Risk Management Appendix

Service Contracts with Private Individuals, Companies, Corporations, Etc.:

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Contractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:

1) **Commercial general liability** and **automobile liability** insurance – minimum limits of liability required are **$250,000 per person** and **$1,000,000 per occurrence.**
2) **Workers compensation** insurance meeting all statutory limits.
3) The State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an **additional insured** on the commercial general liability and automobile liability policies.
4) Said endorsements shall contain a **"Waiver of Subrogation"** in favor of the state of North Dakota.
5) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

Contractor shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the undersigned State representative prior to commencement of this agreement.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08.

When a portion of a Contract is sublet, the Contractor shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Contractor and the State as a result of work undertaken by the Subcontractor. In addition, the Contractor shall ensure that any and all parties performing work under the Contract are covered by public liability insurance as outlined above. All Subcontractors performing work under the Contract are required to maintain the same scope of insurance required of the Contractor. The Contractor shall be held responsible for ensuring compliance with those requirements by all Subcontractors.

Contractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State. Any insurance, self-insurance or self-retention maintained by the State shall be excess of the Contractor's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the Contractor. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above.

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