



NEW YORK MANDATORY PERSONAL INJURY PROTECTION

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

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

MANDATORY PERSONAL INJURY PROTECTION.

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

First-party Benefits.

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

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

Basic Economic Loss.

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

Medical Expense.

Medical expense shall consist of necessary expenses for:

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

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

Work Loss.

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

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

Other Expenses.

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

Death Benefit.

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

Eligible Injured Person.

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

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

Exclusions.

This coverage does not apply to *personal injury* sustained by:

- (a) the *named insured* while occupying, or while a pedestrian through being struck by, any *motor vehicle* owned by the *named insured* with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) any *relative* while occupying, or while a pedestrian through being struck by, any *motor vehicle* owned by the *relative* with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (c) the *named insured* or *relative* while occupying, or while a pedestrian through being struck by, a *motor vehicle* in New York State, other than the *insured motor vehicle*, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to *personal injury* sustained in New York State by the *named insured* or *relative* while *occupying* a *bus* or school *bus*, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such *bus* or school *bus*;
- (d) any person 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 Reparations 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:
 - (1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;
 - (2) operating a *motor vehicle* in a race or speed test;
 - (3) operating or *occupying* a *motor vehicle* known to that person to be stolen; or
 - (4) repairing, servicing or otherwise maintaining a *motor vehicle* if 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*, bodily sickness or bodily 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 who is temporarily living elsewhere; and
- (h) *use or operation* of a *motor vehicle* or *motorcycle* includes the loading or unloading of such vehicle.

Conditions.

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

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

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

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

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

Arbitration. In the event any person making a claim for *first-party benefits* and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of 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 of recovery for damages for *personal injury* under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such settlement or judgment to the extent that the Company has paid *first-party benefits*. An *eligible injured person* shall:

- (a) hold in trust, for the benefit of the Company, all rights of recovery which that person shall have for *personal injury* under section 5104(b) of the New York Insurance Law;
- (b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and
- (c) execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

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

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

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

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