

FORMS – APPROVED

DECEMBER 4, 2019

COMMERCIAL AUTOMOBILE

LI-CA-2019-281

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## MINNESOTA REVISED COMMERCIAL AUTO ENDORSEMENTS APPROVED

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### KEY MESSAGE

The Minnesota Department of Commerce has approved filing CA-2019-OEND1.

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### BACKGROUND

In circular [LI-CA-2019-224](#), we informed you that in response to *Poehler v. Cincinnati Ins. Co.*, 889 N.W.2d 135 (2017) with respect to appraisal and MINN. STAT. § 549.09 subd. 1(b) with respect to arbitration, we:

- Revised the applicable Commercial Auto endorsements to state that an insured may not collect preaward interest on an award.
- Filed these revisions under ISO Filing Designation Number CA-2019-OEND1 with the Minnesota Department of Insurance.

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### INSURANCE DEPARTMENT ACTION

The Minnesota Department of Commerce has approved filing [CA-2019-OEND1](#) as filed.

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### EFFECTIVE DATE

We do not establish an effective date for Commercial Auto forms revisions in Minnesota. Each insurer that elects to utilize this revision is responsible for determining its own effective date.

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### COMPANY ACTION

ISO has not filed this revision on behalf of insurers.

You must independently determine what revision to make and when to make any revision effective. If you decide to use all or any part of our revision, you are NOT required to file anything with the Minnesota Department of Commerce.

You must document your files in case the Minnesota Department of Commerce wishes to review the information at a later date. In all internal correspondence on this revision, you should refer to ISO Revision Designation Number [CA-2019-OEND1](#), NOT this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

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### RATING SOFTWARE IMPACT

New attribute being introduced with this revision:

- New edition dates of existing form numbers are being introduced.

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## POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2018-044](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

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## REVISION DISTRIBUTION

We will issue a Notice to Portfolioholders with an edition date of 5-20 (or the earliest possible subsequent date), along with any new and/or revised forms.

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## REFERENCE(S)

- [LI-CA-2019-224](#) (10/07/2019) Minnesota Revised Commercial Auto Endorsements Filed
- [LI-CL-2018-044](#) (11/27/2018) Revised Lead Time Requirements Listing

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## ATTACHMENT(S)

Final copies of [CA 01 33 05 20](#), [CA 01 38 05 20](#), [CA 21 24 05 20](#), [CA 22 25 05 20](#) and [CA 99 46 05 20](#)

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MINNESOTA CHANGES – AUTO DEALERS COVERAGE FORM**

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Minnesota, this endorsement modifies insurance provided under the following:

### **AUTO DEALERS COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The Common Policy Conditions are amended as follows:  
The **Examination Of Your Books And Records** Condition applies except that the time we have to examine your records after the policy period is changed from three years to one year.
- B.** The third paragraph of **D.1. Coverage** under **Covered Autos Liability Coverage** is replaced by the following:  
We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We will settle or defend, as we consider appropriate, any claim or "suit" asking for damages which are payable under the terms of this Coverage Form.
- C.** Paragraph **D.3.a. Supplementary Payments** of **Covered Autos Liability Coverage** is amended by the addition of the following:  
**(7)** Prejudgment interest awarded against the "insured" on that part of the judgment we pay. If we offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- D.** Paragraph **D.5. Limit Of Insurance – Covered Autos Liability** of **Covered Autos Liability Coverage** is revised by the addition of the following:  
We will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to provide separate limits required by law for bodily injury liability and property damage liability. However, this provision will not change our total Limit of Insurance.
- E.** Paragraph **E.3. Coverage Extensions** of **Garagekeepers Coverage** is amended by the addition of the following:  
**f.** Prejudgment interest awarded against the "insured" on that part of the judgment we pay. If we offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- F.** Paragraph **E. Supplementary Payments** of **General Liability Coverages** and Paragraph **D. Supplementary Payments of Acts, Errors Or Omissions Liability Coverages** are amended by the addition of the following:  
**6.** Prejudgment interest awarded against the "insured" on that part of the judgment we pay. If we offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

G. The **Conditions** are amended as follows:

1. The **Appraisal For Physical Damage Loss** Condition is replaced by the following:

1. **Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", and the disputed amount is:

- a. \$10,000 or less, both parties must submit to appraisal;
- b. More than \$10,000, either party may demand an appraisal of the "loss".

In the event of an appraisal, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we still retain our right to deny the claim.

However, we will not pay you any interest, other than the interest that accrues between the time that it is determined that a "loss" shall be payable, in accordance with this Appraisal Condition, and before we pay, tender or deposit in court payment for the "loss".

2. The lead-in wording of the **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** Condition is replaced by the following:

The following duties apply:

3. **Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

- a. Our rights under this condition with respect to all coverages other than Covered Autos Liability, General Liability and Acts, Errors Or Omissions Liability Coverages do not apply against a person who is 21 years of age or older who:

- (1) Had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages, knowingly or recklessly permitted the consumption of alcoholic beverages that caused the intoxication of a person under 21 years of age; or

- (2) Sold, bartered, furnished or gave to, or purchased alcoholic beverages for a person under 21 years of age that caused the intoxication of a person under 21 years of age;

and that intoxicated person caused the injury, "loss" or damage for which payment was made under this policy.

- b. Our rights are subject to any applicable limitations contained in the Minnesota statutes.
- c. With respect to Physical Damage Coverage, if you have received less than all of your deductible amount after a subrogation settlement or judgment, you will retain your right to recover the remaining portion of the deductible from parties liable for the "loss".
- d. Our rights do not apply against any person or organization insured under this or any other Coverage Form we issue with respect to the same "accident" or "loss".

4. Paragraph **B.1. Bankruptcy** is replaced by the following:

1. **Bankruptcy**

Bankruptcy, insolvency or dissolution of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

5. The **Concealment, Misrepresentation Or Fraud** Condition is amended as follows:

- a. With respect to Covered Autos Liability Coverage, the **Concealment, Misrepresentation Or Fraud** Condition does not apply.

- b. With respect to other than Covered Autos Liability Coverage, the **Concealment, Misrepresentation Or Fraud** Condition is replaced by the following:

We will not pay for any "loss" or damage in any case of fraud by you at any time as it relates to this Coverage Form. We will not pay for any "loss" or damage if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This Coverage Form;
- (2) The covered "auto";
- (3) Your interest in the covered "auto"; or
- (4) A claim under this Coverage Form.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MINNESOTA CHANGES**

For a covered "auto" licensed or principally garaged in Minnesota, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The Common Policy Conditions are amended as follows:
- The **Examination Of Your Books And Records** Condition applies except that the time we have to examine your records after the policy period is changed from three years to one year.
- B.** The third paragraph of **A. Coverage in Section II – Covered Autos Liability Coverage** is replaced by the following:
- We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We will settle or defend, as we consider appropriate, any claim or "suit" asking for damages which are payable under the terms of this Coverage Form.
- C.** Paragraph **A.2.a. Coverage Extensions of Section II – Covered Autos Liability Coverage** is amended by the addition of the following:
- (7) Prejudgment interest awarded against the "insured" on that part of the judgment we pay. If we offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- D.** Paragraph **C. Limit Of Insurance in Section II – Covered Autos Liability Coverage** is revised by the addition of the following:
- We will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to provide separate limits required by law for bodily injury liability and property damage liability. However, this provision will not change our total Limit of Insurance.
- E.** Paragraph **A.2. of Section III – Trailer Interchange Coverage** in the Motor Carrier Coverage Form is replaced by the following:
2. We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for any "loss" to which this insurance does not apply. We will settle or defend, as we consider appropriate, any claim or "suit" asking for damages which are payable under the terms of this Coverage Form.
- F.** Paragraph **A.3. Coverage Extensions of Section III – Trailer Interchange Coverage** in the Motor Carrier Coverage Form is revised by the addition of the following:
- f. Prejudgment interest awarded against the "insured" on that part of the judgment we pay. If we offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- G.** The **Conditions** are amended as follows:
1. The **Appraisal For Physical Damage Loss** Condition is replaced by the following:
- 1. Appraisal For Physical Damage Loss**
- If you and we disagree on the amount of "loss", and the disputed amount is:
- a. \$10,000 or less, both parties must submit to appraisal; or
- b. More than \$10,000, either party may demand an appraisal of the "loss".

In the event of an appraisal, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we still retain our right to deny the claim.

However, we will not pay you any interest, other than the interest that accrues between the time that it is determined that a "loss" shall be payable, in accordance with this Appraisal Condition, and before we pay, tender or deposit in court payment for the "loss".

2. The lead-in wording of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

The following duties apply:

3. **Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

- a. Our rights under this condition with respect to all coverages other than Covered Autos Liability Coverage do not apply against a person who is 21 years of age or older who:

- (1) Had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages, knowingly or recklessly permitted the consumption of alcoholic beverages that caused the intoxication of a person under 21 years of age; or
- (2) Sold, bartered, furnished or gave to, or purchased alcoholic beverages for a person under 21 years of age that caused the intoxication of a person under 21 years of age;

and that intoxicated person caused the injury, "loss" or damage for which payment was made under this policy.

- b. Our rights are subject to any applicable limitations contained in the Minnesota statutes.

- c. With respect to Physical Damage, if you have received less than all of your deductible amount after a subrogation settlement or judgment, you will retain your right to recover the remaining portion of the deductible from parties liable for the "loss".

- d. Our rights do not apply against any person or organization insured under this or any other Coverage Form we issue with respect to the same "accident" or "loss".

4. Paragraph **B.1. Bankruptcy** is replaced by the following:

1. **Bankruptcy**

Bankruptcy, insolvency or dissolution of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

5. The **Concealment, Misrepresentation Or Fraud** Condition is amended as follows:

- a. With respect to Covered Autos Liability Coverage, the **Concealment, Misrepresentation Or Fraud Condition** does not apply.

- b. With respect to other than Covered Autos Liability Coverage, the **Concealment, Misrepresentation Or Fraud** Condition is replaced by the following:

We will not pay for any "loss" or damage in any case of fraud by you at any time as it relates to this Coverage Form. We will not pay for any "loss" or damage if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This Coverage Form;
- (2) The covered "auto";
- (3) Your interest in the covered "auto"; or
- (4) A claim under this Coverage Form.



## B. Who Is An Insured

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds":
  - a. The Named Insured and any "family members".
  - b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
  - c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
  - a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
  - b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

## C. Exclusions

This insurance does not apply to any of the following:

1. Any claim settled with the owner or operator of an "uninsured motor vehicle" without our consent.
2. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
3. "Bodily injury" under Uninsured Motorists Coverage, if that "bodily injury" is sustained by:
  - a. An individual Named Insured while "occupying" a vehicle owned by that Named Insured that is not a covered "auto" for Uninsured Motorists Coverage; or
  - b. Any "family member" while "occupying" any vehicle owned by that "family member" that is not a covered "auto" for Uninsured Motorists Coverage.
4. "Bodily injury" under Underinsured Motorists Coverage, if that "bodily injury" is sustained by:
  - a. An individual Named Insured while "occupying" a vehicle owned by that Named Insured that is not a covered "auto" for Underinsured Motorists Coverage; or

- b. Any "family member" while "occupying" any vehicle owned by that "family member" that is not a covered "auto" for Underinsured Motorists Coverage.

5. Anyone using a vehicle without a reasonable belief that the person is entitled to do so. However, this exclusion does not apply to a "family member" who is not identified by name in any other contract for a plan of reparation security complying with the Minnesota No-fault Automobile Insurance Act, while using a covered "auto" which is owned by the Named Insured.
6. Punitive or exemplary damages.
7. "Bodily injury" arising directly or indirectly out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

## D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident":
  - a. With an "uninsured motor vehicle" is the limit of Uninsured Motorists Coverage shown in the Schedule.
  - b. With an "underinsured motor vehicle" is the limit of Underinsured Motorists Coverage shown in the Schedule.

We will apply the Limit Of Liability for each of these coverages as shown in the Schedule to provide separate limits required by law for uninsured and underinsured "bodily injury" liability.
2. Any amounts otherwise payable for damages under this insurance shall be reduced by all sums paid or payable or which would be paid or payable except for the application of a deductible under Personal Injury Protection applicable to the same element of loss.

3. We will not make a duplicate payment under this Coverage for any element of "loss" for which payment has been made by or for anyone who is legally responsible.
4. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form, any Liability Coverage form, or any Medical Payments Coverage endorsement attached to this Coverage Part.

**E. Changes In Conditions**

The Conditions are changed for Uninsured Motorists Coverage and Underinsured Motorists Coverage as follows:

1. The reference in **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form to "other applicable insurance" applies only to other collectible uninsured motorists insurance and is replaced by the following:
  - a. With respect to coverage we provide when a covered "auto" the Named Insured owns is involved in an "accident", only:
    - (1) The Limit of Insurance for Uninsured Motorists Coverage applicable to that "auto" will apply for damages for which the owner or operator of the "uninsured motor vehicle" is legally responsible.
    - (2) The Limit of Insurance for Underinsured Motorists Coverage applicable to that "auto" will apply for damages for which the owner or operator of the "underinsured motor vehicle" is legally responsible.
  - b. If an "insured" sustains "bodily injury" while:
    - (1) "Occupying" a vehicle not owned by that person or while not "occupying" any vehicle; or
    - (2) "Occupying" a vehicle owned by the Named Insured or any "family member", if the Named Insured is an individual, and such vehicle is insured under one or more separate policies providing uninsured motorists or underinsured motorists insurance;

the following priorities of recovery apply:

<b>First Priority</b>	The policy affording Uninsured Motorists Coverage or Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the "accident".
<b>Second Priority</b>	Any Coverage Form or policy affording Uninsured Motorists Coverage or Underinsured Motorists Coverage to the "insured" as an individual Named Insured or "family member".

- (1) Where there is no applicable insurance available under the first priority, the maximum recovery under all Coverage Forms or policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one Coverage Form or policy.
- (2) Where there is applicable insurance available under the first priority:
  - (a) The Limit of Insurance applicable to the vehicle the "insured" was "occupying", under the Coverage Form or policy in the first priority, shall first be exhausted; and
  - (b) If there is other applicable insurance available under one or more policies or provisions of coverage:

The maximum recovery in the second priority under all Coverage Forms or policies combined may equal but not exceed the highest applicable limit for any one vehicle under any Coverage Form or policy providing coverage on either a primary or excess basis.

Any insurance we provide with respect to a vehicle the Named Insured does not own shall be excess over any collectible uninsured or underinsured motorists insurance providing coverage on a primary basis.

If the coverage under this Coverage Form is provided:

(i) On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on a primary basis.

(ii) On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on an excess basis.

(3) We will pay only our share of the "loss", not to exceed our share of the maximum recovery. Our share is the proportion that our Limit of Insurance bears to the total of all applicable limits in the same level of priority.

**2. Duties In The Event Of Accident, Claim, Suit Or Loss** in the Business Auto and Motor Carrier Coverage Forms and **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** in the Auto Dealers Coverage Form are changed by adding the following:

- a. Promptly notify the police if a hit-and-run driver is involved; and
- b. Promptly send us copies of the legal papers if a "suit" is brought.

For an "underinsured motor vehicle", **Duties In The Event Of Accident, Claim, Suit Or Loss** in the Business Auto and Motor Carrier Coverage Forms and **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** in the Auto Dealers Coverage Form are also changed by adding the following:

- a. Promptly notify us in writing of a tentative settlement between the "insured" and the insurer of an "underinsured motor vehicle". Such notice shall:
  - (1) Identify the "insured", the owner or driver of the "underinsured motor vehicle" and the insurer of the "underinsured motor vehicle";

- (2) Disclose the limits of the automobile liability insurance available to the owner or driver of the "underinsured motor vehicle"; and

- (3) Disclose the agreed upon amount of the tentative settlement; and

- b. Allow us 30 days to advance payment to that "insured" in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such "underinsured motor vehicle".

**3. Transfer Of Rights Of Recovery Against Others To Us** is replaced by the following and supersedes any provision to the contrary:

**Transfer Of Rights Of Recovery Against Others To Us**

- a. If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

- b. If we make any payment and the "insured" recovers from another party, the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid.

- c. For an "underinsured motor vehicle", Paragraph 3.a. of the Transfer Of Rights Of Recovery Against Others To Us Condition does not apply if:

- (1) We have been given prompt written notice of a tentative settlement between an "insured" and the insurer of an "underinsured motor vehicle"; and

- (2) We fail to advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of such notification.

If we advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of written notification:

- (1) That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Underinsured Motorists Coverage; and

- (2) We also have a right to recover the advance payment.

- d. Our rights under Paragraph 3.a. of this condition do not apply against any person or organization insured under this or any other Coverage Form we issue with respect to the same "accident" or "loss".
- e. Our rights under this condition do not apply against a person who is 21 years of age or older who:
  - (1) Had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages, knowingly or recklessly permitted the consumption of alcoholic beverages that caused the intoxication of a person under 21 years of age; or
  - (2) Sold, bartered, furnished or gave to, or purchased alcoholic beverages for a person under 21 years of age that caused the intoxication of a person under 21 years of age;
 and that intoxicated person caused the injury, "loss" or damage for which payment was made under this policy.
- f. Our rights are subject to any applicable limitations contained in the Minnesota statutes.

4. The following condition is added:

**Arbitration**

- a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "uninsured motor vehicle" or "underinsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured", then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated. Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.
- b. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

However, we will not pay the "insured" any interest, other than the interest that accrues between the time that it is determined that a "loss" shall be payable, in accordance with this Arbitration Condition, and before we pay, tender or deposit in court payment for the "loss".

**F. Additional Definitions**

As used in this endorsement:

- 1. "Family member" means a person related to an individual Named Insured by blood, marriage or adoption, who is a resident of such Named Insured's household, including a ward or foster child.
- 2. "Occupying" means in, upon, getting in, on, out or off.
- 3. "Uninsured motor vehicle" means a land motor vehicle or "trailer":
  - a. To which (1) no bodily injury liability bond or policy applies at the time of an "accident" or (2) a bodily injury liability bond or policy applies at the time of the "accident", but its limit for bodily injury liability is less than the minimum limit for bodily injury liability specified by the Minnesota No-fault Automobile Insurance Act;
  - b. For which an insuring or bonding company denies coverage or is or becomes insolvent; or
  - c. That is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must hit an "insured", a covered "auto" or a vehicle an "insured" is "occupying", or must cause an "accident" resulting in "bodily injury" to an "insured" without hitting a covered "auto" or a vehicle an "insured" is "occupying".

However, "uninsured motor vehicle" does not include any vehicle or equipment:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who (1) denies coverage, (2) is or becomes insolvent or (3) cannot provide the amounts required by that motor vehicle law;
- b. Designed for use mainly off public roads while not on public roads;
- c. That is an "underinsured motor vehicle";

- d. Owned by or furnished or available for the regular use of an "insured";
  - e. Operated on rails or crawler treads; or
  - f. While located for use as a residence or premises.
4. "Underinsured motor vehicle" means a land motor vehicle or "trailer" for which a bodily injury liability bond or policy applies at the time of the "accident" in limits equal to or greater than the minimum limits specified by the Minnesota No-fault Automobile Insurance Act, but its limit for "bodily injury" liability is not enough to pay the full amount the "insured" is legally entitled to recover as damages caused by the "accident".

However, "underinsured motor vehicle" does not include any vehicle or equipment:

- a. For which a liability bond or policy applies at the time of the "accident", but the bonding or insuring company **(1)** denies coverage or **(2)** is or becomes insolvent;
- b. Designed for use mainly off public roads while not on public roads;
- c. That is an "uninsured motor vehicle";
- d. Owned by or furnished or available for the regular use of an "insured";
- e. Operated on rails or crawler treads; or
- f. While located for use as a residence or premises.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## MINNESOTA PERSONAL INJURY PROTECTION

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Minnesota, this endorsement modifies insurance provided under the following:

- AUTO DEALERS COVERAGE FORM
- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

<b>Named Insured:</b>
<b>Endorsement Effective Date:</b>

### SCHEDULE

In consideration of an increase in premium, the following Personal Injury Protection Coverage option applies as indicated below or in the Declarations:
<input type="checkbox"/> The Named Insured elects to add together two or more Personal Injury Protection Coverages. (Refer to Paragraph 3. of the Limit Of Insurance Provision.)
In consideration of a reduction in premium, exclusion of work loss applies as indicated below or in the Declarations:
<input type="checkbox"/> Work loss will not be provided for the Named Insured age 65 or older, or age 60 or older, if retired and receiving a pension.
<input type="checkbox"/> Work loss will not be provided for the Named Insured and any "family member" age 65 or older, or age 60 or older, if retired and receiving a pension.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

## A. Coverage

The company will pay, in accordance with the Minnesota No-fault Automobile Insurance Act, Personal Injury Protection benefits incurred with respect to "bodily injury" sustained by an "insured" caused by an "accident" arising out of the maintenance or use of a "motor vehicle" as a vehicle, or through being struck by a motorcycle. These Personal Injury Protection benefits consist of the following:

### 1. Medical Expenses

Means all reasonable expenses incurred for necessary:

- a. Medical, surgical, x-ray, optical, dental, chiropractic and rehabilitative services, including prosthetic devices;
- b. Prescription drugs as provided under MINN. STAT. § 65B.44, Subd. 2;
- c. Ambulance and all other transportation expenses incurred in traveling to receive other covered medical expense benefits;
- d. Sign interpreting and language translation services, other than such services provided by a member of the "insured's" family, related to the receipt of medical expenses provided under Paragraph **A.1.** of this provision; and
- e. Hospital, extended care and nursing services, including necessary remedial treatment and services recognized and permitted under the laws of Minnesota for an "insured" who relies upon spiritual means through prayer alone for healing in accordance with his or her religious belief; however, it does not include expenses in excess of those for a semiprivate room, unless more intensive care is medically required.

### 2. Work Loss

Means:

- a. 85% of loss of gross income resulting from the "insured's" inability to work on a regular basis including the costs incurred by an "insured" who is self-employed in hiring substitute "employees" to perform tasks which are necessary to maintain his or her income, which he or she normally performs himself or herself, and which he or she cannot perform because of his or her injury; or

- b. Lost unemployment benefits in an amount equal to the unemployment benefits otherwise payable, if the "insured":

- (1) Is unemployed at the time of the injury and is receiving or is eligible to receive unemployment benefits; and
- (2) Loses eligibility for unemployment benefits because of his or her inability to work caused by injury;

reduced by any income from work actually performed by the "insured", or by any income he or she would have earned in available appropriate substitute work which he or she was capable of performing but unreasonably failed to undertake.

### 3. Essential Services Expenses

Expenses reasonably incurred during a period commencing eight days after the date of the accident and during the "insured's" lifetime, in obtaining usual and necessary substitute services in lieu of those that, had he or she not been injured, he or she would have performed not for income but for the direct benefit of himself or herself or his or her household; if the non-fatally injured "insured" normally, as a full-time responsibility, provides care and maintenance of a home, with or without children, the benefit is the reasonable value of such care and maintenance.

### 4. Funeral Expenses

Reasonable expenses for professional funeral and burial services, including expense for cremation, or delivery under the Minnesota Uniform Anatomical Gift Act.

### 5. Survivors' Loss

Means:

- a. "Loss", in the event of the death of an "insured" occurring within one year from the date of the "accident", of contributions of money or tangible things of economic value, not including services, that his or her surviving dependents would have received from him or her for their support during their dependency had he or she not suffered the fatal "bodily injury"; and

- b. Expenses reasonably incurred by surviving dependents after the death of an "insured" in obtaining ordinary and necessary substitute services in lieu of those he or she would have performed for their benefit had he or she not suffered the fatal "bodily injury", minus expenses of the surviving dependents avoided by reason of such death,

provided that the dependency of the surviving spouse shall be terminated in the event such surviving spouse remarries or dies, and the dependency of a child who is not physically or mentally incapacitated from earning shall be terminated in the event he or she attains majority, marries or becomes otherwise emancipated, or dies.

#### **B. Who Is An Insured**

- 1. The Named Insured or any "family member" who sustains "bodily injury" while "occupying" a "motor vehicle", or while a pedestrian as a result of an "accident" involving any "motor vehicle" or motorcycle.
- 2. Any other person who sustains "bodily injury" while "occupying" the "insured motor vehicle", or while a pedestrian as a result of an "accident" involving the "insured motor vehicle".
- 3. Any other person who sustains "bodily injury" while "occupying" a "motor vehicle" not owned by, but operated by the Named Insured or "family member", other than a public or livery conveyance, if the "bodily injury" results from the operation of the "motor vehicle" by the Named Insured or "family member". As used in this provision, public or livery conveyance includes, but is not limited to, any period of time a "motor vehicle" is being used by any person who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the "motor vehicle".

#### **C. Exclusions**

We will not pay Personal Injury Protection benefits for "bodily injury":

- 1. Sustained by any "family member" if such "family member" is entitled to Personal Injury Protection Coverage as a self-insured or as a Named Insured under the terms of any other Coverage Form or policy with respect to such coverage.
- 2. Sustained by any person, other than the Named Insured or "family member", if such person is entitled to Personal Injury Protection Coverage as a self-insured or as a Named Insured or "family member" under the terms of any other Coverage Form or policy with respect to such coverage.
- 3. Sustained by any person arising out of the maintenance or use of a "motor vehicle":
  - a. Being used in the business of transporting persons or property; or
  - b. Furnished by the employer of the Named Insured or "family member";if with respect to such vehicle, the security required by the Minnesota No-fault Automobile Insurance Act is in effect, provided that such "bodily injury" is sustained while not "occupying" another involved "motor vehicle"; however, this exclusion does not apply to **(i)** the "insured motor vehicle", **(ii)** a commuter van as defined in the Minnesota No-fault Automobile Insurance Act, **(iii)** a vehicle being used to transport children to school or to a school sponsored activity, **(iv)** a vehicle being used to transport children as part of a family or group family day care program, **(v)** any bus, other than a bus included as a vehicle described in **(ii)**, **(iii)** or **(iv)** above, while in operation within the state of Minnesota as to any Minnesota resident who is an insured as defined in the Minnesota No-fault Automobile Insurance Act, or **(vi)** a passenger in a taxi.
- 4. To any benefits any person would otherwise be entitled to receive hereunder for "bodily injury" intentionally caused by such person or arising out of his or her intentionally attempting to cause "bodily injury", and, if any person dies as a result of intentionally causing or attempting to cause "bodily injury" to himself or herself, his or her survivors are not entitled to any survivors' loss benefits.
- 5. Sustained by any person in the course of an officiated racing or speed contest, or in practice or preparation therefor, other than a rally held in whole or in part upon public roads.
- 6. Sustained by any person if such injury arises out of conduct within the course of a business of repairing, servicing or otherwise maintaining "motor vehicles" unless such conduct occurs off the business premises.

7. Sustained by any person if such injury arises out of conduct in the course of loading or unloading any "motor vehicle" unless the conduct occurs while such person is "occupying" such "motor vehicle".
8. Sustained by any person while "occupying" a motorcycle.
9. To Personal Injury Protection benefits otherwise payable in the event that a lapse of one year or more occurs in the period of disability and medical treatment of an "insured" as a result of any one "accident".
10. Sustained by any person, other than the Named Insured or any "family member", arising out of the maintenance or use by such person of a "motor vehicle" without a good faith belief that he or she is legally entitled to use such "motor vehicle".
11. Sustained by any person, other than the Named Insured or any "family member", while a pedestrian through being struck by the "insured" "motor vehicle", if the "accident" occurs outside the state of Minnesota.
12. Sustained by any person arising out of the maintenance or use of a "motor vehicle" while located for use as a residence or premises.
13. Arising directly or indirectly out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
14. Resulting from the radioactive, toxic, explosive or other hazardous properties of nuclear material.
15. With respect to work loss, essential services expenses and survivors' loss benefits, sustained by any person, other than the Named Insured or "family member", while "occupying" any "motor vehicle", not owned by the Named Insured or "family member", which is being operated by the Named Insured or "family member".

16. Sustained by any person, other than the Named Insured or any "family member", while "occupying" a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under common ownership or a vehicle owned by a government other than the state of Minnesota, its political subdivisions, municipal corporations or public agencies, if the "accident" occurs outside the state of Minnesota.

#### **D. Limit Of Insurance**

1. Except as provided in Paragraph 3., regardless of the number of persons insured, policies or plans of self-insurance applicable, premiums paid, claims made or "insured motor vehicles" to which this coverage applies, our liability for Personal Injury Protection benefits with respect to "bodily injury" sustained by any one "insured" in any one "motor vehicle" "accident" shall not exceed \$40,000 in the aggregate and subject to such aggregate:
  - a. The maximum amount payable for "medical expenses" shall not exceed \$20,000.
  - b. The maximum aggregate amount payable for work loss, essential services expenses, funeral expenses and survivors' loss benefits shall not exceed \$20,000. Subject to this maximum aggregate:
    - (1) The maximum amount payable for work loss shall not exceed \$500 per week.
    - (2) The maximum amount payable for essential services expenses shall not exceed \$200 per week.
    - (3) The maximum amount payable for funeral expenses shall not exceed \$5,000.
    - (4) The maximum amount payable for survivors' loss benefits:
      - (a) With respect to Paragraph A.5.a. of the definition of survivors' loss benefits shall not exceed \$500 per week; and
      - (b) With respect to Paragraph A.5.b. of the definition of survivors' loss benefits shall not exceed \$200 per week.

2. Any amount payable by the company under the terms of this coverage shall be reduced by:

a. Any amounts paid, payable or required to be provided on account of such "bodily injury" under any workers' compensation law; except that if the "accident" involves a "motor vehicle" used in a "ridesharing arrangement", this coverage shall be primary.

b. The amount of any deductible applicable to "medical expenses" set forth in this Coverage Form, but only with respect to "bodily injury" sustained by the Named Insured or by a "family member", provided that, if two or more such persons sustain "bodily injury" in the same "motor vehicle" "accident", the total amount of the deductible applicable to all of them shall not exceed the deductible amount stated in this Coverage Form, and such amount shall be allocated equally among them.

c. The amount of any deductible applicable to work loss set forth in this Coverage Form, but only with respect to "bodily injury" sustained by the Named Insured or any "family member".

3. If the Schedule or Declarations indicates that the Named Insured elected to add together two or more Personal Injury Protection Coverages, regardless of the number of persons insured, premiums paid or claims made, our liability for Personal Injury Protection benefits with respect to "bodily injury" sustained by any one "insured" in any one "motor vehicle" "accident" shall not exceed \$40,000 in the aggregate, per "insured motor vehicle", and subject to each such aggregate:

a. The maximum amount payable for "medical expenses" shall not exceed \$20,000 per "insured motor vehicle".

b. The maximum amount payable for work loss, essential services expenses, funeral expenses and survivors' loss benefits shall not exceed \$20,000 per "insured motor vehicle". Subject to this maximum aggregate:

(1) The maximum amount payable for work loss shall not exceed \$500 per week per "insured motor vehicle".

(2) The maximum amount payable for essential services expenses shall not exceed \$200 per week per "insured motor vehicle".

(3) The maximum amount payable for funeral expenses shall not exceed \$5,000 per "insured motor vehicle".

(4) The maximum amount payable for survivors' loss benefits:

(a) With respect to Paragraph A.5.a. of the definition of survivors' loss benefits shall not exceed \$500 per week per "insured motor vehicle"; and

(b) With respect to Paragraph A.5.b. of the definition of survivors' loss benefits shall not exceed \$200 per week per "insured motor vehicle".

#### E. Changes In Conditions

The **Conditions** are changed for Personal Injury Protection as follows:

1. **Duties In The Event Of Accident, Claim, Suit Or Loss** in the Business Auto and Motor Carrier Coverage Forms and **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** in the Auto Dealers Coverage Form are replaced by the following:

a. In the event of any "accident", written notice containing particulars sufficient to identify the "insured" and also reasonably obtainable information respecting the time, place and circumstances of the "accident" shall be given by or on behalf of each "insured" to us or any of our authorized agents within six months from the date of the "accident". Failure to provide such written notice shall not render an "insured" ineligible to receive benefits unless actual prejudice is shown by us and then only to the extent of the prejudice. If an "insured", his or her legal representative or his or her surviving dependents shall institute legal action to recover damages for "bodily injury" against a person or organization who is or may be liable in tort therefor, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to us by such "insured", his or her legal representative or his or her surviving dependents.

b. As soon as practicable, the "insured" or someone on his or her behalf shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the "bodily injury", treatment and rehabilitation received and contemplated, and such other information as may assist us in determining the amount due and payable. The "insured" shall submit to physical and mental examination by physicians selected by us when and as often as we may reasonably require. An "insured" who has undertaken a procedure or treatment for rehabilitation or a course of rehabilitative occupational training, other than a medical rehabilitation procedure or treatment, shall notify us that he or she has undertaken the procedure, treatment or training within 60 days after a rehabilitation expense exceeding \$1,000 has been incurred for the procedure, treatment or training, unless we know or have reason to know of the undertaking. If the "insured" does not give the required notice within the prescribed time, we are responsible only for \$1,000 or the expense incurred after the notice is given and within 60 days before the notice, whichever is greater, unless failure to give timely notice is the result of excusable neglect.

**2. The Transfer Of Rights Of Recovery Against Others To Us** Policy Condition does not apply.

**3. Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form are amended by the following:

In the event the "insured" has other similar insurance including self-insurance available and applicable to the "accident", we shall not be liable for a greater proportion of any loss to which this coverage applies than the Limit of Insurance hereunder bears to the sum of the applicable Limits of Insurance of this coverage and such other insurance.

However, if the driver or occupant of a "motor vehicle" sustains "bodily injury" while using the vehicle in the business of transporting persons or property, this insurance is primary.

**4. The Two Or More Coverage Forms Or Policies Issued By Us** Policy Condition is replaced by the following:

**Two Or More Coverage Forms Or Policies Issued By Us**

If the Schedule indicates that the Named Insured elected to add together two or more Personal Injury Protection Coverages, the Two Or More Coverage Forms Or Policies Issued By Us provision in the Policy Conditions section of the Coverage Form does not apply to coverage afforded under this endorsement. However, no one will be entitled to receive duplicate payments for the same elements of "loss".

**5. The following conditions are added:**

**Coordination, Nonduplication And Priority Of Payments**

a. No "insured" shall recover duplicate benefits for the same elements of "loss" under this or any similar insurance including self-insurance.

b. Any amount payable under any Uninsured Motorists Coverage afforded under this Coverage Form or policy shall be reduced by the amount of any Personal Injury Protection 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 insurance Coverage Form or policy because of "bodily injury" sustained by an "insured".

**Constitutionality Clause**

The premium for and the coverages of the Policy have been established in reliance upon the provisions of the Minnesota No-fault Automobile Insurance Act. In the event a court of competent jurisdiction declares, or enters a judgment the effect of which is to render the provisions of such act invalid or unenforceable in whole or in part, we shall have the right to recompute the premium payable for the Policy and the provisions of this endorsement shall be voidable or subject to amendment at our option.

## Arbitration

If you and we disagree on the amount of "loss" under Personal Injury Protection and the disputed amount is:

- a. \$10,000 or less, both parties must submit to arbitration; or
- b. More than \$10,000, we will advise the "insured" whether we will submit the claim to arbitration.

Arbitration will be conducted in accordance with the Rules of Procedure For No-fault Arbitration contained in the Minnesota Insurance Laws.

In the event of arbitration, each party will select a competent arbitrator. The two arbitrators will select a competent and impartial umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen arbitrator; and
- b. Bear the other expenses of the arbitration and umpire equally.

If we submit to arbitration, we still retain our right to deny the claim.

However, we will not pay you any interest, other than the interest that accrues between the time that it is determined that a "loss" shall be payable, in accordance with this Arbitration Condition, and before we pay, tender or deposit in court payment for the "loss".

## F. Additional Definitions

As used in this endorsement:

1. "Family member" means the spouse or any person related to the Named Insured by blood, marriage or adoption, including a minor in the custody of the Named Insured, spouse or such related person, who is a resident of the same household as the Named Insured whether or not temporarily residing elsewhere.
2. "Insured motor vehicle" means a "motor vehicle" with respect to which:
  - a. The "bodily injury" liability insurance of the Coverage Form or Policy applies and for which a specific premium is charged; and

- b. The Named Insured is required to maintain security under the provisions of the Minnesota No-fault Automobile Insurance Act.

3. "Motor vehicle" means every vehicle, other than a motorcycle or other vehicle with fewer than four wheels, which:

- a. Is required to be registered pursuant to Minnesota Statutes, Chapter 168; and

- b. Is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways or streets in the transportation of persons or property, and includes a "trailer" with one or more wheels, when the "trailer" is connected to or being towed by a "motor vehicle".

4. "Occupying" means in or upon, entering into or alighting from.

5. "Ridesharing arrangement" means the transportation of persons, for a fee or otherwise, in a "motor vehicle" when the transportation is incidental to another purpose of the driver. The term includes the forms of shared transportation known as car pools, commuter van pools and bus pools whether or not furnished by an employer. It does not include transportation of "employees" by an employer from one place to another.

6. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## MINNESOTA BUSINESS INTERRUPTION COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form to which this endorsement is attached apply, unless modified by the endorsement.

### SCHEDULE

<b>Description Of Business Activities Dependent On Scheduled Property:</b>	
<b>Applicable Coverage(s) (select one):</b>	
<input type="checkbox"/> <b>Business Income (Without Extra Expense)</b> <input type="checkbox"/> <b>Business Income And Extra Expense</b>	
<b>Option A</b>	
<b>Description Of Scheduled Property</b>	<b>Limit Of Insurance</b>
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$
6.	\$
<b>Notes:</b>	
<ul style="list-style-type: none"> <li>● Use this section of the Schedule (Option A) if there is only one item of scheduled property or to show a separate Limit of Insurance for each item of scheduled property. The Limit of Insurance can be the same amount for each item or a different amount for each item.</li> <li>● A particular item of scheduled property may be shown under Option A or Option B of this Schedule, but not under both Options. Therefore, if Options A and B are used, each Option must pertain to different items of scheduled property.</li> </ul>	

Option B	
<b>Description Of Scheduled Property</b>	
1.	
2.	
3.	
4.	
5.	
6.	
<b>Limit Of Insurance</b>	<b>\$</b>
<b>Notes:</b> <ul style="list-style-type: none"> <li>● Use this section of the Schedule (Option B) when a single Limit of Insurance applies to the total of all covered business income loss and extra expense attributable to all items of scheduled property subject to such Limit.</li> <li>● A particular item of scheduled property may be shown under Option A or Option B of this Schedule, but not under both Options. Therefore, if Options A and B are used, each Option must pertain to different items of scheduled property.</li> </ul>	
<b>Covered Causes Of Loss Option(s)</b> (select all that apply): <input type="checkbox"/> Comprehensive    OR <input type="checkbox"/> Specified Causes Of Loss <input type="checkbox"/> Collision	
<b>Business Income Coverage Waiting Period</b> (number of hours, if other than 72):	
<b>Extended Business Income Additional Coverage</b> (number of consecutive days, if other than 60):	
<b>Premium:</b>	<b>\$</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

## A. Coverage

This endorsement provides coverage in accordance with the entries made in the Schedule.

### 1. Business Income

We will pay for the actual loss of "business income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct and accidental loss or damage to "scheduled property". The direct and accidental loss or damage must be caused by or result from a Covered Cause of Loss and must occur while such "scheduled property" is located within the coverage territory.

### 2. Extra Expense

If the Schedule indicates that Extra Expense Coverage applies, we will pay the actual and necessary "extra expense" you incur during the "period of restoration" due to direct and accidental loss or damage to "scheduled property". The direct and accidental loss or damage must be caused by or result from a Covered Cause of Loss and must occur while such "scheduled property" is located within the coverage territory.

## B. Additional Coverages

### 1. Extended Business Income

If the necessary "suspension" of your "operations" produces a "business income" loss payable under this endorsement, we will pay for the actual loss of "business income" you incur during the period that:

- a. Begins on the date "scheduled property" is actually repaired or replaced and "operations" are resumed; and
- b. Ends on the earlier of:
  - (1) The date you could restore your "operations", with reasonable speed, to the level which would generate the "business income" amount that would have existed if no direct and accidental loss or damage had occurred; or
  - (2) 60 consecutive days after the date determined in Paragraph **B.1.a.**, unless a different number of days is shown in the Schedule.

However, Extended Business Income Additional Coverage does not apply to loss of "business income" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where "scheduled property" is normally used.

Loss of "business income" must be caused by direct and accidental loss or damage to "scheduled property" caused by or resulting from a Covered Cause of Loss.

### 2. Temporary Substitute And Newly Acquired Property

The coverage applicable to "scheduled property" under this endorsement is extended to apply to:

- a. Property that is used as a temporary substitute for "scheduled property", but only while such "scheduled property" is out of service due to breakdown, repair, servicing, destruction or direct and accidental loss or damage;
- b. Newly acquired property, other than temporary substitute property described in Paragraph **B.2.a.**, but only if:
  - (1) It serves as a replacement for "scheduled property"; and
  - (2) You tell us within 30 days after you acquire it that you want it to be added as "scheduled property".

## C. Covered Causes Of Loss

1. With respect to the coverage provided under this endorsement, the following Covered Causes of Loss apply if selected in the Schedule:
  - a. Comprehensive, meaning any cause of direct and accidental loss or damage except:
    - (1) "Scheduled property's" collision with another object; or
    - (2) "Scheduled property's" overturn.Comprehensive also includes direct and accidental loss or damage caused by falling objects, missiles or hitting a bird or animal.

b. Specified Causes Of Loss, meaning direct and accidental loss or damage caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting "scheduled property".

c. Collision, meaning direct and accidental loss or damage caused by:

- (1) "Scheduled property's" collision with another object; or
- (2) "Scheduled property's" overturn.

#### D. Exclusions

We do not provide coverage under this endorsement:

1. When direct and accidental loss or damage is caused by or results from any of the following, regardless of any other cause or event that contributes concurrently or in any sequence to the direct and accidental loss or damage:

##### a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

##### b. War Or Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. When direct and accidental loss or damage to "scheduled property" is caused by or results from "scheduled property" being used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We also do not provide coverage under this endorsement while that "scheduled property" is being prepared for such contest or activity.

3. When direct and accidental loss or damage is due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

4. For any increase of "business income" loss caused by or resulting from the suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your "business income" during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of Extended Business Income Additional Coverage.

5. For any "extra expense" caused by or resulting from the suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

6. For any other consequential loss.

#### E. Limit Of Insurance

1. When a separate Limit of Insurance applies to each item of "scheduled property" as shown in Option A of the Schedule, that Limit is the most we will pay in any one occurrence for the total of all covered "business income" loss and "extra expense" attributable to that item of "scheduled property", regardless of the number of premiums paid or claims made.

2. When a single Limit of Insurance applies to more than one item of "scheduled property" as shown in Option B of the Schedule, that Limit is the most we will pay in any one occurrence for the total of all covered "business income" loss and "extra expense" attributable to all items of "scheduled property" to which that Limit applies, regardless of the number of items of "scheduled property", premiums paid or claims made.

3. "Business income" loss and "extra expense" attributable to a particular item of "scheduled property" will not be covered under more than one Limit of Insurance. Therefore:

- a. If more than one such Limit could be said to apply based on the descriptions of "scheduled property", then coverage will be subject to the Limit of Insurance associated with the more specific description of that item;

- b. If the same description of "scheduled property" appears more than once in the Schedule, then coverage for such item of "scheduled property" will be subject to the Limit of Insurance that would provide the highest loss payment.

4. Payments made under Extended Business Income Additional Coverage or Temporary Substitute And Newly Acquired Property Additional Coverage will not increase the applicable Limit of Insurance.

## F. Changes In Conditions

With respect to the coverage provided by this endorsement, the following conditions are added and replace any provisions to the contrary:

### 1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

However, we will not pay you any interest, other than the interest that accrues between the time that it is determined that an amount of Net Income and operating expense or amount of loss shall be payable, in accordance with this Appraisal Condition, and before we pay, tender or deposit in court payment for the amount.

### 2. Duties In The Event Of Loss

If there is direct and accidental loss or damage to "scheduled property", you must do the following:

- a. Give us or our authorized representative prompt notice of such loss or damage. Include a description of the "scheduled property" involved.

- b. As soon as possible, give us or our authorized representative a description of how, when and where such loss or damage occurred.

- c. Promptly notify the police if "scheduled property" or any of its equipment is stolen.

- d. Take all reasonable steps to protect "scheduled property" from further damage, and keep a record of your expenses necessary to protect "scheduled property", for consideration in the settlement of the claim. Also, if feasible, set such property aside and in the best possible order for examination.

- e. As often as may be reasonably required, permit us to inspect "scheduled property" and examine and make copies of your books and records.

- f. Agree to examinations under oath at our request and give us a signed statement of your answers.

- g. Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

- h. Cooperate with us in the investigation or settlement of the claim.

- i. If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

### 3. Other Insurance

- a. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance provided under this endorsement. If you do, we will pay our share of the covered "business income" loss or "extra expense". Our share is the proportion that the applicable Limit of Insurance under this endorsement bears to the Limits of Insurance of all insurance covering on the same basis.

- b. If there is other insurance covering the same "business income" loss or "extra expense", other than that described in Paragraph F.3.a., we will pay only for the amount of covered "business income" loss or "extra expense" in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

#### 4. Loss Determination

- a. The amount of "business income" loss will be determined based on:
  - (1) The Net Income of your "operations" before the direct and accidental loss or damage occurred;
  - (2) The likely Net Income of your "operations" if no direct and accidental loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of your "operations" due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct and accidental loss or damage; and
  - (4) Other relevant sources of information, including:
    - (a) Your financial records and accounting procedures;
    - (b) Bills, invoices and other vouchers; and
    - (c) Titles, liens or contracts.
- b. The amount of "extra expense" will be determined based on:
  - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct and accidental loss or damage had occurred. We will deduct from the total of such expenses:
    - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
    - (b) Any "extra expense" that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as the coverage provided by this endorsement; and
  - (2) Necessary expenses that reduce the "business income" loss that otherwise would have been incurred.

#### 5. Resumption Of Operations

- a. We will reduce the amount of your "business income" loss, other than "extra expense", to the extent you can resume "operations", in whole or in part, by using any property.
- b. We will reduce the amount of your "extra expense" loss to the extent you can return "operations" to normal and discontinue such "extra expense".
- c. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

#### 6. Loss Payment

We will pay for covered "business income" loss or "extra expense" within five business days after we receive the sworn documentation addressed in Paragraph **F.2.g.**, if you have complied with all of the terms of this Coverage Part and:

- a. We have reached agreement with you on the amount of such loss; or
- b. An appraisal award has been made.

#### G. Additional Definitions

As used in this endorsement:

- 1. "Business income" means the:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
  - b. Continuing normal operating expenses incurred, including payroll.
- 2. "Extra expense" means necessary expenses (other than the expense to repair or replace property) that you would not have incurred if there had been no direct and accidental loss or damage to "scheduled property". "Extra expense" includes expenses which are incurred:
  - a. To avoid or minimize the "suspension" of "operations" and to continue "operations";
  - b. To minimize the "suspension" if you cannot continue "operations"; or
  - c. For temporary use of other property.
- 3. "Operations" means your business activities described in the Schedule that are dependent on "scheduled property".

4. "Period of restoration" means the period of time that:

a. Begins:

(1) 72 hours after the time of direct and accidental loss or damage for Business Income Coverage, unless a different number of hours is shown in the Schedule for the Business Income Coverage Waiting Period; or

(2) Immediately after the time of direct and accidental loss or damage for Extra Expense Coverage;

caused by or resulting from a Covered Cause of Loss to "scheduled property"; and

b. Ends on the earlier of:

(1) The date when "scheduled property" should be repaired or replaced with reasonable speed and similar quality; or

(2) The date when "operations" are resumed.

"Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

(1) Regulates the use or repair of any property, or requires updated emissions controls or safety features which were not part of "scheduled property" prior to the direct and accidental loss or damage; or

(2) Requires anyone to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

5. "Scheduled property" means the items of property described in the Schedule, including machinery or equipment that is permanently installed in such property. "Scheduled property" does not include buildings, locations or premises.

6. "Suspension" means the slowdown or cessation of your "operations".