death, the company will provide supplemental limits of liability of \$50,000 for such **bodily injury** resulting in death sustained by each person as the result of any one occurrence 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 each occurrence.

The limits of liability of this endorsement shall be reduced as follows:

1. In the event of the death of one person, the \$50,000 limit shall be reduced by any amounts paid to or on behalf of that person under PART I - LIABILITY TO OTHERS, and
2. In the event of the death of two or more persons, and subject to the limitation in item 1 above, the \$100,000 limit shall be reduced by any amounts paid to or on behalf of those persons under PART I - LIABILITY TO OTHERS.

If the **bodily injury** results in death, the company will provide supplemental limits of liability of \$50,000 for such **bodily injury** resulting in death sustained by one person as the result of any one **accident** and, subject to this limit of each person, \$100,000 for such **bodily injury** resulting in death sustained by two or more persons as the result of any one **accident**.

The limits of insurance of this endorsement shall be reduced as follows:

1. In the event of the death of one person, the \$50,000 limit shall be reduced by any amount paid to or on behalf of that person under the New York Automobile Accident Indemnification Endorsement; and
2. In the event of the death of two or more persons, and subject to the limitations in item 1 above, the \$100,000 limit shall be reduced by any amounts paid to or on behalf of those persons under the New York Automobile Accident Indemnification Endorsement.

All **bodily injury** and **property damage** resulting from continuous and repeated exposure to substantially the same conditions will be considered as resulting from one **accident**. Any amount payable under this coverage to or for an insured will be reduced by any payment made to that person under any Uninsured/Supplementary Uninsured Motorists Coverage of this Policy.

PART II > EXPENSES FOR MEDICAL SERVICES TO INSUREDS

INSURING AGREEMENT

If **you** purchase this coverage, **we** will pay reasonable expenses incurred within one year from the date of the **accident** for necessary medical and funeral services because of **bodily injury** sustained in the **accident** by an **insured** while driving **your insured auto**.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this PART II - EXPENSES FOR MEDICAL SERVICES TO INSUREDS, "**Insured**" means:

1. **You**, if an individual, or a **relative** while **occupying your insured auto**.
2. Any other person **occupying your insured auto** while being used by **you, a relative** or another person if that person has **your** expressed permission to use **your insured auto** and it is used within the scope of **your** expressed permission.

EXCLUSIONS

PLEASE READ THE EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, **YOU WILL NOT HAVE COVERAGE FOR A LOSS** THAT OTHERWISE WOULD BE COVERED UNDER THIS POLICY.

We do not cover **bodily injury** to any person:

1. Sustained while **occupying your insured auto** while being used as a public or livery conveyance. This exclusion does not apply to shared-expense **auto** pools whose members are on the way to or from the same place of employment.
2. Sustained while **occupying** a vehicle while being used as a residence or premises.
3. Sustained while **occupying** or when struck by an **auto**, other than **your insured auto**, which is owned by or furnished or available for regular use by **you** or a **relative**.
4. Occurring in the course of employment if benefits are payable or must be provided under a Workers' Compensation Law or similar law.
5. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or a consequence of any of these.
6. Occurring while an **insured** commits or attempts to commit a felony, or by an **insured** while involved in an illegal occupation.
7. Sustained while **your insured auto** is driven in or preparing it for any prearranged or organized race, speed contest or performance contest.

8. Sustained while **your insured auto** is being operated by a person without **your** expressed permission.
9. While employed in the business of selling, servicing, repairing, or parking **autos**.

LIMITS OF LIABILITY

Regardless of the number of **autos** described in the Declarations Page, **insureds**, claims or Policies, or **autos** involved in the **accident**, **we** will pay no more than the Limit of Liability shown for this coverage in the Declarations Page for one or more persons injured in any one **accident**.

Any amount paid or payable for the same medical expenses under PART I - LIABILITY TO OTHERS, PART IV - UNINSURED MOTORIST COVERAGE or the Supplementary Uninsured Motorists (SUM) endorsement of this policy shall be deducted from the amounts payable under PART II - FOR MEDICAL SERVICES TO INSUREDS.

OTHER INSURANCE

We will not be liable under this Policy for any medical expense paid or payable under the provisions of any:

1. premises insurance providing coverage for medical expenses.
2. individual, blanket, or group accident, disability or hospitalization insurance.
3. medical, surgical, hospital, or funeral services benefit or reimbursement plan.
4. Worker's Compensation or disability benefits law or any similar law.

PART III > PERSONAL INJURY PROTECTION COVERAGE

INSURING AGREEMENT

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 Nine 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 Repairs 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 Repairs 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 Repairs 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 in New York **State** while **occupying** the **insured motor vehicle** which is a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, but only if such person is a **named insured** or **relative** under any other policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Repairs Act; however, this exclusion does not apply to the operator, an owner, or an employee of the owner or operator, of such bus or school bus;
- (e) any person while **occupying a motorcycle**;
- (f) any person who intentionally causes his or her own **personal injury**;
- (g) any person as a result of operating a **motor vehicle** while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law); 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.

- (i) 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;
- (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 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;
- (k) 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;
- (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 90 days after the date of the **accident**, unless the eligible injured person submits written proof providing clear and reasonable justification for failure to comply with such time limitation due to specific circumstances beyond such person's control. 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 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 180 days after the date services are rendered or 180 days after the date written notice was given to the Company, whichever is later. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits to the Company as soon as reasonably practicable. Written proof of claim for other necessary expenses shall be submitted by the eligible injured person or that person's representative to the Company as soon as reasonably practicable, but in no event later than 90 days after the 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 that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. Upon request by the Company, the eligible injured person or that person's representative shall:

- a. execute a written proof of claim under oath;
- b. provide authorization that will enable the Company to obtain medical records; and
- c. 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 Insurance.

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 for 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 VI or VIII 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 obligations 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 Insurance, 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.

PART IV > UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

We, the Company, agree with **you**, as the **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:

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 word "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 subparagraphs (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 **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 or 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 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 or her 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 or her 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 word “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 noneconomic 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 “Duties After An Accident or Loss”; “Fraud,” 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** shall 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 **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 therefore, 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 the 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 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 that **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 other 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 Insurance 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 an 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:
- The survivor as named **insured**,
 - The decedent's legal representative as named **insured**, but only while acting within the scope of such representative's duties as such; and
 - Any **relative** who was an **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.

PART V > AUTO DAMAGE COVERAGE

INSURING AGREEMENT

If **you** pay a specific premium for Auto Damage Coverage, **we** will pay for loss or damage to **your insured auto** or its equipment caused by:

- Collision** or
- Comprehensive** or
- Fire and Theft with combined additional coverage**,

less any applicable deductibles for each separate **loss**.

We may pay the **loss** in money or repair or replace damaged or stolen property with other of like kind and quality. **We** may, at any time before the **loss** is paid or the property is replaced, return, at **our** expense, any stolen property either to **you** or to the owner or to the address shown in the Declarations Page, with payment for any resulting damage. **We** may keep all or part of the property at the agreed or appraised value, but there shall be no abandonment to the Company.

We may make payment for a **loss** to **you** or to the owner of the property and to a repair facility and to any applicable lienholder.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in PART V - AUTO DAMAGE COVERAGE:

- "**Collision**" means **collision** of **your insured auto** with another object or overturn of **your insured auto**. **Loss** caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is not **loss** caused by "**collision**."
- "**Comprehensive**" means **loss** other than that caused by **collision**.
- "**Fire and theft with combined additional coverage**" means **loss** caused by:
 - fire or lightning, or
 - windstorm
 - hail
 - earthquake
 - explosion

- f. the forced landing or falling of any aircraft or its parts or equipment
 - g. flood or rising waters
 - h. malicious mischief or vandalism
 - i. external discharge or leakage or water except **loss** resulting from rain, snow, or sleet, whether or not wind-driven.
4. "**Loss**" is changed to mean direct and **accidental loss** or damage to **your insured auto** including, however, only equipment which is permanently attached and forming part of the **auto**.

TRANSPORTATION EXPENSES

We will pay up to \$10 per day, to a maximum of \$300, for transportation expenses incurred by **you**. This applies only in the event of the total theft of **your insured auto**. **We** will pay only transportation expenses incurred during the period:

- 1. beginning 48 hours after the theft; and
- 2. ending when **your insured auto** is returned to use or **we** pay for its loss.

EXCLUSIONS

PLEASE READ THE EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, **YOU** WILL NOT HAVE COVERAGE FOR A **LOSS** THAT OTHERWISE WOULD BE COVERED UNDER THIS POLICY.

We do not cover **loss**:

- 1. Caused by war (declared or undeclared), civil war, warlike action or action taken to defend against an actual or expected attack, riot, insurrection, rebellion, revolution, nuclear contamination, and any consequence of any of these is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the **loss**.
- 2. To any sound equipment installed in **your insured auto** including tapes, records, or similar items used with sound equipment. This exclusion does not apply to sound equipment permanently installed in **your insured auto**.
- 3. To sound receiving equipment or transmitting equipment designed for use as telephones, scanning monitor receivers, radar detectors, television sets, or their accessories or antennas, and home high fidelity equipment.
- 4. To chrome, reverse chrome, alloy or magnesium wheels, chrome engine accessories, racing slicks or non-factory installed tachometer or pressure gauges.
- 5. To camper unit, pickup cover, cap or shell, or other detachable living quarters unit, whether attached or detached.

- 6. To any T-bar, roof, bubble dome, bubble window or other deluxe roof treatment or to any custom paint work, including lettering and decals.
- 7. To equipment such as booms, drill rigs, welders, winches, hazard lights, chains or tarps.
- 8. To any swivel chairs, appliances, furniture, special carpeting, paneling, or other equipment or accessories which change the use or appearance of the interior of the **auto**.
- 9. To any non-factory installed equipment which mechanically or structurally changes the **auto** and results in an increase in performance or a change in appearance.
- 10. Resulting from prior loss or damage, manufacturers' defects, wear and tear, freezing, mechanical or electrical breakdown or failure.
- 11. To an **auto** when used in **auto** business operations, including the selling, repairing, servicing, storing or parking of **autos**.
- 12. To wearing apparel or personal effects.
- 13. To tires, unless damaged by fire, stolen, or unless the **loss** occurs at the same time and from the same cause as other **loss** covered by this Policy.
- 14. While the **auto** is used in any illicit trade or transportation.
- 15. Due to the use of the **auto** for transportation of any explosive substance, flammable liquid, or similarly hazardous material.
- 16. While the **auto** is driven in or preparing for any prearranged or organized race, speed contest or performance contest.
- 17. While the **auto** is subject to any bailment lease, conditional sale, mortgage or other encumbrance not specifically declared and described in this Policy.
- 18. Under Comprehensive Coverage through secretion, conversion, or embezzlement by any person in lawful possession of the **auto** under a bailment lease, mortgage, conditional sale or other encumbrance.
- 19. Assumed by **insured** under any contract or agreement.
- 20. **Loss** caused intentionally by or at the direction of **you**.

LIMITS OF LIABILITY

Our limit of liability for **loss** shall not exceed the lesser of:

- 1. the actual cash value of the stolen or damaged property at the time of **loss**;
- 2. the amount necessary to repair or replace the property with other of the like kind and quality;

3. the amount stated in the Declarations Page or endorsements of this policy.

Our payment for **loss** will be reduced by any applicable deductible shown in the Declarations Page.

If repair or replacement of damaged property increases the overall value of **your insured auto**, **we** may deduct this amount from the repair cost. If **we** pay the actual cash value of the **auto** less deductible, **we** are entitled to all salvage.

APPRAISAL

For 90 days from the date of **loss**, if **we** and **you** do not agree on the amount of **loss**, either may demand an appraisal of the **loss**. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of **loss**. If they fail to agree, they will submit their differences to the umpire. A decision by two will be binding. Each party will:

1. pay its chosen appraiser; and
2. bear the expenses of the appraisal and umpire equally.

We do not waive any of **our** rights or defenses under this policy by agreeing to appraisal.

NO BENEFITS TO BAILEE

This insurance shall not in any way benefit any person or organization caring for or handling property for a fee.

OTHER INSURANCE

If there is other applicable similar insurance on a **loss** covered by PART V - AUTO DAMAGE COVERAGE, **we** will pay only that proportion of the **loss** that our limit of liability bears to the total limits of all applicable insurance.

MANDATORY INSPECTION

1. **We** have the right to inspect any:
 - a. private passenger **auto**; or
 - b. pickup, panel truck or van;

which **you** insure or intend to insure for Auto Damage Coverage under this policy.

This right applies only to the extent authorized by Regulation 79, as amended.

2. **We** do not provide Auto Damage Coverage for any additional or replacement vehicle **you** acquire until after **you**:
 - a. notify **us**; and
 - b. request coverage for that vehicle

However, this provision does not apply to a replacement vehicle for the 3 day period beginning on the date **you** become the owner if:

- a. **you** acquire the vehicle during the policy period; and
- b. **we** provided Auto Damage Coverage on the vehicle **you** replaced for at least 12 months prior to the date of replacement.

For each of the following which falls within the 3 day period, **we** will extend the period 1 day:

- a. Saturday;
 - b. Sunday; or
 - c. Legal holiday.
3. When **we** require an inspection **you** must:
 - a. cooperate; and
 - b. make the vehicle available for the inspection.

A. AUTO REPAIRS

When there is a loss to your covered auto covered under Part D, we:

1. May not:
 - a. Condition payment upon repair;
 - b. Require that repairs be made by a particular repair shop or concern; and
2. Are entitled to the following:
 - a. a completed "Certificate of Automobile Repairs" as prescribed by the New York **State** Insurance Department;
 - b. if the automobile is repaired, and itemized repair invoice prepared by the automobile repairer, and
 - c. an inspection of the automobile, whether or not the automobile is repaired.

B. RECOVERY OF STOLEN OR ABANDONED AUTOS

Notwithstanding any conflicting provisions applicable to the physical damage coverages of this policy, it is agreed that the following condition is added:

Recovery of Stolen or Abandoned Automobiles

In the event an automobile to which physical damage coverages of this policy apply is stolen or abandoned, the company or its authorized representative(s) shall when notified of the location of the automobile, have the right to take custody of the automobile for safekeeping.

PART VI > GENERAL PROVISIONS

1. POLICY PERIOD, TERRITORY

This policy applies only to **losses** occurring during the policy period shown in the Declarations, and while **your insured auto** is within the United States, its territories or possessions, or Canada, or between their ports.

2. PREMIUM

The premium for this policy is computed in accordance with **our** rules and rating plans applicable to the insurance afforded.

3. CHANGES

This policy, its applications, all endorsements, and the Declarations include all the agreements between **you** and **us** relating to this insurance. It is the responsibility of the **insured** to notify **us** of any changes to drivers and vehicles. No change or waiver may be effected in this policy except by endorsement issued by **us**. If a premium adjustment is necessary, **we** will make the adjustment as of the effective date of the change. All endorsements to this policy are subject to these General Provisions unless otherwise modified in the endorsement.

4. SUIT AGAINST US

We may not be sued unless there is full compliance with all the terms of this Policy. **We** may not be sued under the Part I - Liability to Others Coverage until the obligation of an **insured** to pay is finally determined either by judgment against the **insured** after actual trial or by written agreement of the **insured**, the claimant, and **us**. No one shall have any right to make **us** a party to suit to determine the liability of an **insured**.

In case judgment against the insured or the insured's personal representative in an action brought to recover damages for injury sustained or loss or damage occasioned during the life of the policy shall remain unsatisfied at the expiration of thirty days from the serving of notice of entry of judgment upon the attorney for the insured, or upon the insured, and upon the insurer, then an action may, except during a stay or limited stay of execution against then insured on such judgment, be maintained against the insurer under the terms of the policy for the amount of such judgment not exceeding the amount of the applicable limit of coverage under such policy.

5. OUR RECOVERY RIGHT SUBROGATION

In the event of a payment under this policy, **we** are entitled to all the rights of recovery that the person or organization to whom payment was made has against another. That person or organization must sign and deliver to **us** any legal papers relating to that recovery, do whatever else is necessary to help **us** exercise those rights, and do nothing after **loss** to harm **our** rights.

When a person has been paid damages by **us** under this policy and also recovers the same damages from another, the amount recovered from the other shall be held by that person in trust for **us** and reimbursed to **us** to the extent of our payment.

6. ASSIGNMENT

Interest in this policy may not be assigned without **our** written consent. If the policyholder named in the Declarations Page is an individual, and dies, the policy will cover until the end of the policy period:

- a. The survivor;
- b. The legal representative of the deceased person while acting within the scope of duties of a legal representative and while having proper custody of **your insured auto**;
- c. Any person having proper custody of **your insured auto** until a legal representative is appointed, but in no event for more than 30 days after the date of such death.

7. BANKRUPTCY

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an **insured**.

8. TWO OR MORE AUTO POLICIES

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. No one will be entitled to receive duplicate payments for the same elements of loss.

9. FRAUD AND MISREPRESENTATION

The statements made by you in the application are deemed to be representations. If any representation contained in the application is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of facts or incorrect statements, this policy may be cancelled or nonrenewed subject to the provisions of section 3426 of the New York State Insurance Laws.

If any representation contained in any notification of change is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of factors or incorrect statements, this policy may be cancelled or nonrenewed subject to the provisions of section 3426 of the New York State Insurance Laws.

This paragraph shall also apply to misstatement of use and omissions of fact.

10. INSPECTION AND AUDIT

We shall also have the right to examine and audit **your** books and records at any time during the Policy period and any extensions of that period and within 3 years after termination of the Policy, as far as they relate to the subject matter of this insurance.

11. OTHER INSURANCE

This Policy provides primary insurance for any **insured auto you** own. But while **your insured auto** which is a trailer is attached to another **auto**, liability coverage provided by this Policy for the trailer:

- a. is excess while it is attached to an **auto** not owned by **you**;
- b. is primary while attached to **your insured auto** owned by **you**.

When this and other insurance applies on a similar basis, whether primary, excess or contingent, **we** will pay our share only. Our share is the proportion that our Limits of Liability bear to the total limits of all the Policies covering on a similar basis.

12. TERMS OF POLICY CONFORMED TO STATUTES

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

13. CANCELLATION OR NONRENEWAL OF THIS POLICY

A. Cancellation

1. **You** may cancel the policy by returning it to **us** or by giving **us** advance notice of the date cancellation is to take effect.
2. When this policy is in effect 60 days or less and is not a renewal or continuation policy, **we** may cancel by mailing to **you** at least:
 - a. 20 days notice if **we** cancel for any reason not included in paragraph b. below.
 - b. 15 days notice if **we** cancel for any of the following reasons:
 - (1) Nonpayment of premium;
 - (2) Conviction of a crime arising out of acts increasing the hazard insured against;
 - (3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;
 - (4) After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

(6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize **our** solvency or be hazardous to the interest of our policyholders, **our** creditors or the public;

(7) A determination by the Superintendent that the continuation of the policy would violate, or would place **us** in violation of, any provision of the Insurance Code;

(8) Where **we** have reason to believe, in good faith and with sufficient cause, that there is a probable risk or danger that the insured will destroy or permit to be destroyed, the **insured** property for the purpose of collecting the insurance proceeds; or

3. When this policy is in effect more than 60 days or is a renewal or continuation policy, **we** may cancel only for any of the reasons listed in paragraph **2.b.** above, provided **we** mail **you** at least 15 days notice.
4. If this policy is cancelled, **we** will send **you** any premium refund due. The refund will be pro rata.
5. The effective date of cancellation stated in the notice shall become the end of the policy period.
6. Notice will include the reason for cancellation. **We** will mail or deliver our notice to **you** at the address shown in the policy and to **your** authorized agent or broker.

B. Non-Renewal and Conditional Renewal

1. If **we** decide not to renew or continue this policy **we** will send notice as provided in paragraph 3. below along with the reason for nonrenewal.
2. If **we** condition renewal of this policy upon:
 - a. Change of limits;
 - b. Change in type of coverage;
 - c. Reduction of coverage;
 - d. Increased deductible;
 - e. Addition of exclusion;
 - f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added; or as a result of experience rating, retrospective rating or audit **we** will send notice as provided in paragraph 3. below.
3. If **we** decide not to renew or continue this policy, or to conditionally renew this policy as provided in paragraphs 1. and 2. above, **we** will mail you notice at least 60 but not more than 120 days before the end of the policy period. If the policy period is other than one year, **we** will have the right not to renew or continue it only at an anniversary of its original effective date.
4. **We** will not send you notice of non-renewal of conditional renewal if **you, your** authorized agent or broker or another insurer of **yours** mails or delivery notice that **you** have replaced this policy or no longer want it.
5. Notice of non-renewal will state the reasons for non-renewal.

C. Mailing of Notices

Any notice of cancellation or non-renewal along with the reason for cancellation or non-renewal will be mailed to **you** at the address shown in the policy and to **your** agent or broker. However, **we** may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.

D. Fees

Payment received from the insured is first applied to fees owed and then to the premium due.

14. LOSS PAYABLE CLAUSE

Loss or damage under this policy shall be paid as interest may appear to **you** and the loss payee shown in the Declarations Page.

This insurance covering the interest of the loss payee shall become invalid only because of **your** fraudulent acts or omissions. However, **we** reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. **We** will give the same advance notice of cancellation to the loss payee as **we** give to the named **insured** shown in 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.

15. MANDATORY INSPECTIONS ENDORSEMENT FOR PHYSICAL DAMAGE COVERAGE

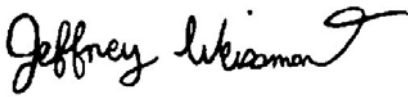
Notwithstanding any conflicting provisions contained in physical damage coverages of this policy, it is agreed that the following conditions are added:

- a. The company or its authorized representative, has the right to inspect any private passenger automobile, including a non-owned automobile, insured or intended to be insured under this policy before physical damage coverage shall be effective, except to the extent that this right is prescribed and limited by New York State Insurance Department Regulation No. 79 (11 NYCRR 67) implementing Section 3411(d) or the New York Insurance Law.
- b. During the term of the policy, coverage for an additional replacement private passenger automobile shall not become effective until the insured notifies the company and requests coverage for the automobile.
- c. When an inspection is required by the company, the insured shall cooperate and make the automobile available for the inspection

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested.

A handwritten signature in black ink, appearing to read "Barry S. Karfunkel". The signature is stylized with a large, sweeping flourish at the end.

Barry S. Karfunkel
President

A handwritten signature in black ink, appearing to read "Jeffrey Weissmann". The signature is written in a cursive style with a prominent flourish at the end.

Jeffrey Weissmann
Secretary