

**NORTH DAKOTA INSURANCE RESERVE FUND**

**AUTOMOBILE MEMORANDUM OF COVERAGE**

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## NORTH DAKOTA INSURANCE RESERVE FUND

### AUTOMOBILE MEMORANDUM OF COVERAGE

Various provisions in this memorandum restrict coverage. Read the entire memorandum carefully to determine rights, duties, and what is covered and is not covered.

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).

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – 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 Chapter 32-12.1-03(2) of the North Dakota Century Code, two hundred fifty thousand dollars per person and one million dollars 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 26.1-23.1-02 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”.

#### SECTION I – COVERED AUTOS

The COVERED AUTO(S) section of the Automobile Coverage Declarations shows the “autos” that are covered “autos” for each of your coverages. The following numerical symbols describe the “autos” that may be covered “autos”. The symbols entered next to a coverage on the Declarations designate the only “autos” that are covered “autos”.

##### A. DESCRIPTION OF COVERED AUTO(S) DESIGNATION SYMBOLS

###### SYMBOL    DESCRIPTION

- 1    **ANY “AUTO.”**
- 2    **OWNED “AUTOS” SUBJECT TO NO-FAULT.** Only those “autos” you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those “autos” you acquire ownership of after the memorandum begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
- 3    **OWNED “AUTOS” SUBJECT TO A COMPULSORY UNINSURED/UNDERINSURED MOTORISTS LAW.** Only those “autos” you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured/Underinsured Motorists Coverage. This includes those “autos” you acquire ownership of after the memorandum begins provided they are subject to the same state uninsured motorists/underinsured motorists requirement.

- 4 SPECIFICALLY DESCRIBED "AUTOS".** Only those "autos" described in the Schedule of Covered Automobiles for which a contribution charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in the Schedule of Covered Automobiles).
- 5 HIRED "AUTOS" ONLY.** Only those "autos" you lease, hire, rent, or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your employees or partners or members of their households.
- 6 NONOWNED "AUTOS" ONLY.** Only those "autos" you do not own, lease, hire, rent, or borrow that are used in connection with your business. This includes "autos" owned by your employees or partners or members of their households but only while used in your business or your personal affairs.
- 7 PHYSICAL DAMAGE TO RENTAL VEHICLES.** When this Memorandum of Coverage covers a private passenger automobile the following shall apply:
- a. The coverage for property damage liability for the automobile is extended to provide coverage for the loss of use of and damage to a private passenger automobile rented for 30 continuous days or less by a "covered party".
  - b. With respect to the loss of use of the rented private passenger automobile "we" will reimburse the "covered party" up to 60% of the daily rental fee which would have been paid had the rented private passenger automobile not been damaged. The period for which "we" shall be liable shall commence on the day of the accident which resulted in such rental automobile being unavailable for use, provided you have reported, as promptly as practicable, the loss or damage to "us," and shall cease, regardless of the expiration of the memorandum;
    1. on the day repairs are completed; or
    2. the day "we" make payment for the replacement of the rental automobile;whichever comes first, however, coverage is limited to:
    1. the length of time required with the exercise of due diligence and dispatch to repair or replace such rental automobile; or
    2. a maximum of 15 days.
  - c. With respect to the coverage provided to rental private passenger automobiles, if there is other collectible automobile liability coverage you may choose under which automobile liability coverage to collect.

The automobile liability coverage chosen will be entitled to a pro rata contribution from the other policies based upon the property damage limits of liability.
  - d. This coverage is excess over any other collectible insurance or coverage.

## **B. OWNED AUTOS YOU ACQUIRE AFTER THE MEMORANDUM BEGINS**

1. If symbols 1, 2, 3, or 7 are entered next to a coverage in the Automobile Coverage Declarations, then you have coverage for “autos” that you acquire of the type described for the remainder of the memorandum period.
2. If symbol 4 is entered next to a coverage in the Automobile Coverage Declarations, an “auto” you acquire will be a covered “auto”. You must tell us within 30 days after you acquire the “auto” if you want us to continue coverage. The largest deductible listed on the Auto Schedule will apply if coverage is provided under this section.

## **C. CERTAIN TRAILERS, MOBILE EQUIPMENT AND TEMPORARY SUBSTITUTE AUTOS**

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered “autos” for Liability Coverage:

1. “Trailers” with a load capacity of 2,000 pounds or less designed primarily for road travel on public roads.
2. “Mobile equipment” while being carried or towed by a covered “auto”.
3. Any “auto” you do not own while used with the permission of its owner as a temporary substitute for a covered “auto” you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. “Loss”; or
  - e. Destruction.

## **SECTION II – LIABILITY COVERAGE**

### **A. COVERAGE**

We will pay all sums a “covered party” legally must pay as damages, except punitive or exemplary damages, because of “bodily injury” or “property damage” to which this coverage applies, caused by an “accident” and resulting from the ownership, maintenance, or use of a covered “auto”.

We have the right and duty to defend any “suit” asking for these damages. However, we have no duty to defend “suits” for “bodily injury” or “property damage” not covered by this Coverage Form. We may investigate and settle any claim or “suit” as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Coverage has been exhausted by payment of judgements or settlements.

#### **1. WHO IS A COVERED PARTY**

“Covered party” means:

- a. You for any covered “auto”.

- b. Any "employee", official, or volunteer using a covered "auto" you don't own, hire or borrow while acting on your behalf. Coverage is excess to any other collectible personal "auto" insurance or coverage. However this coverage does not apply if the employee, official, or volunteer fails to meet the North Dakota Financial Responsibility of Owners and Operators as provided for in the North Dakota Century Code, Chapter 39-16.
- c. Anyone else while using with your permission a covered "auto" you own, hire, or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
  - (2) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, or parking "autos" unless the business is yours.
  - (3) Anyone other than your "employees", a lessee or borrower or any of their employees, while moving property to or from a covered auto.
- d. Anyone else who is not otherwise excluded under paragraph c. above and is liable for the conduct of a "covered party" but only to the extent indemnification for such liability is allowed under North Dakota law.

## **2. COVERAGE EXTENSIONS**

- a. Supplementary Payments. In addition to the Limit of Liability, we will pay for the "covered party":
  - (1) All expenses we incur.
  - (2) The cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
  - (3) The cost of bonds to release attachments in any "suit" we defend, but only for bond amounts within our Limit of Liability.
  - (4) All reasonable expenses incurred by a "covered party" at our request.
  - (5) All costs taxed against a "covered party" in any "suit" we defend.
  - (6) All interest on the full amount of any judgement that accrues after entry of the judgement in any "suit" we defend; but "our" duty to pay interest ends when we have paid, offered to pay, or deposited in court the part of the judgement that is within our Limit of Liability.
- b. Personal Property of Others Being Transported.

We will pay up to \$2,500 to reimburse the actual physical damage to personal property of others being transported in an owned, hired, borrowed or rented auto. Coverage is primary to any other collectible insurance or coverage. This coverage extension does not apply to personal property owned by:

- (1) A "covered party" or their family member;
- (2) A named member's employee or their family member;

(3) A named member's elected or appointed official or their family member; or

(4) A named member's volunteer or their family member.

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

c. Out of State Coverage Extensions.

While a covered "auto" is away from the state where it is licensed we will:

(1) Increase the Limit of Liability for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.

(2) Provide the minimum amounts and types of other coverage, such as no-fault, required of out of state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## **B. EXCLUSIONS**

This coverage does not apply to any of the following:

### **1. EXPECTED OR INTENDED INJURY**

"Bodily injury" or "property damage" expected or intended from the standpoint of a "covered party". However this exclusion does not apply to the named member.

### **2. CONTRACTUAL**

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is a "covered contract," or
- b. That the "covered party" would have in the absence of the contract or agreement.

### **3. WORKERS COMPENSATION**

Any obligation for which the "covered party" or the named member's insurer may be held liable under any workers compensation, disability benefits, or unemployment compensation law, or any similar law.

### **4. EMPLOYEE INDEMNIFICATION AND EMPLOYER'S LIABILITY**

"Bodily injury" to:

- a. An employee of the named member arising out of and in the course of employment by the named member; or

- b. The spouse, child, parent, brother, or sister of that employee as a consequence of paragraph a. above.

This exclusion applies:

- a. Whether the “covered party” may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

## **5. CARE, CUSTODY, OR CONTROL**

“Property damage” to property owned, rented, occupied by, transported by, or in the care, custody, or control of a “covered party” or the named member. But this exclusion does not apply to:

- a. Liability assumed under a sidetrack agreement.
- b. Coverage provided under Coverage Extension b. Personal Property of Others Being Transported.

## **6. HANDLING OF PROPERTY**

“Bodily injury” or “property damage” resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by a “covered party” for movement into or onto the covered “auto”; or
- b. After it is moved from the covered “auto” to the place where it is finally delivered by a “covered party”.

## **7. MOVEMENT OF PROPERTY BY MECHANICAL DEVICE**

“Bodily injury” or “property damage” resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered “auto”.

## **8. OPERATIONS**

“Bodily injury” or “property damage” arising out of the operations of any equipment listed in paragraphs 6.a. and 6.b. of the definition of “mobile equipment”.

## **9. POLLUTION**

- a. “Bodily injury” or “property damage” arising out of the actual, alleged, or threatened discharge, dispersal, release, or escape of “pollutants”:

(1) That are contained in any property that is:

- (a) Being transported or towed by, or handled for movement into, onto, or from, the covered “auto”.
- (b) Otherwise in the course of transit by the “member”; or
- (c) Being stored, disposed of, treated, or processed in or upon the covered “auto”.



- (2) Before the “pollutants” or any property in which the “pollutants” are contained are moved from the place where they are accepted by the “covered party” for movement into or onto the covered “auto”; or
  - (3) After the “pollutants” or any property in which the “pollutants” are contained are moved from the covered “auto” to the place where they are finally delivered, disposed of, or abandoned by the “covered party”.
- b. 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”.

Paragraph a.(1)(c) does not apply to fuels, lubricants, fluids, exhaust gases, or other similar “pollutants” that are needed for or result from the normal electrical, hydraulic, or mechanical functioning of the covered “auto” or its parts, if:

- (1) The “pollutants” escape or are discharged, dispersed, or released directly from an “auto” part designed by its manufacturer to hold, store, receive, or dispose of such pollutants; and
- (2) The “bodily injury” or “property damage” does not arise out of the operation of any equipment listed in paragraphs 6.b and 6.c of the definition of “mobile equipment”.

Paragraphs a(2) and a(3) of this exclusion do not apply if:

- (1) The “pollutants” or any property in which the “pollutants” are contained are upset, overturned, or damaged as a result of the maintenance or use of a covered “auto”; and
- (2) The discharge, dispersal, release, or escape of the “pollutants” is caused directly by such upset, overturn, or damage.

This exclusion does not apply to a maximum of \$250,000 that a “covered party” legally must pay as damages, clean up costs, or defense costs because of “bodily injury” or “property damage” arising out of the sudden and accidental escape of “pollutants”.

## **10. WAR**

“Bodily injury” or “property damage” 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 a contract or agreement.

## **C. LIMIT OF COVERAGE**

Regardless of the number of covered “autos,” “covered parties,” contributions paid, claims made, or vehicles involved in the “accident,” the most we will pay for all damages resulting from one “accident” is the Limit of Liability for Liability Coverage shown in the Declarations.

All “bodily injury” and “property damage” resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one “accident”.

## **SECTION III – PHYSICAL DAMAGE COVERAGE**

### **A. COVERAGE**

#### **1. We will pay for “loss” to a covered “auto” or its “equipment” under:**

- a. Comprehensive Coverage. From any cause except:
  - (1) The covered “auto’s” collision with another object; or
  - (2) The covered “auto’s” overturn.
- b. Specified Causes of Loss Coverage. Caused by:
  - (1) Fire, lightning, or explosion;
  - (2) Theft;
  - (3) Windstorm, hail, or earthquake;
  - (4) Flood;
  - (5) Mischief or vandalism; or
  - (6) The sinking, burning, collision, or derailment of any conveyance transporting the covered “auto”.
- c. Collision Coverage. Caused by:
  - (1) The covered “auto’s” collision with another object; or
  - (2) The covered “auto’s” overturn.

#### **2. Towing**

We will pay recovery costs and towing costs or transportation costs to the closest place of competent repair, that are reasonable, for an “auto” covered for “loss”, under comprehensive coverage, specified causes of loss coverage, or collision coverage.

In addition we will pay:

- a. Up to \$250 for towing and labor costs incurred each time a covered private passenger “auto” is disabled; and
- b. Up to \$1,000 for towing and labor costs incurred each time a covered “auto” other than a private passenger type is disabled.

Labor costs must be performed at the place of disablement for coverage to apply.

#### **3. Glass Breakage – Hitting a Bird or Animal – Falling Objects or Missiles**

If you carry Comprehensive Coverage for the damaged covered “auto”, we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

#### **4. Rental Reimbursement**

We will pay for rental reimbursement expenses that you incur as a result of a covered "loss" to a covered "auto". We will pay for transportation expenses incurred:

- a. up to \$50 per day to a maximum of \$1,500 for "loss" to private passenger type "auto",
- b. up to \$250 per day to a maximum of \$7,500 for "loss" to an emergency vehicle (police vehicle, fire fighting vehicle, or ambulance), or
- c. up to \$150 per day to a maximum of \$4,500 for "loss" to any other "auto".

Payment for the covered "auto" will end when the maximum rental reimbursement is paid, when the covered "auto" is returned to use or we pay for its "loss". This coverage does not apply when you have additional "autos" available to accomplish your operational requirements. This payment will be made regardless of the memorandum's expiration.

#### **5. Emergency Personnel's Personal Auto**

We will pay up to \$ 5,000 to reimburse the actual physical damage or deductible under an "auto" policy, whichever is less, for a covered loss to any "auto" owned or operated by rostered emergency personnel to respond to the scene of an emergency as long as the emergency personnel are acting on your behalf. No deductible applies to this coverage.

### **B. EXCLUSIONS**

#### **1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".**

- a. Nuclear Hazard
  - (1) The explosion of any weapon employing atomic fission or fusion; or
  - (2) Nuclear reaction or radiation, or radioactive contamination, however caused.
- b. War or Military Action
  - (1) War, including undeclared or civil war;
  - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
  - (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

## **2. Other Exclusions:**

We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this memorandum.

- (1) Wear and tear, mechanical, or electrical breakdown.
- (2) Freezing of an "auto" engine or equipment permanently attached to an emergency "auto" that is not properly maintained.
- (3) Blowouts, punctures, or other road damage to tires.

## **C. LIMIT OF COVERAGE**

The most we will pay for "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

## **D. DEDUCTIBLE**

For each covered "auto", our obligation to pay for, repair, return, or replace damaged or stolen property will be reduced by the applicable deductible shown in the Auto Schedule.

1. Any Comprehensive Coverage deductible shown in the Auto Schedule does not apply to "loss" caused by fire or lightning or to damaged glass that is repaired and not replaced.
2. If two or more covered "autos" sustain a "loss" in a single occurrence or "accident", only one deductible, the largest, is applicable.

## **SECTION IV – AUTO CONDITIONS**

The following conditions apply in addition to the Common Memorandum Conditions:

### **A. LOSS CONDITIONS**

#### **1. APPRAISAL FOR PHYSICAL DAMAGE LOSS**

If you and we disagree on the amount of "loss," either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

## **2. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS**

- a. In the event of “accident,” claim, “suit,” or “loss”, you must give us or our authorized representative prompt notice of the “accident” or “loss.” Include:
  - (1) How, when, and where the “accident” or “loss” occurred;
  - (2) The “covered party’s” name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved “covered party” must:
  - (1) Assume no obligation, make no payment, or incur no expense without our consent, except at the “covered party’s” own cost.
  - (2) Immediately send us copies of any demand, notice, summons, or legal paper received concerning the claim or “suit”.
  - (3) Cooperate with us in the investigation, settlement, or defense of the claim or “suit”.
  - (4) Authorize us to obtain medical records or other pertinent information.
  - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.
- c. If there is “loss” to a covered “auto” or its equipment you must also do the following:
  - (1) Promptly notify the police if the covered “auto” or any of its equipment is stolen.
  - (2) Take all reasonable steps to protect the covered “auto” from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
  - (3) Permit us to inspect the covered “auto” and records proving the “loss” before its repair or disposition.
  - (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

## **3. LEGAL ACTION AGAINST US**

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all terms of this Coverage Form; and
- b. Under Liability Coverage, we agree in writing that the “covered party” has an obligation to pay or until the amount of that obligation has finally been determined by judgement after trial. No one has the right under this memorandum to bring us into an action to determine a “covered party’s” liability.

#### **4. LOSS PAYMENT – PHYSICAL DAMAGE COVERAGE**

At our option we may:

- a. Pay for, repair, or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the “auto” from the theft; or
- c. Take all or part of the damaged or stolen property at an agreed or appraised value.
- d. Take all or part of the damaged or stolen property under Stated Amount Coverage when the Stated Amount Value is paid.

#### **5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any person or organization to or for whom we make a payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after the “accident” or “loss” to impair them.

### **B. GENERAL CONDITIONS**

#### **1. BANKRUPTCY**

Bankruptcy or insolvency of the Named Member will not relieve us of any obligations under this Coverage Form.

#### **2. CONCEALMENT, MISREPRESENTATION, OR FRAUD**

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other “covered party”, at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered “auto”;
- c. Your interest in the covered “auto”; or
- d. A claim under this Coverage Form.

#### **3. LIBERALIZATION**

If we revise this Coverage Form to provide more coverage without additional cost, your memorandum will automatically provide the additional coverage as of the day the revision is effective in your state.

#### **4. NO BENEFIT TO BAILEE – PHYSICAL DAMAGE COVERAGES**

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing, or transporting property for a fee regardless of any other provision of this Coverage Form.

## 5. OTHER INSURANCE

- a. For any covered "auto" you own, this Coverage Form provides primary coverage. For any covered "auto" you don't own, the coverage provided by this Coverage Form is excess over any other collectible insurance unless otherwise indicated as primary to any other collectible insurance or coverage. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:
  - (1) Excess while it is connected to a motor vehicle you do not own.
  - (2) Primary while it is connected to a covered "auto" you own.
- b. Regardless of the provisions of paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under a "covered contract".
- c. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share, except where coverage is indicated as primary to any other collectible insurance or coverage. Our share is the proportion that the Limit of Coverage of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

## 6. COST AUDIT

- a. The estimated cost for this Coverage Form is based on the exposures you told us you would have when this memorandum began. We will compute the final cost due when we determine your actual exposures. The estimated total cost will be credited against the final cost due and the first Named Member will be billed for the balance, if any. If the estimated total cost exceeds the final cost due the first Named Member will get a refund.
- b. If this memorandum is issued for more than one year, the cost for this Coverage Form will be computed annually based on our rates or costs in effect at the beginning of each year of the memorandum.

## 7. COVERAGE PERIOD, COVERAGE TERRITORY

- a. Under this Coverage Form, we cover "accidents" and "losses" occurring:
  - (1) During the coverage period shown in the Declarations; and
  - (2) Within the coverage territory.
- b. The coverage territory is:
  - (1) The United States of America;
  - (2) The territories and possessions of the United States of America;
  - (3) Puerto Rico; and
  - (4) Canada.

We also cover "loss" to or "accidents" involving a covered "auto" while being transported between any of these places.

## 8. TWO OR MORE COVERAGE FORMS OR MEMORANDUMS ISSUED BY US

If this Coverage Form and any other Coverage Form or memorandums issued to you by us apply to the same “accident”, the aggregate maximum Limit of Liability under all Coverage Forms or memorandums shall not exceed the highest applicable Limit of Liability under any one Coverage Form or memorandum. This condition does not apply to any Coverage Form or memorandum issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

### SECTION V – DEFINITIONS

- A. “Accident” includes continuous or repeated exposure to the same conditions resulting in “bodily injury” or “property damage”.
- B. “Auto” means:
1. A land motor vehicle, “trailer”, or semitrailer designed for travel on public roads; or
  2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, “auto” does not include “mobile equipment”.

- C. “Bodily injury” means bodily injury, sickness, or disease sustained by a person including death resulting from any of these.
- D. “Covered party” means any person or organization qualifying as a covered party in the Who is a Covered Party provision of the applicable coverage. Except with respect to the Limit of Liability, the coverage afforded applies separately to each covered party who is seeking coverage or against whom a claim or “suit” is brought.
- E. “Covered contract” means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
  4. Any other easement agreement;
  5. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality; or
  6. That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay damages because of “bodily injury” or “property damage” to a third person or organization, **if the contract or agreement is made prior to the “bodily injury” or “property damage” and the indemnification is allowed under North Dakota law.** Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
  7. A “covered contract” does not include that part of any contract or agreement that holds a person or organization engaged in the business of transporting property by “auto” for hire harmless for



your use of a covered “auto” over a route or territory that person or organization is authorized to serve by public authority.

F. “Employee” includes a “leased worker. “Employee” does not include a “temporary worker”.

G. “Equipment” means as it applies to:

1. Fire fighting vehicles, the normal complement of equipment or property, installed or portable, that is consistent with fire fighting operations.
2. Law enforcement vehicles, the normal complement of equipment or property, installed or portable, that is consistent with law enforcement operations.
3. Ambulance, rescue and emergency vehicles, the normal complement of medical equipment and supplies, that is consistent with medical rescue and transport operations.

However, “equipment” does not include fire fighting turnout gear including helmets, footwear and gloves, self contained breathing apparatus (SCBA), jaws of life, smoke fans, portable power generators, diving gear (scuba), aircraft or other vehicle that can be flown, cellular telephones, or pagers.

H. “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 business. “Leased worker does not include a “temporary worker”.

I. “Loss” means direct and accidental loss or damage.

J. “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 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 and similar devices used to raise or 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 or lower workers; and
  - b. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, or well servicing equipment.
- K. “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.
- L. “Property damage” means damage to or loss of use of tangible property.
- M. “Suit” means a civil proceeding in which damages because of “bodily injury” or “property damage” to which this coverage applies are alleged. “Suit” includes an arbitration proceeding alleging such damages are claimed and to which “covered party” must submit with our consent.
- N. “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.
- O. “Trailer” includes semi-trailer.

## SECTION VI – NORTH DAKOTA PERSONAL INJURY PROTECTION

### A. COVERAGE

We will pay personal injury protection benefits in accordance with the North Dakota Auto Accident Reparations Act to or for a “covered party” who sustains “bodily injury” caused by an “accident” arising out of the operation, maintenance, or use of an “auto” as a vehicle. These personal injury benefits consist of the following:

1. **Funeral expenses:** Reasonable expenses incurred for a professional funeral, cremation, or burial.
2. **Medical expenses:** Reasonable charges incurred for necessary medical, surgical, X-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care rendered in accordance with a recognized religious healing method, but medical expenses do not include that portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility, or any similar facility in excess of the reasonable and customary charge for semi-private accommodations unless intensive care is medically needed.
3. **Rehabilitation expenses:** The cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.
4. **Replacement services loss:** Expenses incurred in obtaining ordinary and necessary services from others not members of the “covered party’s” household in lieu of those that the “covered party” would have performed had he or she not been injured, not for income but for benefit of himself or herself or his or her household, but replacement services loss does not include any loss after death of the “covered party”.

5. **Survivors' income loss:** Loss sustained after a "covered party's" death by his or her "survivors" during their dependency and consisting of the loss of the contributions they would have received for their support from that "insured" out of income from work he or she would normally have performed had he or she not died.
6. **Survivors' replacement services loss:** Expenses incurred after the "covered party's" death by their "survivors" in obtaining ordinary and necessary services from others not members of that "covered party's" household in lieu of the services he or she would have performed not for income but for the benefit of his or her household.
7. **Work loss:** Eighty-five percent of loss of income from work a "covered party" who would normally be employed in gainful activity during the period of his or her disability, would have performed had he or she not been injured, reduced by any income from substitute work actually performed by the "covered party" or by income the "covered party" would have earned in available appropriate substitute work which he or she was capable of performing but unreasonably failed to undertake, but work loss does not include any loss after death of a "covered party".

## **B. WHO IS A COVERED PARTY**

Any person who sustains "bodily injury" while "occupying", or while a "pedestrian" through being struck by, the covered "auto";

## **C. EXCLUSIONS**

We will not pay Personal Injury Protection benefits for "bodily injury":

1. Sustained by a "covered party" while "occupying" any "auto" owned by the Named Member which is not a covered "auto";
2. Sustained by any person if the injury arises out of conduct within the course of a business of repairing, servicing, or otherwise maintaining "autos" unless that conduct involves the actual operation of an "auto" as a vehicle on the business premises or unless that conduct occurs off the business premises;
3. Sustained by any person arising out of conduct in the course of loading or unloading any "auto" unless the injury occurs while "occupying" that "auto";
4. Sustained by any person while "occupying" any "auto" without the express or implied consent of the "named member" or while not in lawful possession of any "auto";
5. Intentionally caused by any person who would otherwise be entitled to receive benefits hereunder for "bodily injury" arising out of his or her intentionally attempting to cause "bodily injury" to oneself or to another person, and, if any person dies as a result of intentionally causing or attempting to cause "bodily injury" to oneself, his or her "survivors" are not entitled to any survivors income loss or survivors replacement services loss benefits;
6. Sustained by any person while in the course of a racing or speed contest or in practice or preparation thereto;
7. Sustained by any "pedestrian", other than a "covered party", if the accident occurs outside the State of North Dakota;
8. Sustained by any person arising out of the operation, maintenance, or use of any "auto" while located for use as a residence or premises;

9. Due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
10. Resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear material.

#### **D. DEFINITIONS**

When used in Section VI – North Dakota Personal Injury Protection:

1. “Auto” means a vehicle having more than three load bearing wheels, of a kind required to be registered under the laws of North Dakota relating to motor vehicles, designed primarily for operation upon public streets, roads and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
2. Covered “auto” means an “auto” with respect to which:
  - a. Security is required to be maintained under the provisions of the North Dakota Auto Accident Reparations Act; and
  - b. The “bodily injury” liability coverage of the memorandum applies and for which a specific contribution is charged.
3. “Family member” means a spouse or any other person related to the “covered party” by blood, marriage, or adoption, including a ward or foster child, who is a resident of the same household as the “covered party,” or who usually makes his or her home in the same household but temporarily lives elsewhere.
4. “Named member” means the person or organization named in the Declarations.
5. “Occupying” means in or upon.
6. “Pedestrian” means any person not “occupying” a “motor vehicle” or any other vehicle designed to be driven or drawn by power other than muscular power.
7. “Ridesharing arrangement” means the transportation of persons in an “auto” where the transportation is incidental to another purpose of the driver or owner and is not provided for pecuniary gain. The term shall include ridesharing arrangements known as carpools and vanpools as defined in North Dakota Laws.
8. “Survivor” means a dependent survivor of a deceased “covered party” and includes the following survivors only:
  - a. The surviving spouse if residing in the deceased’s household at the time of his or her death providing that the dependency of that spouse shall terminate upon remarriage; and
  - b. Other persons receiving support from the deceased at the time of his or her death which would qualify them as dependents of the deceased for federal income tax purposes under the Federal Internal Revenue Code.

#### **E. COVERAGE PERIOD; TERRITORY**

This coverage applies only to accidents which occur during the coverage period and within the United States of America, its territories or possessions, or Canada.

## F. LIMIT OF LIABILITY

Regardless of the number of “covered parties”, memorandums, policies, or approved plan of self insurance applicable, contributions paid, claims made, or covered “autos” to which this coverage applies, our liability for personal injury protection benefits with respect to “bodily injury” sustained by any one “covered party” in any one “auto” “accident” shall not exceed \$30,000 in the aggregate, and subject to such aggregate limit:

1. The maximum amount payable for work loss or survivors income loss shall not exceed \$150 per week prorated for any lesser period;
2. The maximum amount payable for replacement services loss or survivors replacement services loss shall not exceed \$15 per day;
3. The maximum amount payable for funeral, cremation, and burial expenses shall not exceed \$3,500.

Any amount payable by us under the terms of this coverage shall be reduced by the amount of benefits a “covered party” has recovered or is entitled to recover for the same elements of loss under any workers compensation act.

## G. CHANGES IN CONDITIONS

For Section VI – North Dakota Personal Injury Protection, Section IV – Business Auto Conditions is amended as follows:

**1. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS** We have no duty to provide coverage under this Automobile Memorandum of Coverage unless there has been full compliance with the following duties:

- a. In the event of an “accident”, written notice containing particulars sufficient to identify the “covered party”, and also reasonably obtainable information respecting the time, place, and circumstances of the “accident” shall be given to the NDIRF or any of its authorized agents as soon as practicable. If a “covered party”, his or her legal representative or his or her “survivors” shall institute legal action to recover damages for “bodily injury” against a person or organization who is or may be liable in tort therefor, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to us by such “covered party”, his or her legal representative, or his or her “survivors”.
- b. As soon as practicable, the “covered party” or someone on his or her behalf shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the “bodily injury” treatment and rehabilitation received and contemplated and such other information as may assist us in determining the amount due and payable. The “covered party” shall submit to physical and mental examination by physicians selected by us when and as often as we may reasonably require. If a “covered party” refuses to submit to a physical or mental examination, we may request a court to enter an order requiring the “covered party” to submit to the examination.

**2. Legal Action Against Us As It Applies To Section VI – North Dakota Personal Injury Protection**

No action shall lie against us unless as a condition precedent thereto, there shall have been full compliance with all the terms of this coverage.

**3. Transfer Of Rights Of Recovery Against Others To Us As It Applies To Section VI – North Dakota Personal Injury Protection**

Subject to any applicable limitation set forth in North Dakota Auto Accident Reparations Act, in the event of any payment under this coverage, we are subrogated to the rights of the person to whom or for whose benefit the payments were made to the extent of those payments. That person shall execute and deliver the instruments and papers and do whatever else is necessary to secure those rights. That person shall do nothing after loss to prejudice those rights.

**H. ADDITIONAL CONDITIONS**

The following Conditions are added for Section VI – North Dakota Personal Injury Protection:

**1. Constitutionality Clause**

The contribution for and the coverage of the memorandum have been established in reliance upon the provisions of the North Dakota Auto Accident Reparations Act. In the event a court of competent jurisdiction declares, or enters a judgement the effect of which is to render the provisions of such statute invalid or unenforceable in whole or in part, we shall have the right to recompute the contribution payable for this memorandum and the provisions of this coverage shall be voidable or subject to amendment at our option.

**2. Coordination**

Any amount payable under uninsured motorists coverage shall be reduced by the amount of any personal injury protection benefits paid or payable under this or any other automobile insurance policy because of “bodily injury” sustained by a “covered party”.

Any automobile medical payments afforded under this memorandum shall be excess coverage over any personal injury protection benefits paid or payable under this or any other automobile insurance policy because of “bodily injury” sustained by a “covered party”.

**3. Nonduplication Of Benefits**

No “covered party” shall recover duplicate benefits for the same elements of loss under this coverage or any similar insurance including approved plans of self-insurance.

**4. Priority Of Payments**

This coverage applies on a primary basis to “bodily injury” sustained by a “covered party” if the accident arises out of the use or operation of the covered “auto” except, if the “accident” involves the operation of a “covered auto” in a “ridesharing arrangement”, any personal injury protection coverage, required by the North Dakota Auto Accident Reparations Act, afforded by another policy under which such “covered party” is a named insured or “family member”, shall be primary and this coverage shall be excess.

**5. Reimbursement And Trust Agreement**

In the event of the payment to any person under this coverage:

- a. We shall be entitled to the extent of the payment to the proceeds of any settlement or judgement that may result from the exercise of any rights of recovery of that person against any person or organization legally responsible for the “bodily injury” because of which that payment is made, and we shall have a lien to the extent of that payment, notice of which

may be given to the person or organization causing the “bodily injury”, his or her agent, his or her insurer, or a court having jurisdiction in the matter;

- b. That person shall hold in trust for our benefit all rights of recovery which he or she shall have against that other person or organization because of the “bodily injury”;
- c. That person shall do whatever is proper to secure, and shall do nothing after loss to prejudice, those rights; and
- d. That person shall execute and deliver to us instruments and papers as may be appropriate to secure those rights and obligations of that person and us established by this provision.

## **SECTION VII – NORTH DAKOTA UNINSURED MOTORIST COVERAGE AND UNDERINSURED MOTORIST COVERAGE**

### **A. COVERAGE**

1. We will pay all sums the “covered party” is legally entitled to recover as compensatory damages from the owner or driver of an “uninsured motor vehicle” or “underinsured motor vehicle”, **in accordance with North Dakota Century Code 26.1-40 Automobile Insurance Warranties Sections 26.1-40-15.1 through 26.1-40-15.7**. The damages must result from “bodily injury” sustained by the “covered party” caused by an “accident”. The owner’s or driver’s liability for these damages must result from the ownership, maintenance, or use of the “uninsured motor vehicle” or “underinsured motor vehicle”.
2. We will pay under underinsured motorist coverage only if paragraph a. or b. below applies:
  - a. The limits of any applicable liability bonds or policies have been exhausted by payment of judgments or settlements; or
  - b. A tentative settlement has been made between a “covered party” and the insurer of the “underinsured motor vehicle” which would exhaust the limits of liability under any applicable bonds or policies; and we:
    - (1) Have been given prompt written notice of such tentative settlement; and
    - (2) Advance payment to the “covered party” in an amount equal to the tentative settlement within 30 days after receipt of notification.
3. No judgement for damages arising out of a “suit” brought against the owner or operator of an “uninsured motor vehicle” or “underinsured motor vehicle” is binding on us unless we:
  - a. Received reasonable notice of the pendency of the “suit” resulting in the judgement; and
  - b. Had a reasonable opportunity to protect our interests in the “suit.”

### **B. WHO IS A COVERED PARTY**

The following are “covered parties”:

1. Anyone “occupying” a covered “auto” or a temporary substitute for a covered “auto”. The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss”, or destruction.

2. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “covered party”.

### C. EXCLUSIONS

This coverage does not apply to:

1. Any claim settled or judgment reached without our written consent, if the settlement or judgment prejudices our right to recover payment.
2. Punitive or exemplary damages.
3. The direct or indirect benefit of any insurer or self-insurer under any workers’ compensation, disability benefits, or similar law.
4. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.

### D. LIMIT OF LIABILITY

1. Regardless of the number of covered “autos”, “covered parties”, contributions paid, claims made, or vehicles involved in the “accident”, the most we will pay for all damages resulting from any one “accident” is the **limit of liability for uninsured motorists coverage/underinsured motorists coverage** shown in the Declarations.
2. No one will be entitled to receive duplicate payments for the same elements of “loss” under this coverage form and any valid and collectible motor vehicle medical payments, uninsured motorists coverage, underinsured motorist coverage, personal injury protection or similar motor vehicle coverage.

We will not pay for any element of “loss” if a person is entitled to receive payment for the same element of “loss” under any workers’ compensation or similar law, except non-occupational disability benefits.

### E. CHANGES IN CONDITIONS

**SECTION IV – AUTO CONDITIONS** is changed for UNINSURED MOTORISTS COVERAGE AND UNDERINSURED MOTORISTS COVERAGE as follows:

1. **OTHER INSURANCE** is replaced by the following:
  - a. If this Coverage Form and any other Coverage Form or policy providing Uninsured or Underinsured Motorists Coverage apply to the same “accident” and:
    - (1) The motor vehicle the “covered party” was “occupying” at the time of the “accident” was loaned, rented or leased to the “covered party”, and a policy which applies to the motor vehicle was in force which provided Uninsured Motorists Coverage or Underinsured Motorist Coverage to someone engaged in the business of selling, repairing, servicing, storing, leasing, or parking motor vehicles, the following provisions apply:

**First Priority** – The Underinsured Motorist Coverage or Uninsured Motorist Coverage applicable to a vehicle that is not involved in the “accident”, that provides coverage to the injured person as a named insured;



**Second Priority** – The Underinsured Motorist Coverage or Uninsured Motorist Coverage applicable to a vehicle that is not involved in the “accident”, that provides coverage to the injured person as an insured other than a named insured;

**Third Priority** – The Underinsured Motorist Coverage or Uninsured Motorist Coverage applicable to a vehicle the injured person was “occupying” at the time of the “accident”.

- (2) The motor vehicle is not described in Paragraph E.1.a.(1) above, the following priorities of recovery apply:

**First Priority** – The Underinsured Motorist Coverage or Uninsured Motorist Coverage applicable to a vehicle the injured person was “occupying” at the time of the “accident”;

**Second Priority** – The Underinsured Motorist Coverage or Uninsured Motorist Coverage applicable to a vehicle that is not involved in the “accident”, that provides coverage to the injured person as a named insured;

**Third Priority** – The Underinsured Motorist Coverage or Uninsured Motorist Coverage applicable to a vehicle that is not involved in the “accident”, that provides coverage to the injured person as an insured other than a named insured.

- b. The maximum recovery under all coverage forms or policies combined may equal but not exceed the highest applicable limit for any one vehicle under any Coverage Form or policy providing coverage on either a primary or excess basis. Our share is the proportion that our Limit of Coverage bears to the total of all applicable limits of insurance covering on the same level of priority.

2. **DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS** are changed by adding the following:

- a. Promptly notify the proper law enforcement authority of the “accident”, and  
b. Promptly send us copies of the legal papers if a “suit” is brought.

3. **TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US** is changed by adding the following:

- a. If we make any payment and the “covered party” recovers from another party, the “covered party” shall hold the proceeds in trust for us and pay us back the amount we have paid.  
b. If we make a payment under Underinsured Motorist Coverage because the insurer of the “uninsured motor vehicle” is or becomes insolvent, the Transfer Of Rights Of Recovery Against Others To Us Condition does not apply to any right of recovery against either the insured of the insolvent insurer, or the North Dakota Guarantee Fund, except in amounts that exceed the limit of liability of the Coverage Form or policy that was issued by that insolvent insurer.

4. **The following condition is added:**

#### **ARBITRATION**

- a. If we and a “covered party” disagree whether the “covered party” is legally entitled to recover damages from the owner or driver of an “uninsured motor vehicle” or “underinsured motor vehicle” or do not agree as to the amount of damages that are recoverable by that “covered party”, both parties may agree to arbitration and be bound by the results of that arbitration.

However, disputes concerning coverage under “uninsured motorist coverage” or “underinsured motorist coverage” may not be arbitrated. If both parties agree to arbitrate, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

- b. Unless both parties agree otherwise, arbitration will take place in the county in which the “covered party” lives. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

## F. ADDITIONAL DEFINITIONS

As used in this section:

1. “Occupying” means in, upon, getting in, on, out or off.
2. “Underinsured motor vehicle” means a land motor vehicle or “trailer for which the sum of all liability bonds or policies that apply at the time of an “accident” is either:
  - a. Less than the Limit of Coverage for Underinsured Motorists Coverage under this Memorandum of Coverage; or
  - b. Reduced by payments to others injured in the “accident” to less than the Limit of Coverage for Underinsured Motorists coverage under this Memorandum of Coverage.

However, “underinsured motor vehicle” does not include any vehicle:

- a. Owned by a governmental unit or agency;
  - b. For which an insuring or bonding company denies coverage or is or becomes insolvent;
  - c. While located for use as a residence or premises;
  - d. Operated by any person who is specifically excluded from coverage under this Memorandum of Coverage; or
  - e. That is a covered “auto” under this Memorandum of Coverage’s Covered Autos Liability Coverage.
3. “Uninsured motor vehicle” means a land motor vehicle or “trailer”;
    - a. For which no liability bond of policy applies at the time of an “accident”;
    - b. For which an insuring or bonding company denies coverage or is of becomes insolvent; or
    - c. That is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must either:
      - (1) Hit a “covered party”, a covered “auto” or a vehicle a “covered party” is occupying; or
      - (2) Cause “bodily injury” to a “covered party” without hitting a “covered party”, a covered “auto” or a vehicle a “covered party” is “occupying”, provided the facts of the “accident” can be corroborated by competent evidence other than the testimony of any person

having a claim under this or any other similar insurance or coverage as the result of such an “accident”.

However, “uninsured motor vehicle” does not include any vehicle:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;
- b. Owned by a governmental unit or agency;
- c. While located for use as a residence or premises;
- d. Operated by any person who is specifically excluded from coverage under this Memorandum of Coverage; or
- e. That is a covered “auto” under this Memorandum of Coverage’s Covered Autos Liability Coverage.