

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## UNINSURED MOTORISTS COVERAGE AND UNDERINSURED MOTORISTS COVERAGE – HAWAII

**PLEASE NOTE:** Your election of either “STACKED” or “NON-STACKED” coverage appears on your Declaration for this policy, is subject to all terms of this policy, and is further described in the **Limit of Liability** provision of this endorsement.

**PART C – UNINSURED MOTORISTS COVERAGE** is replaced by the following **PART C - UNINSURED MOTORISTS COVERAGE** and **UNDERINSURED MOTORISTS COVERAGE**:

### INSURING AGREEMENT

#### A. Uninsured Motorists Coverage (UM)

If the premium for **Uninsured Motorists Coverage** has been paid, we will pay for compensatory damages that an “insured” is legally entitled to recover from the owner or operator of an “uninsured motor vehicle” for “bodily injury” sustained by that “insured” and caused by a motor vehicle accident.

The owner’s or operator’s liability for these damages must:

1. Be due to a motor vehicle accident; and
2. Arise out of and be causally connected to the ownership, maintenance or use of the “uninsured motor vehicle”.

Any payment by us for this **Uninsured Motorists Coverage** is subject to the limits elected and shown in the Declarations or Schedule, and as further described in the **Limit of Liability** provision of this endorsement.

#### B. Underinsured Motorists Coverage (UIM)

If the premium for **Underinsured Motorists Coverage** has been paid, we will pay for compensatory damages that an “insured” is legally entitled to recover from the owner or operator of an “underinsured motor vehicle” for “bodily injury” sustained by that “insured” and caused by a motor vehicle accident.

The owner’s or operator’s liability for these damages must:

1. Be due to a motor vehicle accident; and
2. Arise out of and be causally connected to the ownership, maintenance or use of the “underinsured motor vehicle”.

Any payment by us for this **Underinsured Motorists Coverage** is subject to the limits elected and shown in the Declarations or Schedule, and as further described in the **Limit of Liability** provision of this endorsement.

#### C. “Insured”, as used in this endorsement, means:

1. You or a “family member” while “occupying” “your covered auto”.
2. You or a “family member” while not “occupying” a motor vehicle.
3. Any other person while “occupying” or using “your covered auto” with permission from you (including while that person may be physically out of but still having a chain of events connection with the use of “your covered auto”).
4. Any person, for damages that person is legally entitled to recover because of “bodily injury” to a person described in this definition in 1., 2., or 3. above. This does not increase our limit of liability in any accident to an amount greater than the limit that applies to the person who has sustained a “bodily injury” and is described in this definition in 1., 2., or 3. above.

However, “insured” shall NOT mean and does NOT include (unless otherwise required by law):

1. You;
2. Any “family member” or any other person related to you who resides with you; or
3. Any other person;

while “occupying”, operating or otherwise using any vehicle owned by, or furnished or available for the regular use of, you, or any person related to you who resides with you, if that vehicle is not “your covered auto”. To the extent such a person is or will be required by law to be an “insured”, that person will only be deemed an “insured” under **PART C** for “minimum limits” for (as applicable) **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage**, any and all coverage under this **PART C** for such an “insured” applies excess to all other available uninsured motorists coverage and underinsured motorists coverage, and only after all other insurance and other sources of recovery have been exhausted by payment.

D. “Family member”, as used in this endorsement, means:

1. A spouse or reciprocal beneficiary (as defined under Hawaii law, as amended) of the named insured on this policy;
2. Any other person related to the named insured on this policy by blood, marriage or adoption;
3. A minor if in the custody of a named insured on this policy or of a relative residing in the same household with that named insured;

provide that person must be a resident of that named insured’s household (even if temporarily living elsewhere but who usually makes his or her home in the same household or family unit), including your ward or foster child.

E. “Minimum limits”, as used in this endorsement, means the minimum amounts of liability insurance required under a financial responsibility or compulsory insurance law of the state where “your covered auto” is registered, as shown in our records, that apply to the owner or operator of a private passenger automobile. The “minimum limits” amount will be the each person/each accident limit required by these laws.

F. “Underinsured motor vehicle” means a land motor vehicle for which one or more “bodily injury” liability bonds or policies, or self-insurance, apply at the time of the accident, but all limits available under those bonds and policies or self-insurance for “bodily injury” liability coverage at the time of the accident are less than the damages sustained and imposed by law in favor of the “insured” who is legally entitled to recover for “bodily injury” from the owner and/or operator of that motor vehicle .

An “underinsured motor vehicle” does NOT include any vehicle or its equipment:

1. Located for use as a residence or premises;
2. Designed for use mainly off public roads, while not on public roads;
3. Operated on rails or crawler treads;
4. Owned by any government or any of its subdivisions or agencies;
5. That is either:
  - a. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy; or
  - b. Owned by, or furnished or available for the regular use of, you, any “family member” or any other person related to you who resides with you;

unless it is “your covered auto” to which **PART A – LIABILITY COVERAGE** of this policy applies and you or a “family member” sustain “bodily injury” (in which case “your covered auto” is an “underinsured motor vehicle” as to only you or a “family member”); or

6. That is an “uninsured motor vehicle”.

G. "Uninsured motor vehicle" means a land motor vehicle that is:

1. Not insured or bonded, nor self-insured, for "bodily injury" liability at the time of the accident;
2. Insured or bonded for "bodily injury" liability at the time of the accident, but the bonding or insuring company denies coverage or is, or becomes, insolvent; or
3. A hit-and-run motor vehicle or a motor vehicle for which the owner or operator cannot be identified, and that motor vehicle causes an accident resulting in "bodily injury" to an "insured". If there is no physical contact with that motor vehicle causing the accident and "bodily injury", then the facts of the accident must be corroborated by competent evidence of an eyewitness other than an "insured" making a claim.

An "uninsured motor vehicle" does NOT include any vehicle or its equipment:

1. Located for use as a residence or premises;
2. Designed for use mainly off public roads, while not on public roads;
3. Operated on rails or crawler treads;
4. Owned by any government or any of its subdivisions or agencies;
5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy;
6. Owned by, or furnished or available for the regular use of, you, any "family member" or any other person related to you who resides with you. However, this does not pertain to you or a "family member" who sustain "bodily injury", in which case such motor vehicle is an "uninsured motor vehicle" as to the "bodily injury" to you and "family members", only, but such **Uninsured Motorists Coverage** that applies under this policy will be available only in an amount up to, but not more than, "minimum limits";
7. Owned or operated by a self-insurer under any motor vehicle law that applies, other than a self-insurer that is or becomes insolvent; or
8. That is an "underinsured motor vehicle".

#### **ADDITIONAL TERMS & DUTIES**

The coverage provided by this endorsement is also subject to these additional terms and duties:

- A. If the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" has liability insurance, self-insurance or bond, we will not make a payment under **PART C** to or for an "insured" until after one of the following occurs:
  1. You and we agree, in writing, to a written settlement;
  2. We have been given both:
    - a. Prompt written notice of an offer of settlement by the owner, operator or insurer of an "uninsured motor vehicle" or "underinsured motor vehicle", and
    - b. Within 30 days of that offer notice, an opportunity to advance payment to the "insured" in an amount equal to that offer of settlement so as to protect our rights to recover against the liable owner and/or operator (or its insurer); or
  3. The limits of liability under those other applicable liability policies or bonds have been exhausted by payment of judgments or settlements.
- B. Without our prior written consent, we are not bound by:
  1. Any settlement for damages; or
  2. Any judgment arising out of a lawsuit;
 against the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle".

- C. In the event of an accident involving a hit-and-run or unidentified vehicle, you (or someone on your behalf) must contact:
1. The police (or other law enforcement with proper jurisdiction) within 30 days of, or as soon as practicable after, that accident, and file a written report; and
  2. Us within 30 days of, or as soon as practicable after, that accident.

## EXCLUSIONS

- A. **Uninsured Motorists Coverage** and **Underinsured Motorists Coverage** do NOT cover "bodily injury" to an "insured" or any person:
1. If the claim is settled without our written consent and our rights are prejudiced.
  2. That occurs while using or "occupying" a vehicle without permission from the owner of the vehicle. This does not apply to you or a "family member" when using or "occupying" "your covered auto".
  3. That occurs while "your covered auto" is being used as a public or livery conveyance or for any delivery of persons or property for compensation or a fee. This exclusion (A.3.) does not apply to shared expense car pools.
- B. **Uninsured Motorists Coverage** and **Underinsured Motorists Coverage** shall NOT apply, directly or indirectly, to benefit any:
1. Workers' compensation or disability benefits insurer;
  2. Self-insurer under any workers' compensation, or disability benefits or similar law; or
  3. Government body or agency.
- C. We do NOT provide any coverage of any kind for any punitive or exemplary damages, however named, and we do not cover any and all:
1. Damages that are separate from sums intended to provide compensation, and are instead intended or awarded to:
    - a. Punish or deter wrongful, malicious or unlawful conduct by any person or party; or
    - b. Fine, penalize or impose a statutory penalty; and
  2. Attorney fees, interest, costs or other fees awarded in connection with the award of any such punitive or exemplary damages.

## LIMIT OF LIABILITY

Our **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** limit of liability (as applicable), which is the most we will pay, is the limit shown in the Declarations or Schedule. That limit is subject to the following terms:

- A. The most we will pay for all covered damages is:
1. The limit for each person shown in the Declarations or Schedule, which shall:
    - a. Apply for all claims due to "bodily injury" to one person in any one accident; and
    - b. Include all claims allowed by law and incurred by persons other than the person who sustains the actual "bodily injury" that results from an accident. These claims include, but are not limited to, derivative or independent claims (however labeled and where allowed by law) for: wrongful death; loss of consortium, companionship, society, support and services; and emotional distress or mental anguish as a result of seeing the accident or "bodily injury".
  2. If the limit shown in the Declarations or Schedule shows a per person and per accident limit, that per accident limit:

- a. Shall apply for "bodily injury" to two or more persons in any one accident; and
  - b. Is subject to the "bodily injury" limit for each person as described above.
3. If only a single per accident limit is shown as the limit of liability in the Declarations or Schedule for **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage**, that amount shown is the most we will pay for the total of all covered damages resulting from any one accident. We will comply with any law requiring us to provide any separate limits, but this does not increase the total limit of liability that applies to each accident.

The limits described above will apply unless the terms of this endorsement indicate only the "minimum limits" are applicable, and then those "minimum limits" will be applied in the same manner as described herein.

- B. There will be no adding, stacking or combining of limits for any one covered accident no matter the number of:
- 1. Injured persons, claims or lawsuits asserted;
  - 2. Vehicles or trailers involved in the accident;
  - 3. Insureds on this policy or involved in the accident;
  - 4. Vehicles or premiums shown in the Declarations or Schedule; or
  - 5. Policies issued by us.
- C. However, notwithstanding any policy provision to the contrary, if both:
- 1. You have selected, purchased and paid the extra premium for the "STACKED" coverage option as shown in the Declarations for **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage**, if and as applicable, on this policy; AND
  - 2. The **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** under this **PART C** applies to an "insured" who is you or a "family member" (also referred to as a Class I "insured");
- then for that applicable **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage**, the following terms apply for any stacking or adding of such coverage under this **PART C** for you or a "family member" as a Class I "insured":
- 1. **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** stacking will be provided only for you and "family members" as Class I "insureds".
  - 2. The most we will pay for all covered damages for an "insured" who is you or a "family member" is the applicable limit of **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** (as set forth in paragraph "A" above under this **Limit of Liability** provision) multiplied by the number of "your covered autos" on this policy for which the "Stacked" coverage option has been selected and purchased with a separate premium per vehicle as shown in the Declarations or Schedule.
  - 3. When **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** stacking applies, the per accident limit that is shown as the limit of liability in the Declarations for that coverage will increase only to the extent that the stacking described above, increases the amount payable to a Class I "insured" (you and "family members") who is entitled to stack coverage to an amount that exceeds the (non-stacked) per person limit of liability shown in the Declarations that is otherwise the limit applicable to that Class I "insured" (you and "family members").
- D. The total damages an "insured" is legally entitled to recover because of the accident with the "uninsured motor vehicle" or "underinsured motor vehicle" shall be reduced by any amount paid or to be paid because of "bodily injury":
- 1. By or on behalf of any persons or parties that may be legally responsible for the injury, including, but not limited to, all amounts paid under **PART A – LIABILITY COVERAGE** of this policy; and

2. Paid under any medical payments, personal injury protection, no-fault and/or first party benefits coverage of this policy; and
  3. Paid or payable because of "bodily injury" under any workers' compensation law, disability benefits law, or similar laws, exclusive of any state non-occupational disability benefits law; and
  4. From any other source of recovery, including this or any other insurance policy.
- E. We also will reduce the "insured's" total damages by any amount available to that "insured", under any bodily injury liability bonds or policies applicable to the "underinsured motor vehicle", that the "insured" did not recover as a result of a settlement between that "insured" and the insurer of an "underinsured motor vehicle". However:
1. Any such reduction of the "insured's" total damages will not reduce the limit of liability for this coverage.
  2. This shall not apply if we advance payment to the "insured" in an amount equal to the tentative settlement with the insurer of the "underinsured motor vehicle".
- F. Duplicate payments will not be allowed or made for the same element of damages, expense or loss that has been or will be paid by any other coverage under this policy, any other policy or by any other source.

### OTHER INSURANCE

If there is other uninsured and/or underinsured motorists coverage, or similar type of insurance or source of recovery, that applies or is available under one or more policies:

- A. Except when the "insured" is "occupying" "your covered auto", the coverage under this policy, if applicable, shall be excess to all other insurance, whether that insurance is considered primary, secondary or excess. If there is other insurance with the same priority as this coverage, we will not pay more than our share of the covered damages or loss. Our share of the covered damages or loss is the proportion that our limit of coverage under **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** bears to the total of all applicable limits with the same priority as this coverage.
- B. Notwithstanding paragraph A. above in this **Other Insurance** section, the total recovery under all such policies or coverages cannot be greater than the single highest limit that applies for any one vehicle under one policy of insurance providing coverage on either a primary, secondary or excess basis. However, this limitation does not apply to **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** if and when required by Hawaii law, as amended, when the extra premium has been paid for the "STACKED" coverage option under this policy for the applicable **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** as shown on the Declarations, and as further described in the **Limit of Liability** provision of this endorsement.

In issuing this policy of insurance we have relied upon your representation that you will purchase and maintain other insurance providing this coverage on a primary basis with respect to you, "family members" and any other person related to you who resides with you. However, this insurance shall be primary to such other insurance for any "insured" while "occupying" or using "your covered auto".

### ARBITRATION

Arbitration is not available to resolve any disputes as to coverage or policy interpretation issues.

Arbitration may be used, if mutually agreed to by both parties, if we and an "insured" do not agree as to:

- A. Whether or not that "insured" is legally entitled to recover damages; or
- B. The amount of damages that "insured" is legally entitled to recover;

from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle". Any such arbitration is limited to resolving only either one or both of those issues (i.e. liability and damages).

The following terms govern the arbitration process (unless otherwise required by Hawaii insurance or arbitration laws, as amended, or we and the “insured” otherwise agree in writing):

- A. Each party will select an impartial and qualified arbitrator. Those two arbitrators will select a third impartial and qualified arbitrator. If the first two arbitrators cannot agree within 30 days, either may request that selection of the third arbitrator be made by a court with proper jurisdiction.
- B. Arbitration will take place in the county in which the “insured” resides at time of accident.
- C. Local rules of law as to procedure and evidence will apply. Disputes as to procedure and evidence shall be subject to the authority of the arbitrator.
- D. Costs will be paid by each party as follows:
  - 1. Each party will pay the expenses it incurs and the costs of its own arbitrator selected; and
  - 2. Each party will share the expenses of the third arbitrator equally.
- E. A decision agreed to by two of the arbitrators will be binding as to:
  - 1. Whether or not that “insured” is legally entitled to recover damages; and
  - 2. The amount of damages that “insured” is legally entitled to recover, but only if that amount is not greater than “minimum limits”.

If the arbitrators’ award is greater than “minimum limits”, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators’ decision. If this demand is not made, the amount of damages agreed to by the arbitrators will then be binding.
- F. The arbitrators shall have no authority to:
  - 1. Resolve any disputes as to coverage, or who is an “insured”, the validity of any coverage election or rejection or selection, residency status of a claimant, qualification of a person as an “insured”, rights or duties under the policy, or statutes of limitations, or other policy interpretation issues; or
  - 2. Award any amount greater than the limit of liability; or
  - 3. Award any amount as punitive or exemplary damages, costs, interest, attorney fees or other fees.

If there is no mutual agreement to arbitrate, all issues shall be resolved in a court of proper and competent jurisdiction.

Under **PART F - GENERAL PROVISIONS**, the following is added to the **Two or More Auto Policies** provision:

This policy provision and limitation does not apply to **PART C - Uninsured Motorists Coverage** and **Underinsured Motorists Coverage** but only if and when the extra premium has been paid for the “STACKED” coverage option under this policy for the applicable **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** as shown on the Declarations for that applicable coverage, and as further described in the **PART C Limit of Liability** provision of this endorsement.

All other policy provisions apply.