

**SPECIMEN MODEL WORDING. THIS FORM PROVIDES NO COVERAGE  
UNLESS ADOPTED AND ISSUED BY A LICENSED INSURER.**

## **BUSINESS AUTO COVERAGE FORM MENLO REFERENCE FORM**

*Menlo Form MENLO-CA-01 is an original document authored by Menlo Insurance Services. It corresponds to coverage commonly written on form CA 00 01, which is referenced for identification only.*

Various provisions in this form restrict coverage. Read the entire form carefully to determine rights, duties, and what is and is not covered. Throughout this form, the words “you” and “your” refer to the named insured shown in the declarations of the issuing policy, and the words “we”, “us”, and “our” refer to the insurer that adopts and issues this form. Other words and phrases that appear in quotation marks have the meanings given in the Definitions section at the end of this form.

Throughout this form, “we”, “us”, and “our” refer to the insurer that issues the policy of which this form is a part. “You” and “your” refer to the named insured shown in the Declarations. Every other word or phrase that appears in double quotation marks has the meaning given in Section K. Definitions.

### **A. Liability Coverage Insuring Agreement**

- 1. Payment of damages.** If an “insured” becomes legally obligated to pay damages for “bodily injury” or “property damage” this insurance covers, we will pay those damages on the insured's behalf. This insurance covers “bodily injury” or “property damage” only if it:
  - a.** arises from an “accident”;
  - b.** results from owning, maintaining, or using a “covered auto”; and
  - c.** occurs during the policy period and in the coverage territory described in J.12.
- 2. Payment of pollution costs.** We will also pay all sums an “insured” legally must pay as a “covered pollution cost or expense”, but only if the “covered pollution cost or expense”:
  - a.** arises from an “accident” that results from owning, maintaining, or using a “covered auto”; and
  - b.** arises out of the same “accident” for which this insurance also applies to “bodily injury” or “property damage”.

We will not pay any “covered pollution cost or expense” under an “accident” for which no “bodily injury” or “property damage” coverage applies.

- 3. Defense.** We have the right and the duty to defend any “insured” against a “suit” that seeks damages this insurance covers, even if the allegations of the “suit” are groundless, false, or fraudulent. We have no duty to defend any “insured” against a “suit” that seeks only damages or costs this insurance does not cover. At our discretion, we may investigate any “accident” and settle any claim or “suit”. Our duty to defend and our duty to pay end when we have used up the applicable Limit of Insurance through payment of judgments, settlements, or “covered pollution cost or expense” amounts.

### **B. Covered Auto Designation Schedule**

An “auto” is a “covered auto” for a particular coverage only if the numeral designating that “auto” under this Section B. is entered in the Declarations opposite that coverage, or if a provision of Section C. extends that coverage to the “auto”. More than one numeral may be entered opposite a single coverage, and different coverages may carry different numerals. If no numeral is entered opposite a coverage, no “auto” is a “covered auto” for that coverage, whatever numerals appear elsewhere in the Declarations. A single “auto” may therefore be a “covered auto” for one coverage and not for

another; the entry opposite each coverage controls that coverage alone. Each numeral designates the “autos” described below, and no others:

1. **Numeral 1: any “auto”.** Every “auto”, without regard to who owns it and without regard to whether it is described in the Declarations. Numeral 1 may be entered opposite Liability Coverage only; it does not designate any “auto” for any other coverage.
2. **Numeral 2: owned “autos”.** Every “auto” you own, whether or not it is described in the Declarations, together with:
  - a. every “auto” you acquire ownership of after the policy period begins, as C.1. provides; and
  - b. for Liability Coverage only, a “trailer” you do not own while it is connected to an “auto” you own that is a “covered auto” for Liability Coverage.
3. **Numeral 3: owned “private passenger autos”.** Every “private passenger auto” you own, together with every “private passenger auto” you acquire ownership of after the policy period begins, as C.1. provides.
4. **Numeral 4: owned “autos” that are not “private passenger autos”.** Every “auto” you own that is not a “private passenger auto”, including every “trailer” you own, together with every such “auto” you acquire ownership of after the policy period begins, as C.1. provides.
5. **Numeral 5: owned “autos” subject to compulsory no-fault law.** Every “auto” you own that is required, by the no-fault benefits law of the state where it is licensed or principally garaged, to carry no-fault benefits, together with every such “auto” you acquire ownership of after the policy period begins, as C.1. provides. Numeral 5 designates “autos” for compulsory no-fault benefits coverage only.
6. **Numeral 6: owned “autos” subject to compulsory uninsured motorists law.** Every “auto” you own that is subject, in the state where it is licensed or principally garaged, to a law that requires uninsured motorists protection and does not permit its rejection, together with every such “auto” you acquire ownership of after the policy period begins, as C.1. provides.

Numeral 6 designates “autos” for compulsory uninsured motorists coverage only.

7. **Numeral 7: specifically described “autos”.** Only those “autos” individually described in the Declarations for which a premium charge is shown for the coverage in question. Each described “auto” carries only the coverages for which the Declarations show a premium charge for that “auto”. Numeral 7 also designates:
  - a. for Liability Coverage only, a “trailer” you do not own while it is connected to a described “auto”; and
  - b. an “auto” you acquire ownership of after the policy period begins, but only under the conditions stated in C.2.
8. **Numeral 8: “hired autos”.** Every “hired auto”. Numeral 8 does not designate any “auto” you own.
9. **Numeral 9: “nonowned autos”.** Every “nonowned auto”. Numeral 9 may be entered opposite Liability Coverage only.
10. **Numeral 19: “mobile equipment” treated as a motor vehicle by law.** Every land vehicle that would otherwise be “mobile equipment” but that a compulsory insurance law, a financial responsibility law, or another law governing motor vehicle insurance treats as a motor vehicle in the state of its licensing or principal garaging, without regard to whether you own, lease, hire, rent, or borrow it. Numeral 19 may be entered opposite Liability Coverage only.

Numerals 2, 3, 4, 7, and 8 may be entered opposite any coverage this form provides. Numerals 1, 9, and 19 may be entered opposite Liability Coverage only, and numerals 5 and 6 only opposite the statutory coverages they describe. Numerals 3 and 4 together designate the same “autos” as numeral 2; they exist so that the Declarations may give owned “private passenger autos” and other owned “autos” different coverages, limits, or deductibles. Numerals 5 and 6 designate “autos” only for the compulsory statutory coverages they respectively describe; neither designates any “auto” for Liability Coverage or for any Physical Damage Coverage. If numeral 1, or the combination of numerals 2, 8, and 9, is entered opposite Liability Coverage, numeral 19 adds nothing, because those entries already reach the vehicles numeral 19 describes.

**C. Autos Acquired After Inception; Automatic Coverage Extensions**

**1. Acquired “autos” under numerals 1 through 6 and 19.** If any of numerals 1 through 6, or numeral 19, is entered opposite a coverage in the Declarations, an “auto” of the type that numeral describes that you acquire ownership of after the policy period begins qualifies as a “covered auto” for that coverage for the remainder of the policy period. No notice to us is required for this coverage to attach; the exposure the acquired “auto” adds is accounted for through the premium audit described in J.11.

**2. Acquired “autos” under numeral 7.** If numeral 7 is entered opposite a coverage in the Declarations, an “auto” you acquire ownership of after the policy period begins qualifies for that coverage as a “covered auto” only if both of the following conditions are satisfied:

- a. one of the following is true:
  - (1) on the date you acquire the “auto”, we already insure every “auto” you own for that coverage, in which case the acquired “auto” gains that coverage; or
  - (2) the acquired “auto” replaces an “auto” you previously owned that carried that coverage, in which case the acquired “auto” gains only the coverage the replaced “auto” carried; and
- b. you ask us to insure the acquired “auto” for that coverage not later than 30 days after you acquire ownership, or by the last day of the policy period if that day comes first.

If you do not satisfy C.2.b., the acquired “auto” is not a “covered auto” for that coverage at any time. Because C.2.a.(1) requires that every “auto” you own already carries the coverage in question, an acquired “auto” that adds to your fleet, rather than replacing a unit, gains a coverage automatically only if that coverage is uniform across all your owned “autos” on the acquisition date.

**3. Certain leased “autos” treated as owned.** An “auto” leased or rented to you, without a driver, is treated as an “auto” you own if:

- a. the lease or rental agreement is written;

- b. the agreement runs for a continuous term of six months or longer; and
- c. the agreement obligates you to provide primary insurance on the “auto”.

An “auto” this paragraph describes is not a “hired auto”.

**4. Light “trailers”.** If Liability Coverage applies under this form, a “trailer” is a “covered auto” for Liability Coverage, in any number and without designation, if the “trailer”:

- a. is designed primarily for travel on public roads; and
- b. has a registered gross vehicle weight of 3,000 pounds or less.

This extension applies to Liability Coverage only; it does not extend any Physical Damage Coverage to the “trailer”.

**5. “Mobile equipment” in transit.** If Liability Coverage applies under this form, “mobile equipment” is a “covered auto” for Liability Coverage while a “covered auto” carries or tows it. This extension applies to Liability Coverage only; F.5. and Section H. govern damage to the “mobile equipment” itself and its operation as equipment.

**6. Temporary substitute “autos”.** If Liability Coverage applies under this form, an “auto” you do not own is a “covered auto” for Liability Coverage while, with the permission of its owner, it is used as a temporary substitute for an owned “covered auto” of yours that is out of service because of:

- a. breakdown;
- b. repair;
- c. servicing;
- d. “loss”; or
- e. destruction.

A rented “auto” that replaces your disabled “covered auto” qualifies under this paragraph; an “auto” rented for a purpose other than substitution, such as travel, does not, though it may be a “covered auto” under a numeral 1 or numeral 8 entry.

**D. Persons and Organizations Protected**

1. **You.** You are an “insured” for any “covered auto”.
2. **Permissive users.** Anyone else is an “insured” while, with your permission, that person or organization uses a “covered auto” that you own, hire, or borrow, except the following persons and organizations:
  - a. the owner of a “covered auto” you hire or borrow, and any other party from whom you hire or borrow it; this exception does not apply while a “trailer” you do not own is connected to a “covered auto” you own;
  - b. your “employee”, while the “covered auto” in use is owned by that “employee” or by a member of that employee's household;
  - c. any person or organization, other than you, while that person or organization is engaged in a business that sells, services, repairs, parks, or stores “autos” and is operating, moving, or holding a “covered auto” in the course of that business;
  - d. anyone, while loading property onto or unloading property from a “covered auto”, other than:
    - (1) you;
    - (2) your “employees”;
    - (3) your partners, if you are a partnership;
    - (4) your members, if you are a limited liability company;
    - (5) a lessee or borrower of the “covered auto”; or
    - (6) an “employee” of a lessee or borrower of the “covered auto”; and
  - e. a partner of your partnership, or a member of your limited liability company, while the “covered auto” in use is owned by that partner or member or by a member of that partner's or member's household.
3. **Vicariously responsible parties.** Anyone answerable at law for the conduct of an “insured” described in D.1. or D.2. is also an “insured”, but only to the extent of that legal responsibility. A person or organization qualifies under this paragraph without being named in the Declarations, and D.2. does not limit the

qualification; a party excepted from insured status under D.2. may still be answerable at law for another insured's conduct and, to that extent alone, qualifies under this paragraph.

4. **Separate application.** Except with respect to the Limit of Insurance, this insurance applies separately to each “insured” against whom a claim is made or a “suit” is brought. An exclusion that turns on the conduct, knowledge, or status of the “insured” is applied separately to each “insured”, as F.1. illustrates.

**E. Additional Payments and State Conformity**

1. **Payments in addition to the Limit of Insurance.** When we defend an “insured” against a “suit”, or investigate or settle a claim, we will pay the following amounts in addition to, and not within, the applicable Limit of Insurance:
  - a. all expenses we incur in the investigation, settlement, or defense;
  - b. up to \$2,000 for bail bond costs an “insured” incurs because of an “accident” we cover, including bonds for related traffic law violations; we are not obligated to furnish the bonds;
  - c. the premium on any bond required to release attachments in a “suit” we defend, but only for a bond amount not greater than the applicable Limit of Insurance;
  - d. all reasonable expenses an “insured” incurs at our request, including earnings actually lost, up to \$250 for each day of time taken off work;
  - e. the costs of court taxed against an “insured” in a “suit” we defend; these costs do not include attorneys' fees or expenses awarded against the “insured”; and
  - f. all interest that accrues on the full amount of a judgment after the judgment is entered and before we pay, offer to pay, or deposit in court that portion of the judgment which does not exceed the applicable Limit of Insurance.

Interest that accrues before entry of judgment is not payable under this paragraph. Our duty to make the payments this paragraph describes ends when we have used up the applicable

Limit of Insurance through payment of judgments, settlements, or “covered pollution cost or expense” amounts.

2. **Out-of-state conformity.** While a “covered auto” is away from the state where it is licensed, and the jurisdiction where it is being used applies its motor vehicle insurance requirements to the “covered auto”, we will:
  - a. increase the Limit of Insurance for Liability Coverage to meet the minimum limits that jurisdiction's compulsory insurance or financial responsibility law specifies; and
  - b. provide the minimum types and amounts of coverage, other than benefits payable regardless of fault, that jurisdiction's motor vehicle insurance law requires of nonresidents.

We will not pay anyone more than once for the same element of loss because of these conformity provisions, and this paragraph does not enlarge the coverage territory described in J.12.

**F. Liability Coverage Exclusions**

This insurance does not apply to any of the following under Liability Coverage:

1. **Intended harm.** “Bodily injury” or “property damage” that the “insured” expected or intended. This exclusion applies only to the “insured” who held the expectation or intent; it does not defeat coverage for any other “insured”.
2. **Assumed liability.** Liability for “bodily injury” or “property damage” that the “insured” assumed under any contract or agreement. This exclusion does not defeat coverage for:
  - a. damages the “insured” would owe even if the contract or agreement did not exist; or
  - b. liability for damages assumed under an “insured contract”, if the “bodily injury” or “property damage” occurs after the “insured contract” is executed.
3. **Statutory benefit obligations.** Any obligation for which the “insured” or the insurer of the “insured” may be held liable under a workers compensation law, disability benefits law,

unemployment compensation law, or any similar law.

4. **Injury to your “employees”.** “Bodily injury” to:
  - a. an “employee” of the “insured”, if the injury arises out of, and occurs in the course of, employment by the “insured”, or arises out of the performance of duties related to the conduct of the insured's business; or
  - b. the spouse, child, parent, brother, or sister of that “employee”, as a consequence of the injury described in F.4.a.

This exclusion applies whether the “insured” may be liable as an employer or in any other capacity, and it applies to any obligation of the “insured” to share damages with, or to repay, another party who must pay damages because of the injury. This exclusion does not apply to:

- a. “bodily injury” to a domestic “employee” who is not entitled to workers compensation benefits; or
- b. liability assumed by the “insured” under an “insured contract”.

5. **Injury to a co-worker.** “Bodily injury” to a fellow “employee” of the “insured”, if the injury arises out of, and occurs in the course of, the fellow employee's employment, or arises out of the performance of duties related to the conduct of your business.
6. **Property held or transported.** “Property damage” to, or any “covered pollution cost or expense” involving, property:
  - a. owned or transported by the “insured”; or
  - b. within the care, the custody, or the control of the “insured”.

Any one of care, custody, or control is enough for this exclusion to apply. This exclusion does not defeat coverage for liability an “insured” assumes under a sidetrack agreement.

7. **Handling of property outside the transit window.** “Bodily injury” or “property damage” that results from the handling of property:
  - a. before the property is moved from the place where it is accepted by the “insured” for movement into or onto the “covered auto”; or

b. after the property is moved from the “covered auto” to the place where it is finally delivered by the “insured”.

**8. Mechanical devices.** “Bodily injury” or “property damage” that results from the movement of property by a mechanical device, other than a hand truck, unless the device is attached to the “covered auto”.

**9. Equipment operation.** “Bodily injury” or “property damage” that arises out of the operation of:

- a. any equipment described in paragraphs 2.b. and 2.c. of the definition of “mobile equipment” in Section K.; or
- b. machinery or equipment mounted on or attached to an “auto”, while that machinery or equipment is being operated as equipment rather than the “auto” being operated as a vehicle.

**10. Completed work.** “Bodily injury” or “property damage” that arises out of your work, after that work has been completed or abandoned. For this exclusion, your work is completed at the earliest of the following times:

- a. when all the work called for in your contract has been finished;
- b. when all the work to be done at a particular site has been finished, if your contract calls for work at more than one site; or
- c. when anyone other than a contractor or subcontractor working on the same project puts to its intended use the portion of the work from which the injury or damage arises.

Work that requires further service, maintenance, correction, repair, or replacement, but is otherwise complete, is treated as completed.

**11. Pollution.** “Bodily injury” or “property damage” that arises out of any escape, discharge, dispersal, seepage, migration, or release of “pollutants”, whether actual, alleged, or threatened, if the “pollutants” are:

- a. being transported or towed by, handled for movement into or onto, handled for movement out of or off of, or otherwise handled in connection with, a “covered auto”;

- b. otherwise in the course of transit by or on behalf of the “insured”; or
- c. being stored, disposed of, treated, or processed in or upon a “covered auto”.

This exclusion also reaches “bodily injury” or “property damage” that arises out of “pollutants” before the “pollutants” are accepted for movement into or onto a “covered auto”, and after the “pollutants” are finally delivered, disposed of, or abandoned. This exclusion does not apply in the following circumstances:

**a. Operating fluids.** The exclusion does not apply to fuels, lubricants, fluids, exhaust gases, or similar “pollutants” that are needed for, or result from, the normal electrical, hydraulic, or mechanical functioning of a “covered auto” or its parts, if:

- (1) the “pollutants” escape, seep, or migrate directly from, or are discharged, dispersed, or released directly from, a part of the “covered auto” that its manufacturer designed to hold, store, receive, or dispose of them; and
- (2) the “bodily injury” or “property damage” does not arise out of the operation of any equipment described in paragraphs 2.b. and 2.c. of the definition of “mobile equipment” in Section K.; and

**b. Pollutants not carried by the “covered auto”.** The exclusion does not apply to “pollutants” that are not in, on, or being carried by the “covered auto”, if:

- (1) the escape, discharge, dispersal, seepage, migration, or release is directly caused by an “accident” involving the “covered auto” and occurring away from premises you own, rent, or occupy; and
- (2) if the “pollutants” are located on premises at which the “accident” occurs, neither you nor anyone acting on your behalf brought the “pollutants” to those premises.

An exception under F.11.a. or F.11.b. preserves coverage only for the “bodily injury”, “property damage”, or “covered pollution cost or expense” the exception describes; it does not narrow any other exclusion in this Section F., and it does not apply to liability assumed under any contract or agreement other than an “insured contract”.

**12. War.** “Bodily injury” or “property damage” that arises, directly or indirectly, out of:

- a. war, whether declared or not, including civil war;
- b. action of a warlike nature taken by a military force, including action a government, a sovereign, or another authority takes, using military personnel or other agents, to hinder or defend against an attack, actual or expected; or
- c. rebellion, revolution, insurrection, or usurped power, including action a governmental authority takes to hinder or defend against any of these.

**13. Racing and stunting.** Any “covered auto” while it is:

- a. used in any organized or professional racing or demolition contest or stunting activity;
- b. practicing for such a contest or activity; or
- c. being prepared for such a contest or activity.

The “covered auto” need not be a competing vehicle for this exclusion to apply; an “auto” hauling equipment onto the course, or removing wrecked vehicles from it, is used in the activity.

**14. Unmanned aircraft.** “Bodily injury” or “property damage” that arises out of owning, maintaining, using, or operating an aircraft that no person can control directly from within or upon it, because the aircraft was not designed, built, or later modified for such control. This exclusion applies even if the aircraft is launched from, controlled from, or used in connection with a “covered auto”.

**G. Physical Damage Coverage**

**1. Insuring agreement.** We will pay for “loss” to a “covered auto”, or to equipment permanently

installed in or upon it, under whichever of the following coverage options the Declarations activate for that “covered auto”. Each option applies per “covered auto”: the Declarations may give one “covered auto” one option and another “covered auto” a different option, or none. The options are:

**a. Comprehensive.** We will pay for “loss” from any cause, except:

- (1) the covered auto's collision with another object; or
- (2) the covered auto's overturn.

**b. Specified causes of loss.** We will pay for “loss” 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 a conveyance transporting the “covered auto”.

A “covered auto” carries comprehensive coverage or specified causes of loss coverage, never both at once; and

**c. Collision.** We will pay for “loss” caused by:

- (1) the covered auto's collision with another object; or
- (2) the covered auto's overturn.

**2. Glass, animals, and falling objects.** If comprehensive coverage applies to a “covered auto”, we will pay under comprehensive coverage for:

- a. glass breakage;
- b. “loss” caused by contact with a bird or animal; and
- c. “loss” caused by objects that fall or are propelled.

Glass breakage, contact with a bird or animal, and falling or propelled objects are not specified causes of loss; this paragraph applies only if comprehensive coverage applies to the “covered auto”. If glass breakage results from the same event as a collision, you may elect to

have us treat the entire “loss”, glass included, as one collision “loss”, so that a single deductible applies rather than both the comprehensive and the collision deductibles.

3. **Towing and labor.** If the Declarations show a towing and labor charge for a “covered auto” of the private passenger type, we will pay, up to the amount shown, for towing and labor costs incurred each time that “covered auto” is disabled. The amount shown is the most we pay for each disablement, and we pay labor charges only for labor performed at the place of disablement.
4. **Transportation expense extension.** We will pay up to \$30 for each day, and not more than \$900 in total, for temporary transportation expense you incur, such as the rental of a substitute vehicle, taxi fares, or public transportation fares, because of the total theft of a “covered auto” of the private passenger type. This extension applies only if comprehensive coverage or specified causes of loss coverage applies to that “covered auto”. Payment:
  - a. begins 48 hours after the theft; and
  - b. ends, without regard to the policy's expiration, on the earlier of the date the “covered auto” is returned to use or the date we pay for the “loss”.
5. **Loss of use extension for “hired autos”.** If numeral 8 activates a Physical Damage Coverage in the Declarations, we will pay expenses for which an “insured” becomes legally responsible, under a written rental contract or agreement, to pay the owner of a rented “covered auto” for the owner's loss of use of that “auto”. This extension applies only if the loss of use results from a “loss” the activated coverage option would cover, and the most we will pay under it is \$30 for each day and \$900 in total. As an illustration: if you damage a rented van in a collision, the rental contract makes you responsible for the rental company's loss of use while the van is repaired, and collision coverage applies to “hired autos” under this form, we pay the rental company's daily loss of use charge, subject to those daily and total maximums, in addition to the “loss” itself.

**H. Physical Damage Exclusions**

This insurance does not apply to any of the following under Physical Damage Coverage:

1. **Wear and internal failure.** “Loss” caused by any of the following:
  - a. freezing;
  - b. wear and tear;
  - c. breakdown, whether mechanical or electrical; or
  - d. road damage to tires, such as blowouts and punctures.

This exclusion does not defeat coverage for a “loss” that results from the total theft of the “covered auto”.

2. **Nuclear hazard and war.** “Loss” caused by or resulting from:
  - a. nuclear reaction, nuclear radiation, or radioactive contamination, from whatever cause, including a weapon that employs atomic fission or fusion; or
  - b. any of the events described in F.12.

This exclusion applies even if another cause or event contributes to the “loss”, whether concurrently or in any sequence.

3. **Racing and stunting.** “Loss” to any “covered auto” while it is used in, practicing for, or being prepared for any organized or professional racing or demolition contest or stunting activity.
4. **Recorded media.** “Loss” to tapes, records, discs, or other similar audio, visual, or data storage media.
5. **Electronic equipment.** “Loss” to any electronic device that receives, reproduces, or transmits audio, visual, or data signals, and “loss” to that device's accessories, such as cables, adapters, and earphones. This exclusion does not apply to:
  - a. electronic equipment that is permanently installed anywhere in or on the “covered auto”;
  - b. a removable component of equipment described in H.5.a., while the component is in a housing unit that is permanently installed in the “covered auto”;

- c. an integral part of equipment described in H.5.a. or H.5.b.; or
- d. electronic equipment the “covered auto” needs for its normal operation, or that monitors the covered auto’s operating system.

I.3.c. limits what we pay for certain equipment this exception preserves.

**6. Diminished value.** Any decrease in the market or resale value of a “covered auto” because of its damage history, described in Section K. as “diminution in value”, whether claimed as “loss” or as a consequence of a covered “loss”.

**I. Limits of Insurance and Deductible**

- 1. Liability limit.** The most we will pay under Liability Coverage for the total of all damages and all “covered pollution cost or expense” amounts combined, resulting from any one “accident”, is the Limit of Insurance for Liability Coverage shown in the Declarations. This limit applies without regard to the number of:
- a. “insureds”;
  - b. claims made;
  - c. “suits” brought;
  - d. persons or organizations that make claims or bring “suits”; or
  - e. vehicles involved in the “accident”.

All “bodily injury”, “property damage”, and “covered pollution cost or expense” amounts that result from ongoing or repeated exposure to substantially similar conditions are treated as resulting from one “accident”. We will not pay for the same element of loss under both this form and any medical payments, uninsured motorists, or underinsured motorists coverage attached to the policy.

- 2. Physical damage limit.** For “loss” to any one “covered auto”, the most we will pay is the smaller of:
- a. the “actual cash value” of the damaged or stolen property as of the time of the “loss”; or
  - b. what it costs to repair or replace the damaged or stolen property with property of comparable kind and quality.

**3. Adjustments to the physical damage limit.** In applying I.2.:

- a. the “actual cash value” measure includes a deduction for depreciation and for physical condition;
- b. if we repair or replace with property of comparable kind and quality, we owe no payment for betterment; and
- c. the most we will pay for “loss” to electronic equipment described in H.5. that receives, reproduces, or transmits audio, visual, or data signals is \$1,000, if that equipment is permanently installed in the “covered auto” in a housing, opening, or location that the covered auto’s manufacturer did not design for the installation of such equipment.

**4. Deductible.** For each “covered auto”, we subtract the applicable deductible shown in the Declarations from the amount otherwise payable for each “loss”, subject to the following:

- a. any deductible shown for comprehensive coverage does not apply to “loss” caused by fire or lightning; and
- b. if one event causes comprehensive or specified causes of loss “loss” to two or more “covered autos”, the total of all deductibles we subtract for that event will not exceed five times the highest comprehensive or specified causes of loss deductible shown in the Declarations.

As an illustration of I.4.b.: if a hailstorm damages 12 “covered autos”, each carrying a \$500 comprehensive deductible, and \$1,000 is the highest comprehensive or specified causes of loss deductible shown in the Declarations, we subtract \$500 per “covered auto” only until the subtractions total \$5,000; the deductibles for the remaining vehicles are not subtracted.

**J. Conditions**

**1. Appraisal of physical damage disputes.** If you and we agree that a “loss” is covered but disagree on its amount, either of us may demand an appraisal. If either party demands an appraisal:

- a. each party will select a competent appraiser;

- b. the two appraisers will select a competent and impartial umpire;
- c. each appraiser will state separately the "actual cash value" of the property and the amount of the "loss";
- d. if the appraisers disagree, they will submit their differences to the umpire, and a decision that any two of the three agree to binds both parties; and
- e. each party will pay its own appraiser and will bear half the cost of the umpire and of the other appraisal expenses.

If we participate in an appraisal, we keep our right to deny the claim on any ground the policy provides.

**2. Duties after an "accident", claim, "suit", or "loss".** We have no duty to provide coverage unless there has been full compliance with the following duties:

- a. you must give us or our authorized representative prompt notice of the "accident" or "loss", including:
  - (1) how, when, and where it happened;
  - (2) the name and address of each injured person and each witness; and
  - (3) a description of the property involved and its condition;
- b. each "insured" against whom a claim is made or a "suit" is brought must:
  - (1) send us copies of every demand, notice, summons, and other legal paper received, as soon as practicable after receipt;
  - (2) authorize us to obtain medical records and other pertinent records;
  - (3) cooperate with us in the investigation, settlement, and defense of the claim or "suit";
  - (4) submit to examination under oath at our request, at a reasonable time and place we designate, and, if we request it for an injury claim, to physical examination by a physician we select, at our expense; and
  - (5) assume no obligation, make no payment, and incur no expense

without our consent, except at the insured's own cost; and

- c. if the claim involves Physical Damage Coverage, you must also:
  - (1) promptly notify the police if the "covered auto" or any of its equipment is stolen;
  - (2) take all reasonable steps to protect the "covered auto" from further damage, keeping a record of your expenses, which we will consider in settling the "loss"; and
  - (3) permit us to inspect the "covered auto" and its records, and to appraise the "loss", before the covered auto's repair or disposition; and
- d. if a request, demand, order, claim, or "suit" described in the definition of "covered pollution cost or expense" is received, you must give us prompt notice of it and send us copies of all related papers; and
- e. at our request, you must send us a signed, sworn proof of loss stating the facts of the "loss", your interest and all other interests in the property, and the amount claimed, not later than 60 days after our request.

**3. Legal action against us.** No person or organization may bring an action against us under this form until there has been full compliance with all its terms. In addition, under Liability Coverage, no person or organization may:

- a. join us as a party to, or otherwise bring us into, a "suit" seeking damages from an "insured"; or
- b. recover from us before the amount of the insured's obligation has been finally determined, either by judgment after actual trial or by a written settlement agreement signed by us, the "insured", and the claimant.

After that final determination, a person or organization entitled to payment may sue us to recover under this form, but we are not liable for damages this form does not cover or for any amount above the applicable Limit of Insurance.

- 4. Payment of physical damage “loss”.** At our option, we may settle a covered “loss” in any one of the following ways:
- a. pay for the “loss” in money;
  - b. repair or replace the damaged or stolen property; or
  - c. return stolen property to you, at our expense, and pay for any damage the theft caused.

Any payment reflects the applicable deductible and the limits stated in Section I. If we pay for the “loss”, we may keep all or part of the damaged or stolen property at an agreed or appraised value, but you must not abandon property to us without our consent.

- 5. Recovered property.** If either you or we recover property after we have paid for its “loss”, the recovering party must give the other prompt notice of the recovery. At your option, you may keep the recovered property; if you do, you must return to us the amount we paid for that property, and we will pay the cost of repairing any damage the covered “loss” caused, subject to Section I.
- 6. Transfer of recovery rights.** If we make a payment under this form and the person or organization we paid for holds a right to recover any part of that payment from another party, that right transfers to us, up to the amount we paid. The person or organization must:
- a. take every step necessary to preserve that right for us;
  - b. do nothing, after the “accident” or “loss”, to impair that right; and
  - c. help us enforce that right at our request.

We waive our rights of recovery under this condition against a person or organization only if, before the “accident” or “loss”, you waived your own rights of recovery against that person or organization in a written contract, and only to the extent of that written waiver. Any amount we recover is applied first to our payments; any balance is returned to the party from whom the deductible or any uninsured portion of the “loss” was borne.

- 7. Bankruptcy.** The bankruptcy or insolvency of an “insured”, or of the insured’s estate, does not

relieve us of any obligation under this form.

- 8. Concealment or misrepresentation.** This form is void if you commit fraud relating to it, whenever the fraud occurs. The form is likewise void if any “insured” intentionally misrepresents or conceals a material fact concerning:
- a. this form;
  - b. a “covered auto”;
  - c. your interest in a “covered auto”; or
  - d. a claim under this form.
- 9. Liberalization.** If we adopt a revision of this form that would broaden the coverage it provides without an additional premium charge, the broadened coverage applies to your policy as of the date the revision takes effect in your state.
- 10. No transfer of benefit to a bailee.** No person or organization that holds, stores, or transports property for a fee gains any benefit from this insurance, and we will not recognize any assignment of this insurance in favor of such a person or organization.
- 11. Other insurance.** When other insurance or self-insurance applies to a “loss” or “accident” this form also covers, the following rules fix how this insurance responds:
- a. for a “covered auto” you own, the Liability Coverage this form provides is primary; for a “covered auto” you do not own, it is excess over any other collectible insurance;
  - b. a “trailer” connected to a motorized “auto” takes the same primary or excess character, under J.10.a., as the “auto” towing it;
  - c. for Physical Damage Coverage on a “hired auto”, this insurance responds as though the “hired auto” were a “covered auto” you own, and it is primary;
  - d. despite J.10.a., the Liability Coverage this form provides is primary for any liability an “insured” assumes under an “insured contract”; and
  - e. when this form and one or more other coverage forms or policies respond on the same basis, whether primary or excess, we will pay only the proportion of the “loss” or damages that the Limit of Insurance under

this form bears to the total of all applicable limits. As an illustration: if this form carries a \$1,000,000 limit, another applicable primary policy carries a \$500,000 limit, and a covered judgment is \$300,000, we pay \$200,000 and the other insurer's proportionate share is \$100,000.

While this insurance is excess under J.10.a. or J.10.b.:

- a. we have no duty to defend a "suit" if another insurer owes the defense; if no other insurer undertakes the defense, we may do so at our discretion, and we then take over the insured's rights against every other insurer; and
- b. we will pay only our share of the amount, if any, that exceeds the sum of what all other insurance would pay if this insurance did not exist plus every deductible and self-insured amount that applies under that other insurance.

**12. Premium audit.** The premium shown in the Declarations is an estimate, computed on the exposures you reported at inception. At the close of each audit period we will compute the earned premium from your actual exposures for that period. The audit period is the policy period, unless the Declarations state a different audit period. The first named insured must:

- a. keep records of the information we need for premium computation and send us copies at our request; and
- b. pay any audit premium due promptly after our billing; if the audited premium is less than the estimated premium paid, we will return the difference to the first named insured.

**13. Policy period and coverage territory.** This insurance applies only to an "accident" that occurs, or a "loss" that happens, during the policy period and:

- a. in the coverage territory, meaning:
  - (1) the 50 states of the United States of America and the District of Columbia;
  - (2) United States territories and possessions;
  - (3) Puerto Rico;

- (4) Canada; or
- (5) while the "covered auto" is being transported between any of the places described in J.12.a.(1) through J.12.a.(4); or

b. anywhere else in the world, if:

- (1) the "covered auto" is a "private passenger auto" that is leased, hired, rented, or borrowed for 30 days or less and without a driver; and
- (2) the insured's obligation to pay damages is decided in a "suit" on the merits brought in the territory described in J.12.a., or in a settlement to which we agree.

We also have the option to settle any claim or "suit" arising under J.12.b. in the jurisdiction where the "accident" occurred.

**14. Two or more coverage forms issued by us.** If this form and any other coverage form or policy we issue to you, or an affiliate of ours issues to you, applies to the same "accident", the total limit available under all of them combined does not exceed the highest single applicable limit under any one of them. This condition does not apply to a form or policy issued specifically to apply as excess insurance over this form.

**15. Changes.** The terms of this form must not be changed or waived except by an endorsement we issue as part of the policy. The first named insured in the Declarations has authority to act for every "insured" in requesting changes, receiving return premium, and giving or receiving notice of cancellation.

**16. Transfer of your rights and duties.** You must not transfer your rights or duties under this form to any other person or organization without our written consent. If you die, or a court declares you legally incapacitated, your rights and duties transfer automatically, but only while the policy period continues, to:

- a. your legal representative, while acting within the scope of that representative's duties; or
- b. until a legal representative is appointed, any person having proper temporary custody of

a “covered auto”, but only with respect to that “covered auto”.

**K. Definitions**

1. “Accident” means a sudden event that results in “bodily injury” or “property damage”; the term includes ongoing or repeated exposure to substantially similar conditions.
2. “Actual cash value” means the value of property at the time of a “loss”, reflecting depreciation for age, mileage, physical condition, and obsolescence. The market cost of comparable property in comparable condition is evidence of “actual cash value”.
3. “Auto” means:
  - a. a motorized land vehicle, a “trailer”, or a semitrailer, if designed for travel on public roads; or
  - b. any other land vehicle that a compulsory insurance law, a financial responsibility law, or another law governing motor vehicle insurance treats as a motor vehicle in the state of its licensing or principal garaging.

“Auto” does not include “mobile equipment”.
4. “Bodily injury” means physical injury to a person, and includes any sickness, disease, or death that results from the physical injury.
5. “Covered auto” means an “auto” that Section B. or Section C. brings within a particular coverage under this form.
6. “Covered pollution cost or expense” means a cost or expense arising out of either:
  - a. a demand, request, order, or statutory or regulatory requirement directing an “insured” or another party to test for, monitor, contain, clean up, remove, treat, detoxify, or neutralize “pollutants”, or to assess, or otherwise respond to, the effects of “pollutants”; or
  - b. a claim or “suit” that a governmental authority brings, or that is brought on a governmental authority’s behalf, for damages because of activity described in K.6.a.

The term does not include a cost or expense an “insured” incurs voluntarily, in the absence of a

- demand, request, order, requirement, claim, or “suit” described above. The term also does not include any cost or expense arising out of “pollutants” excluded from Liability Coverage under F.11., except to the extent an exception in F.11.a. or F.11.b. preserves coverage.
7. “Diminution in value” means the actual or perceived reduction in the market or resale value of property that remains after the property has been repaired, attributable to the fact that it was damaged.
8. “Employee” includes a “leased worker”; the term does not include a “temporary worker”.
9. “Hired auto” means an “auto” you lease, hire, rent, or borrow, other than an “auto” you lease, hire, rent, or borrow from:
  - a. your “employee”;
  - b. a partner of yours, if you are a partnership;
  - c. a member of your limited liability company; or
  - d. a member of the household of any person described in K.9.a. through K.9.c.
10. “Insured” means a person or organization that qualifies under Section D. for the coverage in question.
11. “Insured contract” means any of the following:
  - a. a lease of premises;
  - b. a sidetrack agreement;
  - c. an easement or license agreement, except one that concerns construction or demolition work performed within 50 feet of a railroad or on railroad property;
  - d. an obligation to indemnify a municipality that an ordinance requires, except an obligation connected with work performed for the municipality;
  - e. the part of any other business-related contract or agreement under which you or your “employee” assumes another party’s tort liability to pay damages to a third person or organization for “bodily injury” or “property damage”, if the contract or agreement is executed before the “bodily injury” or “property damage” occurs; tort liability means liability that the law would

impose even without a contract or agreement; or

- f. the part of any other contract or agreement, made in the course of your business, that pertains to your or your employee's rental or lease of an "auto", except any part that obligates you or your "employee" to pay for damage to the rented or leased "auto" itself or for its loss of use.

"Insured contract" does not include the part of any contract or agreement that:

- a. indemnifies a railroad for "bodily injury" or "property damage" that arises from construction or demolition work performed within 50 feet of, or on, railroad property, or from work affecting a railroad bridge, trestle, track, roadbed, tunnel, underpass, or crossing;
- b. pertains to the lease, hire, rental, or loan of an "auto" together with a driver; or
- c. holds a motor carrier operating for hire harmless in connection with your use of a "covered auto" on a route, or in a territory, that public authority permits the carrier to serve.

12. "Leased worker" means a person a labor leasing firm supplies to you, under an agreement between you and that firm, to perform duties connected with the conduct of your business. A "temporary worker" is not a "leased worker".

13. "Loss" means damage to, or loss of, property, if the damage or loss is both direct and accidental. Indirect consequences, such as loss of use, are outside the term except as G.4. and G.5. provide.

14. "Mobile equipment" means:

- a. a land vehicle, together with any machinery or apparatus attached to it, that is kept primarily for purposes other than transporting persons or cargo, such as a bulldozer, a forklift, farm machinery, or a vehicle that travels on crawler treads or is maintained primarily for use off public roads; but
- b. the following self-propelled vehicles are "autos", not "mobile equipment":

- (1) a vehicle with permanently attached equipment designed primarily for snow removal, road maintenance other than construction or resurfacing, or street cleaning;

- (2) a vehicle with a cherry picker or similar worker-lifting device permanently mounted on a truck or automobile chassis; and

- (3) a vehicle with permanently attached equipment such as an air compressor, pump, generator, or welding, spraying, lighting, building cleaning, well servicing, or geophysical exploration apparatus; and

- c. a land vehicle that a compulsory insurance law, a financial responsibility law, or another law governing motor vehicle insurance treats as a motor vehicle in the state of its licensing or principal garaging is an "auto", not "mobile equipment".

15. "Nonowned auto" means an "auto" you do not own, lease, hire, rent, or borrow that is used in connection with your business. The term includes an "auto" owned by your "employee", by a partner or member of yours, or by a member of any of their households, while the "auto" is used in your business or your personal affairs.

16. "Pollutants" means any irritant or contaminant, whether solid, liquid, gaseous, or thermal, including chemical substances, acids and alkalis, smoke and soot, fumes and vapor, and waste. Waste includes material held for recycling, reconditioning, or reclamation.

17. "Private passenger auto" means an "auto" rated for private passenger use under the applicable rating rules, based on how the "auto" is used rather than on its body style; a pickup or van may qualify if its use, such as commuting without the transport of cargo for a charge, supports that rating.

18. "Property damage" means:

- a. physical injury to tangible property, together with all loss of use of that property that results; or
- b. loss of use of tangible property not itself physically injured.

- 19.** “Suit” means a civil proceeding that alleges damages to which this insurance applies. The term includes:
- a.** an arbitration proceeding for such damages, if the “insured” must submit to it or submits to it with our consent; and
  - b.** any other alternative dispute resolution proceeding for such damages, if the “insured” submits to it with our consent.
- 20.** “Temporary worker” means a person supplied to you to fill in for a permanent “employee” who is on leave, or to handle a seasonal or short-term workload surge.
- 21.** “Trailer” includes a semitrailer.

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