

## DATA BREACH COVERAGE ENDORSEMENT

This endorsement modifies the following:

### LIABILITY MEMORANDUM OF COVERAGE

With respect to this endorsement, the provisions of the LIABILITY MEMORANDUM OF COVERAGE apply unless modified by this endorsement. Coverage under this endorsement is subject to the following:

COVERAGE	LIMIT OF COVERAGE
"Data Breach" Liability Coverage	\$1,000,000
"Data Breach" Expense Coverage	\$250,000

**For the purposes of this endorsement only, SECTION I. COVERAGE is deleted and replaced with the following:**

### I. COVERAGE

**The following coverage applies to a "data breach" that is discovered by you during the Coverage Period specified in the Declarations and is reported to us within 14 days of discovery.**

A. "Data Breach" Liability Coverage

Subject to the terms and conditions contained in this Memorandum of Coverage, we will pay those sums that a "covered party" becomes legally obligated to pay:

1. As damages, except punitive or exemplary damages, arising out of a "data breach" that is discovered by you during the Coverage Period specified in the Declarations and is reported to us within 14 days of discovery.
2. As a result of a "regulatory proceeding" arising out of a "data breach" that is discovered by you during the Coverage Period specified in the Declarations and is reported to us within 14 days of discovery.
3. As a result of a claim made against a "covered party" for non-compliance with Payment Card Industry Data Security Standards arising out of a "data breach" that is discovered by you during the Coverage Period specified in the Declarations and is reported to us within 14 days of discovery.

B. "Data Breach" Expense Coverage

Subject to the terms and conditions contained in this Memorandum of Coverage, we will pay any combination of the following expenses, as deemed necessary by us, legal counsel obtained by us to assist with the "data breach", and/or our "data breach service providers", on your behalf following a "data breach" that is discovered by you during the Coverage Period specified in the Declarations and is reported to us within 14 days of discovery.

1. "Post Breach Consulting Services";
2. "Notification Services"; and

3. "Notification Recipient Services."

**For the purposes of this endorsement only, SECTION II. DEFENSE AND SETTLEMENT is deleted and replaced with the following:**

**II. DEFENSE AND SETTLEMENT**

We have the right and duty to defend any claim, "suit", or "regulatory proceeding" arising out of a "data breach" to which this coverage applies, however:

- A. The amount we will pay is limited as described in SECTION IV. LIMIT OF COVERAGE;
- B. "Defense costs" incurred shall be part of, and not in addition to, the applicable Limit of Coverage. **"Defense Costs" shall reduce the Limit of Coverage.**
- C. We may investigate and settle any claim or "suit" at our discretion; and
- D. Our right and duty to defend ends when we have used up the applicable Limit of Coverage.

**For the purposes of this endorsement only, SECTION III. WHO IS A COVERED PARTY is deleted and replaced with the following:**

**III. WHO IS A COVERED PARTY**

"Covered Party" means:

- A. You;
- B. Your past or present "employee", individual elected or appointed official, or individual serving as a "volunteer", while acting for you or on your behalf;
- C. Any commission, agency, board, district, authority, or similar entity which operates under your control.

However, an independent contractor is not a "covered party".

**For the purposes of this endorsement only, SECTION IV. LIMIT OF COVERAGE is deleted and replaced with the following:**

**IV. LIMIT OF COVERAGE**

- A. "Data Breach" Liability Coverage Limit
  - 1. The Limit shown in this endorsement and the rules set below fix the most we will pay regardless of the number of:
    - a. "Covered parties";
    - b. Claims made or "suits" brought;
    - c. Persons or organizations making claims or bringing "suits"; or

- d. Coverage involved.
2. The applicable limit shown in this endorsement is the most we will pay, regardless of the number of “affected individuals” or the number of “occurrences”, for all sums and expenses, **including “defense costs”**, paid under this Coverage. Upon exhaustion of the limit shown in this endorsement, we will have no further obligation of any kind under this Coverage.
3. In determining our limit of coverage, all injury, damages, and loss arising out of continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one “occurrence.”
4. An “occurrence” taking place over more than one Coverage Period shall be deemed to have taken place during the Coverage Period when the “occurrence” was discovered and shall be treated as a single “occurrence” during such Coverage Period.
5. Court awarded plaintiff’s attorneys’ fees or expenses are covered as damages and are subject to the limit.
6. The most we will pay, regardless of the number of “occurrences”, for all fines arising out of a “regulatory proceeding” is \$100,000. This limit is a part of, and not in addition to, the “Data Breach” Liability Coverage Limit.
7. The most we will pay, regardless of the number of “occurrences”, for all sums a “covered party” becomes legally obligated to pay as a result of a claim made against the “covered party” for non-compliance with Payment Card Industry Data Security Standards is \$100,000. This limit is a part of, and not in addition to, the “Data Breach” Liability Coverage Limit.

**B. “Data Breach” Expense Coverage Limit**

1. The applicable limit shown in this endorsement is the most we will pay, regardless of the number of “affected individuals” or the number of “occurrences”, for all expenses paid under this Coverage. Upon exhaustion of the limit shown in this endorsement, we will have no further obligation of any kind under this coverage.
2. In determining our limit, all “data breaches” arising out of continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one “occurrence.”
3. An “occurrence” taking place over more than one Coverage Period shall be deemed to have taken place during the Coverage Period when the “occurrence” was discovered and shall be treated as a single “occurrence” during such Coverage Period.

**For the purposes of this endorsement only, SECTION V. EXCLUSIONS is deleted and replaced with the following:**

**V. EXCLUSIONS**

This coverage does not apply to the following:

- A. “Personal Injury”, “Property Damage”, or “Governance Liability.”

- B. A “data breach” arising out of a deficiency in your system or security processes, if you had knowledge of the deficiency prior to the “data breach.”
- C. The following exclusions apply as stated unless there is a requirement of you, pursuant to North Dakota law, to defend an “employee” until a determination is made that the “employee” was acting outside the scope of the “employee’s” employment or office.
  - 1. The intentional and malicious involvement of a “covered party” in a “data breach.” However, if you did not have prior knowledge of the intentional and malicious act of a “covered party”, this paragraph does not apply to you.
  - 2. A “data breach” resulting from any fraudulent, deceptive, or criminal activity; or any deliberate, reckless, or known violation of the law by you or any other “covered party” whether acting alone or in collusion with others. However, if you were not involved with and were not aware of the activities listed in this paragraph, this paragraph does not apply to you.
  - 3. A “data breach” resulting from the intentional or reckless disregard for the handling, treatment, transfer, or security of “data” by a “covered party” in your possession, control, or custody. However, if you were not involved with and were not aware of the activities listed in this paragraph, this paragraph does not apply to you.
- D. Criminal investigations or proceedings.
- E. A “data breach” resulting from a “malicious cyber act” when anti-virus, anti-malware, or any other solution that protects from a “malicious cyber act” had not been implemented.
- F. Any threat, extortion, or blackmail including, but not limited to, ransom payments and private security assistance.
- G. Any obligation or liability you are required to pay by reason of the assumption of the obligation or liability in a contract or agreement, except as provided under SECTION I. COVERAGE, A., 3. This exclusion does not apply to liability that you would have in the absence of a contract or agreement or to “defense costs” incurred by us to determine the legal authority of the Named Member to undertake a contractual indemnity.
- H. Any claim or “suit” brought by you against any “covered party.”
- I. A “data breach” in which you fail to cooperate based on your obligations set forth in SECTION VII. CONDITIONS.
- J. Any payment, communication expense, or obligation incurred or promised by a “covered party” without our consent.

**For the purposes of this endorsement only, SECTION VI. SUPPLEMENTARY PAYMENTS – COVERAGE A. AND C. is deleted.**

**For the purposes of this endorsement only, SECTION VII. LIABILITY CONDITIONS is deleted and replaced with the following:**

**VII. CONDITIONS**

- A. Bankruptcy:

Your bankruptcy or insolvency will not relieve us of our obligations under this Memorandum of Coverage.

- B. You and all applicable “covered parties” must cooperate with and provide full disclosure of the circumstances surrounding the “data breach” to us, our “data breach service providers”, applicable regulators, law enforcement personnel, or any other party at our direction.
- C. Duties in the event of a discovery of a “data breach”:
1. You must see to it that we are notified of any “data breach” or potential “data breach”, within 14 days of the discovery of the “data breach” or potential “data breach” by you.
  2. You must make reasonable efforts to secure and protect the remaining data still in your control.
  3. If a claim is made or “suit” is brought against any “covered party”, you must see to it that we receive prompt written notice of the claim or “suit”.
  4. You and any other involved “covered party” must:
    - a. Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the claim or “suit”;
    - b. Authorize us to obtain records and other information;
    - c. Cooperate with us in the investigation, settlement, or defense of the claim or “suit; and
    - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to a “covered party” because of injury or damage to which this coverage may apply.
- D. No “covered party” will, except at their own cost, voluntarily make a payment, assume any obligation or incur any expense, without our consent.
- E. Legal action against us:

No person or organization has a right under this Memorandum of Coverage:

1. To join us as a party or otherwise bring us into a “suit” asking for damage from a “covered party”; or
2. To sue us on this Memorandum of Coverage unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against a “covered party” obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this Memorandum of Coverage or that are excess of the applicable Limit of Coverage. An agreed settlement means a settlement and release of liability signed by us, the “covered party”, and the claimant or the claimant’s legal representative.

F. Other coverage or insurance:

This coverage is excess over any other coverage or insurance, whether primary, excess, contingent, or on any other basis, except where coverage is indicated as primary to any other collectible insurance or coverage. We have no duty under any coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the "covered party's" rights against those other insurers. If no other valid and collectible insurance or coverage is available to a "covered party" for a loss we cover under this Memorandum of Coverage, this coverage is primary.

G. Separation of "covered parties":

Except with respect to the limit of coverage, any rights or duties specifically assigned to the first Named Member apply:

1. As if each Named Member were the only Named Member; and
2. Separately to each "covered party" against whom a claim is made or "suit" is brought.

H. Transfer of rights of recovery against others to us:

If a "covered party" has rights to recover all or part of any payment we have made under this Memorandum of Coverage, those rights are transferred to us. The "covered party" must do nothing after loss to impair them. At our request, the "covered party" will bring "suit" or transfer those rights to us and help enforce them.

**For the purposes of this endorsement only, SECTION VIII. DEFINITIONS is deleted and replaced with the following:**

**VIII. DEFINITIONS**

- A. "Affected Individual(s)" means any person or persons whose "data" was, or is reasonably believed to have been, accessed or acquired by an unauthorized person due to a "data breach" to which this coverage applies.
- B. "Computer System" means any computer hardware, software, firmware, electronic device, electronic data storage device, mobile phones, tablets or any other similar device, electronic data backup facility, networking device, industrial control system, or any components thereof, or any associated input and output devices, network storage equipment, or storage area network, including but not limited to those that have the capability to be linked together through the internet or internal network or that are connected through data storage or other devices.
- C. "Cyber Event" means the unauthorized access to; the presence of a "malicious cyber act" on; the spread of a "malicious cyber act" by; the unauthorized or malicious use of; the intentional shutdown as a preventative measure of; any interruption in service due to a "non-malicious cyber act" on; the malicious interference with or the threat to damage, destroy, corrupt, alter, delete, or otherwise preclude or hinder the use of any "computer system." However, "cyber event" does not include a "data breach."
- D. "Data" means any non-public personal information, or any other information, in any format and includes, but is not limited to, records, reports, designs, plans, formulas, processes, trade secrets, patents, financial information, medical or healthcare information or other

protected health information, contact information, account numbers, account histories, passwords, credit or debit card details, name, email address, social security number, driver's license number, state identification number, telephone number, personally identifiable photos, personally identifiable videos, internet browsing history, biometric records, or other non-public personal information as may be defined in any privacy or cyber laws.

- E. "Data Breach" means the modification, corruption, loss, destruction, theft, collection, use, illegitimate or unauthorized access, handling, or unlawful or unauthorized processing or disclosure of "data", or the inability to access such "data", or the loss, destruction or theft of any computer, electronic device, hardware, or component thereof which contains such "data." However, "data breach" does not include a "cyber event."
- F. "Data Breach Service Provider(s)" means any vendor approved by us to assist with the response to a "data breach" to which the coverage applies.
- G. "Defense costs" means all fees and expenses incurred by us caused by and relating to the adjustment, investigation, defense, or litigation of a claim, "suit", or "regulatory proceeding", including attorneys' fees, court costs and interest on judgments accruing after entry of judgment.
- H. "Employee" means:
  - 1. Any individual serving as an officer, employee, board member, volunteer, or servant of the Named Member, whether elected or appointed and whether or not compensated; and
  - 2. A "leased worker.""Employee" does not include:
  - 1. An independent contractor;
  - 2. An officer or employee of an independent contractor;
  - 3. A person performing tasks the details of which you have no right to control; or
  - 4. A "temporary worker."
- I. "Governance Liability" means any actual or alleged misstatement, misleading statement, act or omission, neglect or breach of duty including misfeasance, malfeasance, or nonfeasance by a "covered party." "Governance liability" does not include "personal injury" liability, "property damage" liability, or "data breach" liability.
- J. "Identity Theft Remediation Services" means identity theft recovery assistance provided by a "data breach services provider."
- K. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your operations. "Leased worker" does not include a "temporary worker."
- L. "Malicious Cyber Act" means any malicious act committed against your "computer system" or malicious access to or hacking of your "computer system," for the purpose of creating,

deleting, taking, collecting, altering, encrypting, or destroying your “data” or services. “Malicious cyber act” includes the introduction of any malware, programs, files, or instructions of a malicious nature which may disrupt, harm, impede access to, or in any other way corrupt the operation of a “computer system,” or the “data” or software within, including, but not limited to malicious code, ransomware, cryptoware, virus, trojans, worms, and logic or time bombs.

- M. “Non-Malicious Cyber Act” means human error, including but not limited to an operating error or omission, an error in the choice of the program used, an error in setting parameters, or any inappropriate single intervention by an employee or a third-party providing services; programming error, including but not limited to an error that occurs during the development or encoding of a program, application or operating system that would, once in operation, result in the malfunction of the “computer system,” an interruption of operations or an incorrect result; or power failure, surge or diminution of an electrical system controlled by a “covered party.”
- N. “Notification Recipient Services” means any combination of the following as deemed necessary by us, legal counsel obtained by us to assist with the “data breach” response, and/or our “data breach service providers”:
1. A toll-free telephone number and call center handling for all “notification services” recipients in order to address issues, concerns, and questions regarding the “data breach”;
  2. Appropriate monitoring services when warranted for all “notification services” recipients; and
  3. “Identity Theft Remediation Services” for all “notification services” recipients in cases of identity theft or account takeover resulting from a “data breach” to which this coverage applies.
- O. “Notification Services” means any combination of the following as deemed necessary by us, legal counsel obtained by us to assist with the “data breach” response, and/or our “data breach service providers”:
1. Preparation, printing, mailing, tracking, documenting, and reporting of breach notification letters;
  2. Preparation, documenting, and reporting of any method of notice required or allowed in accordance with applicable North Dakota law; and
  3. Preparation, documenting, and reporting of any method of notice required or allowed in accordance with any other state or federal law pertaining to the specific “data breach.”
- P. “Occurrence” means a “data breach” which is discovered during the Coverage Period.
- Q. “Personal injury” means:
1. Bodily injury, sickness, disease, shock, mental anguish or mental injury sustained by a person, including death resulting from any of these at any time;
  2. False arrest, detention or imprisonment, defective service or process;

3. Malicious prosecution or humiliation;
  4. Wrongful entry or eviction or other invasions of the right to private occupancy;
  5. Libel, slander, or defamation of character;
  6. Assault and battery;
  7. Discrimination; or
  8. Harassment.
- R. "Post Breach Consulting Services" means any combination of the following as deemed necessary by us, legal counsel obtained by us to assist with the "data breach" response, and/or our "data breach service providers":
1. Evaluation of the "data breach", assessment of privacy impact, and recommendation of best practices for response and notification;
  2. Assistance with interactions with regulators and media relations, if warranted; and
  3. Assistance from legal counsel obtained by us.
- S. "Property damage" means:
1. Physical injury to tangible property, including all resulting loss of use of that property;  
or
  2. Loss of use of tangible property that is not physically injured.
- T. "Regulatory Proceeding" means a non-criminal investigation, demand, or proceeding that is brought by a regulatory agency as the result of an actual or alleged violation of a privacy law by a "covered party."
- U. "Suit" means a civil proceeding initiated by a summons and complaint or statutory notice of direct appeal brought in a court of competent jurisdiction in which damages to which this coverage applies are alleged.
- V. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- W. "Volunteer" means an individual who is not your "employee", who donates his or her work, acts at the direction of and within the scope of duties determined by you and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.