

SECTION I – MANDATORY MEDIATION-ARBITRATION

ENDORSEMENT

This endorsement changes certain paragraphs to **SECTION I – CONDITIONS** in **your** policy.

The endorsement replaces SECTION I – CONDITIONS, Paragraph 6. Mediation or Appraisal in HO3 Special Form (AIIC HO3). This endorsement also deletes any reference to **SECTION I – CONDITIONS, Paragraph 8. Suit Against Us** in HO3 Special Form (AIIC HO3). When this endorsement is invoked, it replaces SECTION I – CONDITIONS, Paragraph 10. Loss Payments in HO3 Special Form (AIIC HO3). For all other claims that are not disputed, SECTION I – CONDITIONS, Paragraph 10. Loss Payments in HO3 Special Form (AIIC HO3) remains in place.

Please read this document carefully as it affects your rights under this policy and under statute, and keep it with **your** policy.

SECTION I – CONDITIONS

Paragraph 8. is deleted and replaced by the following:

8. Dispute Resolution.

For a reduction in premium, and other valuable consideration, **you** agree to the following terms as the exclusive process for resolving any dispute between **us** and **you**, and/or between **us** and any and all persons making a claim of any kind under this policy of insurance, including but not limited to any additional insured, omnibus insured, or assignee of post-loss benefits, arising from, through or by this policy:

a. MEDIATION

If the dispute is based on a disagreement between **you**, or any additional insured, omnibus insured, other person making a claim under the policy, or an assignee of post-loss benefits and **us** as to the value of **your** claim under this policy, the parties agree to first attempt to settle the dispute by mediation. **You** must make a request for mediation within five (5) years from the date of loss, and **you** must comply with all other provisions in this policy. The mediation will take place pursuant to the Florida Rules for Certified & Court-Appointed Mediators.

We shall pay the reasonable costs of the mediation, including the mediator's fee. **You** or any additional insured, omnibus insured, other person making a claim under the policy, or an assignee of post-loss benefits have the right to be represented by an attorney of **your** or their choosing to attend the Mediation. **You** or any additional insured, omnibus insured, other person making a claim under the policy, or an assignee of post-loss benefits, will be responsible for paying for **your** or their own attorney (in the event that **you** or they retain an attorney).

If the parties cannot agree on a mediator, either party may notify the other in writing via certified mail return receipt requested or via hand delivery with signature receipt required of this failure and then **you** will choose a mediator certified pursuant to Section 44.106, Florida Statutes within ten days of such notice.

If **you** do not notify **us** of **your** choice within ten days, the mediation process will be deemed concluded without resolution, and the dispute will move to binding arbitration.

The mediation shall occur at any agreed location. If the parties cannot agree to a location, the mediator will choose the location. If the parties cannot reach a complete resolution through mediation, then they further agree that any remaining dispute shall be concluded by binding arbitration as follows in this policy.

b. BINDING ARBITRATION

i. Confidential Binding Arbitration

All Disputes, including disputes arising out of or related to this Agreement, between **us** and **you**, or any additional insured, omnibus insured, other person making a claim under the policy, or an assignee of post-loss benefits, (hereinafter referred to as “party” or collectively as “the parties”) whether arising out of State or Federal law, and whether based upon statutory duties, breach of contract, tort theories, punitive damages or other legal theories, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be exclusively and finally resolved through confidential binding arbitration (the "Arbitration") as provided herein, in the county of residence premises and shall not be filed in a court of law, except any suit requesting injunctive relief, any action pursuant to §682.02(1), Florida Statutes, and any supplemental relief requested therein may be filed in the Circuit Court in and for the county of residence premises. **The Disputes that are subject of this Binding Arbitration exclude your civil remedies to bring a civil action under section 624.155, Florida Statutes. Resolution through Binding Arbitration must be requested within five (5) years from the date of loss, and you must comply with all other provisions of this policy.**

ii. Venue

The parties agree that venue for the binding arbitration shall be in the county of residence premises and any civil judicial action concerning this Binding Arbitration Agreement shall be in the circuit courts in and for the county of residence premises.

iii. Rules Governing Arbitration

The Arbitration shall be conducted in accordance with the provisions of the Revised Florida Arbitration Code, chapter 682, Florida Statutes, this Agreement and pursuant to the Florida Rules of Civil Procedure, Florida Evidence Code, and substantive Florida law (including statutes, rules, regulations, case law, and common law). Further, nothing in this Agreement is to be construed to contradict an applicable Florida statutory grievance or mediation procedure.

iv. **Right to Counsel**

The parties have the right to be represented by an attorney of their choosing in the binding arbitration proceeding. Each party will be responsible for paying for their own attorney in the event they retain an attorney.

v. **Demand for Arbitration**

If Mediation does not resolve the Dispute between the parties, then either party shall serve a Demand for Arbitration (“Demand”). The Demand for Arbitration shall be a clear and concise statement of the Dispute and the relief sought by the filing party.

vi. **Service of the Demand for Arbitration**

a) If **you**, or any additional insured, omnibus insured, other person making a claim under the policy, or an assignee of post-loss benefits, seek Binding Arbitration to resolve the Dispute, then the Demand for Arbitration shall be served on the Insurer consistent with Florida law, sections 624.422 and 624.423, Florida Statutes, on the State of Florida’s Chief Financial Officer and her or his successors in office.

b) If the Insurer seeks Arbitration, then the Insurer will serve the Demand for Arbitration on **you** or any additional insured, omnibus insured, other person making a claim under the policy, or an assignee of post-loss benefits, consistent with Florida law concerning service of process.

vii. **Selection of Arbitrator**

a) Within twenty (20) Business Days after of service of the Demand for Arbitration, the parties shall jointly select one (1) Arbitrator. The Arbitrator must be either a retired Florida circuit court or federal court judge, or a member of the Florida Bar with at least ten (10) years of experience as an attorney who has reasonable familiarity with the applicable arbitration rules, knowledge of insurance, contracts, and construction law (as may apply to the Dispute) in Florida.

b) If the parties cannot reach an agreement on an Arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then either party may petition the Circuit Court in and for the county of residence premises, for the specific and sole purpose of appointing the arbitrator in accordance herewith. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel, nor may any person with a financial interest in the outcome of the proceedings, serve as an arbitrator in the proceeding. The parties

agree that no attorneys' fees or costs shall be paid or payable in such an action to appoint an arbitrator.

viii. Arbitration Timeline and Discovery

a) Within fifteen (15) days of the appointment of the Arbitrator, the Arbitrator shall schedule a Case Management Conference, via telephone or audio/visual means for the purpose of determining the schedule for the action, including but not limited to, clarifying the Dispute if needed, setting an arbitration timeline, including a discovery schedule, deadlines for witness disclosures and expert witness disclosures, setting deposition parameters in both number and scope, setting deadlines for motion practice, computation of claimed damages, and the final arbitration hearing.

b) If an expert witness is retained, each such expert must provide, not less than fifteen (15) days before a deposition but no less than thirty (30) days before the final arbitration hearing: (1) a written report stating all opinions that he or she will express at the hearing; (2) the bases and reasons for the opinions; (3) the facts and data considered in forming the opinions; (4) all exhibits that will be used to summarize or support the opinions; and (5) his or her curriculum vitae.

c) The parties shall be permitted to appear at any arbitration hearing by telephone or by audio/visual means, unless otherwise determined by the Arbitrator.

d) Within 20 days of the Arbitrator's initial Case Management Conference, any responsive pleading (or arbitration equivalent thereof) to the Demand for Arbitration shall be filed with the Arbitrator, unless otherwise determined by the Arbitrator.

e) The parties have the right to engage in discovery as provided by the Florida Rules of Civil Procedure and the Florida Revised Arbitration Code, and within any parameters set by the Arbitrator. The Arbitrator shall have the power to impose sanctions against a party, or the party's counsel, for failing to comply with discovery obligations and applicable rules, or engaging in other disruptive or dilatory conduct, whether direct or indirect, that causes or will likely cause undue financial burden on another party in accordance with the substantive and procedural laws of Florida.

f) The final Arbitration hearing shall be held within one hundred twenty (120) days from the service of the Demand for Arbitration, and the Arbitrator shall issue a written decision within thirty (30) days after completion of the final Arbitration hearing, unless the parties waive the time-requirements for conducting the final Arbitration hearing or waive the time requirement for issuing the written decision. The Arbitrator's written decision shall contain findings of facts and conclusions of law that support the Arbitrator's decision.

ix. **Arbitration Costs**

Insurer shall bear the costs of the Arbitrator's fee and the Arbitration filing fee. Each party shall otherwise bear his/her/its own attorneys' fees and costs, subject to the terms hereof.

x. **Award**

As set out in paragraph (viii)(f), under this Binding Arbitration section, the Arbitrator shall issue a written decision within thirty (30) days of completion of the final Arbitration hearing, and the written decision shall contain findings of fact and conclusions of law that support the Arbitrator's decision.

The parties agree any court action to confirm, vacate, modify or correct, or entering a judgment on an Arbitration award, pursuant to sections 682.12, 682.13, 682.14, and 682.15, Florida Statutes, shall be in the circuit courts and appellate courts of the county of residence premises.

xi. **Appeal of Arbitration Award**

The parties agree that the Arbitrator's decision shall be final, subject to the parties' right to vacate, modify, correct and appeal the Arbitration Award as set out in the Revised Florida Arbitration Code, chapter 682, Florida Statutes.

xii. **Payment of Arbitration Award**

We will pay you unless some other person is named in the policy or is legally entitled to receive payment.

Loss will be paid upon the earliest of the following:

- a) 20 days after we receive your written proof of loss and reach a written, executed agreement of settlement with you according to the terms of the written settlement agreement; or,
- b) 60 days after we receive your written proof of loss and;
 1. There is an entry of a final judgment or, in the case of an appeal from such judgment, within 60 days from and after the affirmance of the same by the appellate court; or
 2. Written executed mediation settlement with you according to the terms of the written mediation settlement or an arbitration award
- c) Within 90 days after we receive notice of an initial claim, "reopened claim" or "supplemental claim" from you, we will pay or deny such claim or portion of such claim unless the failure to pay such claim or portion of such claim is caused by factors beyond our control which reasonably prevents such payment

Any payment made by us shall not constitute a waiver of our rights within the policy or endorsements.

xiii. Enforcement Consent to Jurisdiction Service of Process.

Without limiting any of the provisions herein, any action in connection with or related to the validity or enforcement of the Arbitration Decision made pursuant hereto or under the Revised Florida Arbitration Code, and any Dispute which by its nature is prohibited under applicable law from resolution through arbitration, or as otherwise contemplated under applicable law as to the issuance of any adequate interim, provisional or temporary relief in the event that an arbitrator is unable to issue such relief, shall be exclusively brought in and before the Circuit Court in and for the county of residence premises.

Each party waives, to the fullest extent permitted by law, (a) any claim, defense, or argument that any such suit, action, or proceedings have been brought in an inconvenient forum; and (b) agrees that service of process in any such action may be effectuated by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party or via hand delivery with signature receipt required.

xiv. Waiver of Jury and Judge Trial.

EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OR JUDGE IN ANY DISPUTE AND AGREES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT AND TO PERFORM THEREUNDER.

xv. Waiver of Entitlement to Attorney's Fees and Costs.

YOU HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE YOUR, OR ANY ADDITIONAL INSUREDS', OMNIBUS INSUREDS', OTHER PERSON MAKING A CLAIM UNDER THE POLICY'S, OR ASSIGNEE'S STATUTORY RIGHTS UNDER FLORIDA LAW, SECTION 627.428, FLORIDA STATUTES, AND SECTIONS 627.70152, 627.7152, FLORIDA STATUTES, TO RECEIVE A REASONABLE SUM AS FEES OR COMPENSATION FOR YOUR ATTORNEY PROSECUTING YOUR CLAIM AGAINST THE INSURER. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT AND TO PERFORM THEREUNDER.

The Insurer acknowledges that the parties retain their entitlement to recover pursuant to section 682.15(3), Florida Statutes, to receive a reasonable attorney fees and expenses incurred by them if they successfully file a judicial proceeding seeking enforcement of an Arbitration award against the Insurer, and/or if they file a judicial proceeding challenging the Arbitration Award that results in a circuit court judgment that vacates the Arbitration Award without directing a rehearing, or that modifies or corrects the Arbitration Award as set out in section 682.15, Florida Statutes.

The parties agree that the award of attorneys' fees and costs under section (x) of the Binding Arbitration Agreement do not include payment for attorney time and costs incurred during the Arbitration proceeding which includes the initial filing through the issuance of the Arbitrator's final written decision, and specifically acknowledge and agree that attorneys' fees otherwise awardable under 627.428 are waived for anything other than those incurred in an enforcement action of the Arbitration award.

You voluntarily acknowledge and fully understand that in waiving your and or any additional insured's, omnibus insured's, other person making a claim under the policy's, or an assignee's statutory rights under Florida law, sections 627.428, 627.70152, and 627.7152, Florida Statutes, to receive reasonable attorneys' fees in the prosecution of your/their claim against the Insurer that:

- a) **The parties will be responsible for paying their own attorney's fees, if they hire an attorney to represent them to prosecute their case in the mediation and arbitration proceedings; and**
- b) **Because you have waived these statutory rights to receive an award of reasonable attorney's fees in the mediation and arbitration proceedings, you have waived the right to give an assignee of your insured loss the ability to receive reasonable attorney's fees and costs under section 627.7152, Florida Statutes.**

xvi. **Confidentiality.**

The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further, the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, except as required by law.

xvii. **Severability.**

If any portion of this Section is determined to be invalid, void, or unenforceable by a court of competent jurisdiction or by the arbitrator, the affected provision(s) shall be stricken from this Section and the arbitration proceeding shall continue to conclusion under the remaining provisions of this Section.