

NORTH DAKOTA INSURANCE RESERVE FUND

LIABILITY MEMORANDUM OF COVERAGE

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NORTH DAKOTA INSURANCE RESERVE FUND

LIABILITY MEMORANDUM OF COVERAGE

Various provisions in this memorandum restrict coverage. Read the entire memorandum carefully to determine your rights.

Throughout this memorandum the words “you” and “your” refer to the Named Member shown in the Declarations. The words “we”, “us”, and “our” refer to the North Dakota Insurance Reserve Fund (NDIRF).

Words or phrases that appear in quotation marks have special meanings. Refer to **SECTION VIII – DEFINITIONS**.

This Memorandum of Coverage does not constitute an insurance policy or insurance contract within the meaning of Chapter 32-12.1 of the North Dakota Century Code. The limit of liability afforded to the Named Member under this Memorandum is that specified by Section 32-12.1-03(2) of the North Dakota Century Code in effect during the year in which the “occurrence” takes place, for any number of claims arising from any single “occurrence” regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that “occurrence.” A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages. The limit of liability shown in the declarations applies in the event of a judicial determination that the statutory limit of liability is not applicable to a specific “occurrence.” The NDIRF is a self-insurance pool within the meaning of Chapter 26.1-23.1 of the North Dakota Century Code. Membership in the NDIRF does not constitute any form of waiver, modification, or limitation of your right to any immunity or limitation of liability that is available with respect to a particular claim or “suit.”

The phrase “covered party” means any organization or person qualifying as such under **SECTION III – WHO IS A COVERED PARTY**.

I. COVERAGE

Subject to the terms and conditions contained in this Liability Memorandum of Coverage, we will pay those sums that a “covered party” becomes legally obligated to pay as damages, except punitive or exemplary damages, because of:

COVERAGE A – “PERSONAL INJURY” AND “PROPERTY DAMAGE” LIABILITY;

COVERAGE B – “MEDICAL PAYMENTS”; or

COVERAGE C – “GOVERNANCE LIABILITY”

caused by an “occurrence.”

II. DEFENSE AND SETTLEMENT

We have the right and duty to defend any claim or “suit” against a “covered party” seeking damages on account of “personal injury” liability, “property damage” liability, or “governance liability” or any combination thereof, however:

A. The amount we will pay for damages is limited as described in **SECTION IV – LIMIT OF LIABILITY**;

B. We may investigate and settle any claim or “suit” at our discretion; and

C. Our right and duty to defend ends when we have used up the applicable limit of liability in the payment of judgments or settlements.

“Defense costs” are payable in addition to the applicable limit of liability. Our responsibility to pay “defense costs” arises only from and after the time we are notified by you of any claim or “suit.” **SEE SECTION VII., B. OF THIS LIABILITY MEMORANDUM OF COVERAGE FOR YOUR DUTY TO PROMPTLY NOTIFY US OF A CLAIM OR “SUIT.”** We have no obligation or responsibility to pay “defense costs” which have been paid or incurred by you prior to the time you notify us of a claim or “suit.” At our sole discretion, we may reimburse you for “defense costs” paid or incurred by you prior to the time you have notified us of a claim or “suit”, if we, in our sole discretion, find good cause for your delay in promptly notifying us of the claim or “suit.”

In accordance with Section 26.1-23.1-01 of the North Dakota Century Code, if a court determines by clear and convincing evidence that your governing body took intentional action through an ordinance, administrative rule, or any other official action in violation of any state law, you shall be liable to us for all attorney fees, expenses, and costs incurred in defending the action.

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. Your present “employee”, individual official, or individual serving as a “volunteer”, while rendering aid or assistance necessary or helpful to other persons who have been injured or are ill as the result of an accident, illness, or trauma; and
- D. Any commission, agency, board, district, authority, or similar entity which operates under your control, including their “employees”, officials, and “volunteers” while acting for them or on their behalf.

However, an independent contractor is not a “covered party.”

IV. LIMIT OF LIABILITY

- A. The Limit of Liability shown in the Declarations and the rules set below fix the most we will pay regardless of the number of:

- 1. “Covered parties”;
- 2. Claims made or “suits” brought;
- 3. Persons or organizations making claims or bringing “suits”; or
- 4. Coverage involved.

The applicable statutory limit of liability under N.D.C.C. § 32-12.1-03(2) shall be determined based on the version of the statute in effect during the year in which the “occurrence” took place.

- B. The maximum limit of liability under any single coverage is the most we will pay, per “occurrence”, for all liability.

C. In determining our limit of liability, 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."

D. An "occurrence" taking place over more than one Coverage Period shall be deemed to have taken place during the Coverage Period when the "occurrence" began and shall be treated as a single "occurrence" during such coverage period.

E. The limit of liability for any claim or "suit":

1. Seeking non-pecuniary or injunctive relief is \$100,000; or
2. Upon initiation of a formal proceeding with the Disciplinary Board of the North Dakota Supreme Court, whether by a letter from Disciplinary Counsel indicating its intent to file a petition or by the actual filing of a petition with the Disciplinary Board, and including any appeals from a decision by such board against your "employee" or elected official is \$50,000 for all petitions and appeals filed during the Memorandum Period.

The limitations set forth in this section include but are not limited to, "defense costs" and court awarded plaintiff's attorney's fees, and costs which you become legally obligated to pay.

F. In determining our limit of liability, all "personal injury" liability, "property damage" liability, and "governance liability" claims or "suits" brought as a result of actions taken, or decisions made, in preparation for, response to, or as a result of a natural disaster will be considered as arising out of one "occurrence."

G. In determining our limit of liability for "sexual misconduct," the total amount payable under this coverage shall be subject to the limit specified in the Declarations or otherwise stated in this memorandum. This limit applies regardless of the number of:

1. "Covered parties";
2. Claims made or "suits" brought;
3. Persons or organizations making claims or bringing "suits";
4. Victims;
5. Incidents; or
6. Locations at which "sexual misconduct" is alleged to have taken place.

This limit shall apply to all damages arising from acts of "sexual misconduct" committed by any one person, or two or more persons acting together, as well as any breach of duty allowing or contributing to such acts.

If "personal injury" arising from "sexual misconduct" occurs during more than one policy period, only the coverage form in effect at the time of "personal injury" first occurs will apply.

H. Court awarded plaintiff attorneys' fees or expenses are covered as damages and are subject to the limit of liability.

I. Our obligation to pay "defense costs" or other claims costs ends after a judgment, a decision in an arbitration proceeding, or a decision in an administrative complaint has been entered for a specific

“suit,” as defined in Section VIII. Definitions, CC.. We retain the right to appeal any judgment at our expense.

- J. Notwithstanding the above limits, if a court determines by clear and convincing evidence that your governing body took intentional action through an ordinance, administrative rule, or any other official action in violation of any state law, you shall be liable to us for all attorney fees, expenses, and costs incurred by us in defending the action, as provided in Section 26.1-23.1-01 of the North Dakota Century Code. Such amounts shall be reimbursed to us by you and are not subject to the applicable limit of liability under this Section.

V. EXCLUSIONS

Our duty to pay for or defend does not apply to:

- A. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law or similar law.

B. Liability:

1. Arising out of oral or written publication of material, if done by or at the direction of a “covered party” with knowledge of its falsity;
2. Arising out of oral or written publication of material whose first publication took place before the beginning of the memorandum period or applicable retroactive date; or
3. Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the “covered party”. This exclusion applies to “personal injury” definitions 2., 3., 4., and 5.

- C. “Personal injury” or “property damage” expected or intended from the standpoint of a “covered party.” This exclusion does not apply to “personal injury” resulting from the use of reasonable force to protect persons or property or during law enforcement, firefighting, or emergency services activities.

- D. Liability you are obligated to pay by reason of the assumption of indemnity in a contract or agreement. This exclusion does not apply to “personal injury” or “property damage” liability that you:

1. Would have in the absence of the contract or agreement; or
2. Are legally permitted to assume in a contract or agreement that is a “covered contract”, provided the event that creates the liability occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in a “covered contract”, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than a covered party are deemed to be damages because of “personal injury” or “property damage”, provided:
 - a. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same “covered contract”; and
 - b. Such attorney fees and litigation expenses are for the defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this memorandum of coverage applies are alleged.

- E. Liability arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or “auto” owned or operated by or rented or loaned to any “covered party.” Use includes operation and “loading or unloading.”

This exclusion does not apply to:

1. Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned or rented or loaned to you;
2. Liability arising out of the operation of any "mobile equipment."

F. Liability arising out of:

1. The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any "covered party"; or
2. The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing speed or demolition contest or in any stunting activity.

G. Liability due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, or revolution. This exclusion applies only to liability assumed under contract or agreement.

H. Liability arising out of the failure of any "covered party" to adequately supply gas, water, electricity, or steam.

This exclusion does not apply if the failure to supply results from sudden and accidental injury to tangible property owned or used by you to process or transmit the gas, water, electricity, or steam.

I. "Personal injury" or "property damage" resulting from the ownership or operation of any airport, airpark, or similar facility, including runways, hangars, buildings, or other properties used in connection with aviation activities.

This exclusion does not apply to "personal injury" definitions 7. Discrimination or 8. Harassment.

J. "Property damage" to:

1. Property a "covered party" owns, rents, or occupies. However;
 - a. Only exclusion C. applies to damage by fire to premises rented to you or temporarily occupied by you with permission of the owner; and
 - b. We will cover "property damage", up to \$25,000 per "occurrence", to premises that you rent or occupy for a period of less than seven consecutive days. Coverage is primary to any other collectible insurance or coverage. However, no coverage is provided for the defense of a "suit" brought to determine legal liability or the extent of loss to such property.
2. Premises you sell, give away, or abandon if the "property damage" arises out of any part of those premises: or
3. Property loaned to the "covered party" or personal property in the "covered party's" care, custody, or control;

This exclusion does not apply to:

- a. "Property Damage" up to \$2,500 per "occurrence" to property of others, excluding "autos" and aircraft, in a "covered party's" care, custody, or control. Coverage is primary to any

other collectible insurance or coverage. However, no coverage is provided for the defense of a "suit" brought to determine legal liability or the extent of loss to such property; or

- b. Personal property of others, excluding aircraft or property of emergency services organizations, controlled by a "covered party" for official use in an emergency situation or while training for an emergency situation within the Named Member's jurisdictional boundary. Coverage is primary to any other collectible insurance or coverage.

- (1) This extension of coverage does not apply to mechanical breakdown of "autos" or mobile equipment unless operated by the Named Member's officials, employees, or volunteers.

- (2) Personal property is considered to be controlled by a "covered party" for official use and the named member is deemed to be legally liable for damage to such property if:

- (a) The property is operated by a "covered party"; or

- (b) Operation of the property is being managed by a "covered party."

K. "Medical payments" for "personal injury":

- 1. To any "covered party".

This exclusion does not apply to bodily injury to volunteer emergency personnel while responding to an emergency. Payment is for medical expenses in excess of available medical insurance, accident or injury insurance, workforce safety and insurance, or similar insurance or a combination thereof.

- 2. To a person hired to do work on behalf of any "covered party" or a tenant of any "covered party";
- 3. To a person injured on that part of premises "you" own or rent that the person occupies;
- 4. To a person, whether or not an employee of any "covered party", if benefits for the "personal injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law;
- 5. To a person taking part in a recreational activity, athletic activity, or practicing for or participating in any competition, contest, exhibition, demonstration, sport, or race;
- 6. To any inmate, patient, or prisoner who is being treated, cared for, detained, or imprisoned by any "covered party";
- 7. To any student;
- 8. Excluded under "personal injury";
- 9. To a person injured on that part of premises you own that is used as a public roadway, street, alleyway, or parking lot;
- 10. To a person injured on that part of premises you own that is used as a public sidewalk, bicycle path, or recreational trail;
- 11. To a person injured on that part of premises you own that is vacant property, undeveloped land, or used for a recreational purpose.

12. To a person unlawfully occupying a premises you own, lease or rent.

L. Damage To "Your Product": "Property damage" to "your product" arising out of it or any part of it.

M. Damage To "Your Work": "Property damage" to "your work" arising out of it or any part of it. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

N. Liability for failure to effect or maintain any insurance or bond.

O. Liability for failure or alleged failure:

1. To request, levy, tax, solicit, or apply for monies from any source; or
2. To provide guidance on the availability of funding or assurance of funding, from any source, to or for any individual, government unit, corporation, organization or other entity.

However, this exclusion does not apply to defense, costs or supplementary payments.

P. Liability for failure to comply with the provisions of the National Flood Insurance Act of 1968 and amendments thereto, the National Flood Insurance Reform Act of 1994 and amendments thereto or similar federal, state or local laws.

Q. Liability arising from responsibilities, obligations, or duties imposed on you as a fiduciary by the Employee Retirement Income Security Act of 1974 and amendments thereto or similar federal, state or local laws.

R. "Governance liability" for:

1. Any amount actually or allegedly due under the terms of any express, implied, actual or constructive contract, agreement, warranty, guarantee or promise whether written or verbal; or
2. For damages arising as a consequence of the failure, refusal, or inability of a "covered party" to enter into, renew, or perform any contract or agreement.

However, this exclusion does not apply with respect to defense, costs, or supplementary payments resulting from a "suit" to which this exclusion applies.

S. Liability based upon or attributable to a "covered party" gaining in fact any personal profit or advantage to which they were not legally entitled, including remuneration paid in violation of the law as determined by the Courts.

T. Liability arising out of the use of any trampoline. However, this exclusion does not apply to the use of a "mini trampoline."

U. Liability arising out of or in any way connected with any operation of the principles of eminent domain, condemnation proceedings, or "inverse condemnation", by whatever name called. However, this exclusion does not apply to defense, costs, or supplementary payments.

V. Any claim or "suit" brought by you against any "covered party."

W. Liability assumed by a "covered party" under any contract guaranteeing the result of any treatment. However, this exclusion does not apply to defense, costs, or supplementary payments.

X. Liability or costs resulting from the actual, alleged, or threatened discharge, dispersal, release, or escape of "pollutants":

1. At or from premises which is or has at any time been owned, rented or occupied by a "covered party";
2. At or from any site or location used by or for you or others for the handling, storage, disposal, processing, or treatment of waste;
3. Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for you or any person or organization for whom you may be legally responsible; or
4. At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations:
 - a. If the "pollutants" are brought on or to the site or location in connection with such operations; or
 - b. If the operations are to test, monitor, clean up, remove, contain, treat, detoxify, or neutralize the "pollutants."

This exclusion does not apply to:

1. Loss or injury caused by heat, smoke, or fumes from a "hostile fire";
2. Sudden and accidental loss arising out of the application of pesticides; or
3. A maximum of \$250,000 per "occurrence" that a "covered party" legally must pay as damages, cleanup costs, or "defense costs" because of "personal injury" or "property damage" arising out of the sudden and accidental escape of "pollutants." However, this does not apply to damages, cleanup costs, or "defense costs" resulting from X.2. & X.3. above or the disposal of waste fluid from vehicles or other equipment.

Y. Any loss, cost, or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize "pollutants."

Z. Any loss, damage, liability, claim, cost, or expense alleged or arising out of, based upon, or attributable to:

1. The covered party, directly or indirectly, from any coverage for physical damage to:
 - a. Nuclear reactor power plants including all auxiliary property on the site, or
 - b. Any other nuclear reactor installation, including laboratories handling radioactive materials in connection with reactor installations, and "critical facilities" as such, or
 - c. Installations for fabricating complete fuel elements or for processing substantial quantities of "special nuclear material", and for reprocessing, salvaging, chemically separating, storing or disposing of "spent" nuclear fuel or waste materials, or
 - d. Installations other than those listed in paragraph Z(1)(c) above using substantial quantities of radioactive isotopes or other products of nuclear fission.

2. Radioactive contamination accruing to the covered party, directly or indirectly, from any coverage on the property which is on the same site as a nuclear reactor power plant or other nuclear installation and which normally would be covered therewith except that this paragraph shall not operate:
 - a. where the covered party does not have knowledge of such nuclear reactor power plant or nuclear installation, or
 - b. where said coverage contains a provision excluding coverage for damage to property caused by or resulting from radioactive contamination, however caused.
3. Radioactive contamination accruing to the covered party, directly or indirectly, when such radioactive contamination is a named hazard specifically covered.
4. It is understood and agreed that this section shall not extend to risks using radioactive isotopes in any form where the nuclear exposure is not considered by the covered party to be the primary hazard.
5. The term "special nuclear material" shall have the meaning given it in the Atomic Energy Act of 1954 or by any law amendatory thereof.

AA. Liability arising out of any claim or "suit", any "covered party" was aware of, which occurred on or after the retroactive date and prior to the coverage period.

BB. "Governance liability" arising out of:

1. A lease of real estate owned by the Named Member and the subsequent sublease of such demised real estate by the Named Member, which is transacted with a corporation that has as a member of its board of directors, a current board member of the Named Member; or
2. The sale of real estate by the Named Member and the subsequent purchase, lease with option to purchase, contract for deed, or similar agreement for the reacquisition of title to such real estate by the Named Member, which is transacted with a corporation that has as a member of its board of directors, a current board member of the Named Member; or
3. A claim or "suit" alleging a violation of North Dakota Century Code, Chapter 44-04, associated with actions taken in conjunction with a transaction described in 1. or 2. above; or
4. A claim or "suit" against a corporation that is a party to a transaction described in 1. or 2. above; or
5. A claim or "suit" alleging a corporation that is a party to a transaction described in 1. or 2. above is a subsidiary of or under the control or supervision of the Named Member.

CC. Liability arising from the failure or alleged failure to comply with provisions of:

1. The Securities Act of 1933;
2. The Securities Exchange Act of 1934;
3. The Private Securities Litigation Act of 1995;
4. Any State securities statute or regulation; or amendments thereto.

DD. Any loss, damage, liability, claim, cost, or expense allegedly or arising out of, based upon, or attributable to a “data breach.”

EE. Any loss, damage, liability, claim, cost, or expense allegedly or arising out of, based upon, or attributable to a “cyber event.”

This exclusion does not apply to a maximum of \$1,000,000 per “occurrence” for defense, supplementary payments, and sums that a “covered party” legally must pay as damages because of “personal injury”, “property damage”, or “governance liability” arising out of a “cyber event.”

FF. Any loss, damage, liability, claim, cost, or expense alleged or arising out of, based upon, or attributable to any “Biometric Information privacy law.”

GG. Any loss, damage, liability, claim, cost, or expense alleged or arising out of, based upon, or attributable to:

1. Any actual or alleged toxic or other harmful properties of lead, silica, or asbestos.
2. Any claim, “suit,” request, demand, order, or statutory or regulatory requirement for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to or assessing the effects of any lead, silica, or asbestos exposure.

HH. Any loss, damage, liability, claim, cost, or expense alleged or arising out of, based upon, or attributable to:

1. Any pathogen, virus, bacteria or other microorganism that actually or allegedly induces or is capable of inducing physical distress, illness, or disease.
2. Any claim, “suit,” request, demand, order, or statutory or regulatory requirement to control, prevent, suppress, mitigate, test for, monitor, treat or remediate the actual, suspected, or anticipated presence, existence or transmission of any pathogen, virus, bacteria or other microorganism that actually or allegedly induces or is capable of inducing physical distress, illness or disease.

The addition of this exclusion does not imply that other Liability Memorandum of Coverage provisions do not also exclude coverage for loss, damage, liability, claim, cost, or expense allegedly or arising out of, based upon, or attributable to any pathogen, virus, bacteria or other microorganism.

II. Any loss, damage, liability, claim, cost, or expense alleged or arising out of, based upon, or attributable to:

1. Any actual, alleged or threatened discharge, disposal, escape, seepage, migration, release, or existence, ingestion, inhalation, absorption, exposure to, contact with, consumption or absorption of “perfluoroalkyl or polyfluoroalkyl substances (PFAS)” or materials containing “perfluoroalkyl or polyfluoroalkyl substances (PFAS)”.
2. Any claim, “suit”, request, demand, directive, statutory or regulatory requirement, or order by or on behalf of any person, entity, or governmental authority that any covered party or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of “perfluoroalkyl or polyfluoroalkyl substances (PFAS)” or materials containing “perfluoroalkyl or polyfluoroalkyl substances (PFAS)”;

3. Any claim or “suit” by or on behalf of any person, entity, or governmental authority for damages or any other relief or remedy because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of “perfluoroalkyl or polyfluoroalkyl substances (PFAS)” or materials containing “perfluoroalkyl or polyfluoroalkyl substances (PFAS)”.

JJ. Liability arising out of, resulting from, or in any way caused by or related to any “acts of terrorism,” including nuclear, biological, chemical or radioactive terrorism, as defined herein.

KK. Any person who has been found guilty of, or pled guilty or no contest to any criminal act involving “sexual misconduct.”

VI. SUPPLEMENTARY PAYMENTS – COVERAGE A. AND C.

A. We will pay, with respect to any claim or “suit” we defend:

1. All expenses we incur.
2. The cost of bail bonds required because of accidents or traffic violations arising out of the use of any vehicle to which the “Personal Injury” Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of liability. We do not have to furnish these bonds.
4. All reasonable expenses incurred by a “covered party” at our request.
5. All court costs taxed against a “covered party” in a “suit” we defend, excluding attorneys’ fees or attorneys’ expenses taxed against a “covered party.”
6. Pre-judgment interest awarded against a “covered party” on that part of a judgment we may pay. If we make an offer to pay the applicable limit of liability, we will not pay any pre-judgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of liability.

These payments will not reduce the limit of liability.

B. If we defend the Named Member against a “suit” and an indemnitee of the Named Member is also named as a party to the “suit”, **we will defend that indemnitee to the extent indemnification by the Named Member is allowed under North Dakota law** for “personal injury” or “property damage”, if all the following conditions are met:

1. The “suit” against the indemnitee seeks damages for which the Named Member has assumed the liability of the indemnitee in a contract or agreement that is a “covered contract”;
2. This memorandum of coverage applies to “personal injury” or “property damage” liability assumed by the Named Member.
3. The obligation to defend or the cost of the defense of, that indemnitee, has also been assumed by the Named Member in the same “covered contract”;

4. The allegations of the “suit” and the information we know about the “occurrence” are such that no conflict appears to exist between the interests of the Named Member and the interests of the indemnitee;
5. The indemnitee and the Named Member ask us to conduct and control the defense of that indemnitee against such “suit” and agree that we can assign the same counsel to defend the Named Member and the indemnitee; and
6. The indemnitee:
 - a. Agrees in writing to:
 - (1) Cooperate with us in the investigation, settlement, or defense of the “suit”;
 - (2) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the “suit”;
 - (3) Notify any other insurer whose coverage is available to the indemnitee; and
 - (4) Cooperate with us with respect to coordinating other applicable insurance or coverage available to the indemnitee; and
 - b. Provides us with written authorization to:
 - (5) Obtain records and other information related to the “suit”; and
 - (6) Conduct and control the defense of the indemnitee in such “suit.”

So long as the above conditions are met, attorneys’ fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph V. D. 2., of this Memorandum of Coverage, such payments will not be deemed to be damages for “personal injury” or “property damage” and will not reduce the limits of liability.

Our obligation to defend the Named Member’s indemnitee and to pay for attorneys’ fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of liability in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreements described in Paragraph 6. above are no longer met.

VII. LIABILITY CONDITIONS

A. Bankruptcy:

Your bankruptcy or insolvency will not relieve us of our obligations under this memorandum of coverage.

B. Duties in the event of an “occurrence”, claim, or “suit”:

We have no duty to provide coverage under this memorandum of coverage unless there has been full compliance with the following duties:

1. You must see to it that we are notified promptly of any “occurrence”, which may result in a claim. Notice should include:

- a. How, when, and where the “occurrence” took place; and
 - b. The names and addresses of any injured persons and witnesses.
2. 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.”
3. 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.
4. No “covered party” will, except at their own cost, voluntarily make a payment, assume any obligation or incur any expense, other than first aid, without our consent.

C. Legal action against us:

No person or organization has a right under this Coverage Part:

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 Coverage Part 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 Coverage Part or that are excess of the applicable limit of liability. 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.

D. Other coverage or insurance:

This coverage is excess over any other liability coverage or insurance, whether primary, excess, contingent, or on any other basis, except where liability coverage is indicated as primary to any other collectible insurance or liability 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 liability coverage is available to a “covered party” for a loss we cover under Coverage A or C of this Coverage Part, this coverage is primary.

E. Contribution audit:

1. We will compute all contributions for this memorandum of coverage in accordance with our rules and rates.
2. Contribution shown in this memorandum of coverage is a deposit contribution only. At the close of each audit period, we have the authority to compute the earned contribution for that period. Audit contributions are due and payable on notice to the first Named Member. If the

sum of the advance and audit contributions paid for the memorandum term is greater than the earned contribution, we will return the excess to the first Named Member.

3. The first Named Member must keep records of the information we need for contribution computation, and send us copies at such times as we may request.

F. Separation of “covered parties”:

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

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.

G. 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 Coverage Part, 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.

VIII. DEFINITIONS

- A. “Act of terrorism” means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political subdivision thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organization(s) or government(s) de jure or de facto, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
- B. “Auto” means a land motor vehicle, trailer, or semi-trailer designed for travel on public roads, including any attached machinery. But “auto” does not include “mobile equipment”.
- C. “Biometric Information privacy law” means the parts of any local, state or federal law, statute, ordinance, regulation or governmental rule, including under any common law legal theory, that govern or relate to the collection, storage, disclosure, retention, destruction, protection, use, sale, lease or trade of “biometric records”.
- D. “Biometric records” means information, regardless of how it is captured, converted, stored or shared, about a person’s physical, biological or behavioral characteristics that can be used to identify such person and includes a person’s retina or iris scan, fingerprint, voiceprint, scan of hand or face or other body geometry, DNA, vein pattern, keystroke pattern or rhythm, gait pattern or rhythm, or sleep, health or exercise data that contain identifying information.
- E. “Computer System” means any computer hardware, software, firmware, electronic device, electronic data storage device, mobile phones, tablets or any similar device, electronic backup facility, networking device, industrial control system, or any component thereof, or any associated input or 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.
- F. “Covered Contract” means

1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not a "covered contract";
2. A sidetrack agreement;
3. Any easement or license agreement;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. An elevator maintenance agreement;
6. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "personal injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph 6. does not include that part of any contract or agreement:

- a. That indemnifies an architect, engineer, or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - b. Under which the insured, if an architect, engineer, or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
- G. "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."
- H. "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.
- I. "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."

J. "Defense costs" means all fees and expenses incurred by us caused by and relating to the adjustment, investigation, defense, or litigation of a claim or "suit" including attorney's fees, court costs, and interest on judgments accruing after entry of judgment.

K. "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".

L. "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 or "property damage" liability.

M. "Hostile fire" means a fire that becomes uncontrollable or breaks out from where it was intended to be.

N. "Inverse condemnation" means a claim or "suit" alleging that a "covered party" has taken or diminished the value of real estate through use restrictions on such real estate or use of adjacent real estate or air space by a "covered party."

O. "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."

P. "Loading or unloading" means the handling of property:

1. After it is moved from the place where it is accepted for movement into or onto an aircraft or "auto";
2. While it is in or on an aircraft or "auto"; or
3. While it is being moved from an aircraft or "auto" to the place where it is finally delivered;

But "loading and unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft or "auto."

Q. "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, deleting, encrypting, or destroying your "data" or services. "Malicious cyber act" includes the introduction of malware, programs, files, or instructions of a malicious nature that may disrupt, harm, or impede access to, or in any way corrupt the operation of a

“computer system”, or the “data” or software within, including, but not limited to, malicious code, ransomware, cryptoware, viruses, trojans, worms, logic, or time bombs.

R. “Medical payments” means medical expenses for “personal injury” caused by an accident:

1. On premises you own or rent;
2. On ways next to premises you own or rent; or
3. Because of your operations;

Provided that:

1. The accident takes place during the memorandum period;
2. The expenses incurred are reported to us within one year of the accident; and
3. The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

We will make these payments regardless of fault.

S. “Mini trampoline” means a trampoline that consists of a rebound area that is less than sixteen square feet.

T. “Mobile equipment” means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to the premises you own or rent;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers, or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers, motor patrols, or rollers;
5. Vehicles that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment; or
 - b. Cherry pickers or similar devices used to raise and lower workers;
6. Vehicles maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not “mobile equipment” but will be considered “autos”:

- a. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise and lower workers; and
 - b. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.
- U. “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.”
- V. “Nuclear, biological, chemical or radioactive terrorism” means:
- 1. Any actual, alleged or threatened exposure, release, dissemination, contamination, spreading by contagion, inhalation or absorption of biological and/or chemical substances caused by an act of terrorism; and/or
 - 2. Any actual, alleged or threatened nuclear reaction, explosion, radiation, or radioactive exposure, release or contamination caused by an act of terrorism.
- W. “Occurrence” means:
- 1. As respects “personal injury” liability and “property damage” liability, an event including continuous and repeated exposure to the same general harmful conditions, which results during the memorandum period or on or after any applicable retroactive date in “personal injury” or “property damage” a “covered party” neither expected nor intended.
 - 2. As respects “governance liability”, an offense committed during the memorandum period or on or after any applicable retroactive date, which results in “governance liability”.
- X. “Perfluoroalkyl or polyfluoroalkyl substances (PFAS)” means any of the following:
- 1. Perfluorooctanoic acid (PFOA), a chemical compound described as
 - (1) C₈HF₁₅O₂,
 - (2) F-CF₂-CF₂-CF₂-CF₂-CF₂-CF₂-CF₂-C(=O(O))-H, or
 - (3) 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluorooctanoic acid-PFOA;
 - 2. Perfluorooctane sulfonic acid (PFOS), a chemical compound described as
 - (1) C₈HF₁₇O₃S,
 - (2) F-CF₂-CF₂-CF₂-CF₂-CF₂-CF₂-CF₂-CF₂-S(=O(=O)(O))-H, or
 - (3) 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluorooctanesulfonic acid-PFOS;
 - 3. Any PFAS replacement related materials, including but not limited to Gen-X, a chemical compound described as C₆H₄F₁₁NO₃,
 - (1) Ammonium perfluoro (2-methyl-3-oxahexanoate),
 - (2) C3 Dimer Acid,
 - (3) hexafluoropropylene oxide dimer acid, or
 - (4) HFPO Dimer Acid.

Y. “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.
- Z. "Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

AA. "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.

BB. "Sexual Misconduct" means any of the following, whether committed intentionally, recklessly, negligently, inadvertently or with the belief, erroneous or otherwise, by any covered party or any other person that the victim is consenting and has the legal and mental capacity to consent thereto, and whether caused by or at the instigation of any covered party or any other person performing services for or on behalf of any insured:

1. Any sexual act, sexual contact, or touching of a sexual nature;
2. Any sexual assault, sexual abuse, or sexual molestation; or
3. Any verbal, written, recorded, or electronic correspondence, transmission, or communication of a sexual nature.

CC. "Suit" means:

1. 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 because of "personal injury" liability, "property damage" liability, or "governance liability" to which this coverage applies are alleged;
2. A civil proceeding initiated by a summons and complaint, writ, or other similar initiating documents in a court of competent jurisdiction in which "governance liability" is alleged and no damages are requested;
3. An arbitration proceeding alleging:
 - a. Damages for "personal injury" liability or "property damage" liability to which you must submit or do submit with our consent; or

- b. Damages for “governance” liability to which you must submit pursuant to a specific statute, governmental rule, or governmental order requiring arbitration or do submit with our consent.
 - 4. A complaint filed with the United States Equal Employment Opportunity Commission (EEOC) or the North Dakota Department of Labor alleging discrimination or harassment under the definition of “personal injury” in section VIII. Definitions; or
 - 5. A formal proceeding commenced by a letter from Disciplinary Counsel indicating its intent to file a petition or by the actual filing of a petition with the Disciplinary Board of the North Dakota Supreme Court or an appeal from a decision of the Disciplinary Board against your “employee” or elected official.
- DD. “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.
- EE. “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.

FF. “Your product”:

- 1. Means:
 - a. Any goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or
 - (3) A person or organization whose business or assets you have acquired; and
 - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- 2. Includes:
 - a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance, or use of "your product"; and
 - b. The providing of or failure to provide warnings or instructions.
- 3. Does not include vending machines or other property rented to or located for the use of others but not sold.

GG. "Your work”:

- 1. Means:
 - a. Work or operations performed by you or on your behalf; and
 - b. Materials, parts, or equipment furnished in connection with such work or operations.
- 2. Includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance, or use of "your work", and
- b. The providing of or failure to provide warnings or instructions.