

SOUTH DAKOTA ASSOCIATION OF TOWNS AND TOWNSHIPS  
INSURANCE AND BOND ALLIANCE  
CLERK, TREASURER, FINANCE OFFICER  
BOND PROGRAM

CLERK, TREASURER, FINANCE OFFICER  
FAITHFUL PERFORMANCE BOND  
COVERAGE FORM

**NOTICE: THIS COVERAGE FORM PROVIDES CLAIMS-MADE COVERAGE. PLEASE REVIEW THE FORM CAREFULLY.**

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

Throughout this policy, the words "you" and "your" refer to the Member Name shown in each individual Member Agreement Certificate. The words "we", "us" and "our" refer to the South Dakota Association of Towns and Townships Insurance and Bond Alliance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VI. - Definitions.

**SECTION 1 - COVERAGE AGREEMENT**

We will pay your "loss" arising out of the failure of a "public official" to faithfully perform the duties or obligations of their position as required by law and which would constitute malfeasance, willful neglect of duty, or bad faith provided always that:

1. The "loss" occurred and is reported to us during the certificate period shown on the Member Agreement Certificate or any applicable reporting period in accordance with **SECTION 5 - GENERAL CONDITIONS**; and
2. The "loss" is within the scope of the bond required in South Dakota statutes SDCL 8-6-1 and 8-7-1.

No other obligation or liability to pay sums or perform acts or services is covered.

**SECTION II - EXCLUSIONS**

We will not pay for "loss" as specified below:

**1. Indirect Loss**

"Loss" that is an indirect result of any act or occurrence covered by this Coverage Form, including but not limited to, "loss" resulting from:

- a. Your inability to realize income or interest that you would have realized had there been no "loss".
- b. Payment of damages of any type for which you are legally liable.
- c. Payment of costs, fees, or other expenses you incur in investigating or otherwise establishing either the existence or the amount of a "loss"

**2. Accounting or Arithmetical Errors or Omissions**

"Loss" resulting from accounting or arithmetical errors or omissions.

**3. Prior Insurance**

Any "loss" for which you are entitled to indemnity or

payment by reason of having given notice of any circumstance which might give rise to a claim under any policy (ies) or agreement(s) which have terminated or expired prior to the inception date of the Member Agreement Certificate applicable to this Coverage Form.

**4. Governmental Fines or Penalties**

Any "loss", damages, costs, civil fines, interest, penalties or expenses arising out of any complaint or enforcement action from any Federal, State or local government agency or department.

**5. Non-Monetary Loss**

Any "loss" or that part of any "loss", that is not "money" or "securities".

**6. Legal Expenses**

Expenses related to any legal action, including any attorney fees.

**7. Third-Party Claims**

Any amounts you become obligated to pay a third-party as a result of a "loss".

**8. Nuclear**

"Loss" resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**SECTION III - LIMITS OF INSURANCE**

The most we will pay for a "loss" associated with the actions of a "Public Official" shall not exceed the amount stated in the Member Agreement Certificate. Our total liability for all "losses" shall not exceed the Aggregate Limit amount stated in the Member Agreement Certificate regardless of the number of "losses" or "Public Officials" involved.

**SECTION IV - DEDUCTIBLES**

You may be subject to a deductible as shown on the Member Agreement Certificate for each "loss". We will only be liable for

the difference between such deductible amounts and the amount of insurance otherwise applicable to a "loss". If we pay any portion of your deductible, you will reimburse us immediately upon our request or when a settlement is reached.

Deductibles:

A deductible of 10% will apply to any claim under \$100,001.

A deductible of 20% will apply to any claim over \$100,000.

## **SECTION V - GENERAL CONDITIONS**

### **A. Duties in the Event of Loss**

1. You must see to it that we are promptly notified of a "loss". To the extent possible, notice should be in writing and include:
  - a. How, when and where the "loss" took place;
  - b. The name and address of the "public official" to which the "loss" is attributed.
  - c. The nature and amount of the "loss".
  - d. Over what period of time did the loss occur.
2. You must:
  - a. Report the "loss" to local law enforcement officials and to the Office of the South Dakota State Auditor;
  - b. Immediately send us copies of any documents related to the "loss", including a copy of any police reports;
  - c. Authorize us to obtain records and other information as we determine are necessary;
  - d. Cooperate with us in the investigation and settlement of the "loss";
  - e. Assist us in securing and enforcing an order for restitution and such other legal rights against any person or organization as may be appropriate to recover amounts we pay under this Coverage Form toward a "loss"; and
  - f. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you for any "loss" to which this Coverage Form may also apply.
3. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

### **B. Discovery Period for Loss**

We will pay only for a covered "loss" discovered no later than one year from the end of the policy period.

### **C. Cancellation as to Any Public Official**

We reserve the right to cancel this coverage as to any "public official":

1. Immediately upon discovery by you of any act on the part of a "public official" whether before or after becoming a "public official" which would constitute a "loss" covered under the terms of this Coverage Form.
2. On the date specified in a notice mailed to you. That date will be at least 30 days after the date of mailing. Proof of mailing notice to you at the last mailing address known to us will be sufficient proof of notice.

### **D. Legal Action Against Us**

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

1. To join us as a party or otherwise bring us into a "suit" asking for damages from any member; or
2. To sue us under this coverage unless all terms have been fully complied with.

We are not liable for amounts that are not payable under the terms of this Coverage Form or that are in excess of the applicable Limits of Insurance.

### **E. Other Insurance**

If other valid and collectible insurance is available to you for a "loss" covered by this Coverage Form, our obligations are limited as follows:

#### **1. Primary Insurance**

This insurance is primary except when:

- a. Other insurance is available which protects you as an additional insured, additional member or additional protected person;
- b. The "loss" sought under this Coverage Form is also covered by your general liability policy; or
- c. 2. Excess Insurance or 3. Method of Sharing below applies.

#### **2. Excess Insurance**

If other insurance is available to you that covers a "loss" that is also covered by this Coverage Form, (except for insurance purchased to apply specifically in excess of this Coverage Form) then coverage provided by this Coverage Form will apply in excess of the other valid and collectible insurance.

When this insurance is excess over other insurance, we will pay only our share of the amount of the "loss", if any, that exceeds the sum of:

- a. The total amount that all such other insurance would pay for the "loss" in the absence of this insurance; and
- b. The total of all deductibles and self-insured amounts under all that other insurance.

We will share the remaining "loss", if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Member's Agreement Certificate.

#### **3. Methods of Sharing**

If all of the other insurance requires contribution by equal shares and we are not excess of such insurance under Condition E., Paragraph 1. Primary Insurance or Paragraph 2. Excess Insurance, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or none of the "loss" remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Insurance to the total applicable Limits of Insurance of all insurers.

### **F. Material Representations**

By accepting this coverage and your Member Agreement Certificate, you represent and agree as a condition to coverage:

1. That the statements in this Coverage Form and on your Member Agreement Certificate are accurate and complete.
2. That the statements made in the application and attachments and any other materials submitted are true and are the basis of this coverage and are to be considered as incorporated

- into and constituting a part of this Coverage Form;
3. Your governing body accepts and approves this bond under South Dakota statute, SDCL 1-24-11, for the purposes of satisfying the requirements of South Dakota statute, SDCL 8-6-1 and 8-7-1, or other applicable statutes;
  4. That the statements made in the application and attachments and any other material submitted are representations and that such representations are deemed material to the acceptance of the risk of "loss" assumed by us under this Coverage Form and that this Coverage Form is issued in reliance upon the truth of such representations; and
  5. That in the event that the application, including attachments and any other materials submitted, contains misrepresentations which materially affect either the acceptance or the risk of "loss" assumed by us, this Coverage Form, in its entirety, shall be void and of no effect.

#### **G. Transfer of Rights of Recovery Against Others to Us**

If you have rights to recover all or part of any payment we have made under this coverage, those rights are transferred to us. You must do nothing after a "loss" to impair them.

At our request, you will bring legal action or transfer those rights to us and help us enforce them.

#### **H. Assignment**

This coverage or Coverage Form may not be assigned by you to anyone.

#### **I. Cancellation**

1. You may cancel your Member Agreement Certificate by mailing or delivering to us advance written notice of cancellation.
2. We may cancel a Member Agreement Certificate by mailing or delivering to you written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for non-payment of premium; or
  - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to your last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The Member Agreement Certificate - certificate period will end on that date.
5. If a Member Agreement Certificate is cancelled, no premium refund shall be made, in whole or in part, but rather the premium shall be deemed fully earned and non-refundable.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.
7. The notice of cancellation for non-payment of premium shall contain information regarding the amount of premium due and the due date. The cancellation shall not be effective if payment of the amount due is received by us prior to the effective date of such cancellation.

#### **J. Non-Renewal**

If we elect not to renew the Member Agreement Certificate, we shall mail or deliver a written notice to you 30 days before the expiration date of the Member Agreement Certificate, except if you have insurance elsewhere, or accepted replacement coverage, or requested or agreed not to renew this policy.

#### **K. Changes**

This Coverage Form contains all the agreements between you and us concerning the insurance afforded. The terms and conditions of this Coverage Form can be amended or waived by attaching an endorsement to your Member Agreement Certificate.

#### **L. Examination of Your Books and Records**

We may examine and audit your books and records as they relate to this coverage at any time during the certificate period and up to one year afterward.

#### **M. Inspections and Audits**

We have the right, but are not obligated, to make inspections and audits of your finances, financial records and all other related matters at any time. We will give you reports on what we find and any recommended changes.

Any inspections, audits, reports or recommendations relate only to insurability, the premiums to be charged, or the amount of "loss". We do not make compliance inspections and we do not undertake to perform the duty of any person or organization to discover, investigate, or determine the amount of "loss".

This condition applies not only to us, but also to any person, company or organization that may perform such inspections or audits on our behalf.

#### **N. Premiums**

You are responsible for the payment of the full amount of premium for this coverage as shown on the applicable Member Agreement Certificate or accompanying declarations page.

#### **O. Transfer of Your Rights and Duties Under this Agreement**

Your rights and duties under this Coverage Form may not be transferred without our written consent.

### **SECTION VI - DEFINITIONS**

- A. "Loss" or "losses" mean the loss of your "money" or "securities" as a direct result of the intentional theft, pilfer, conversion, swindle, fraud, forgery, or other intentional misconduct by a "public official" in the performance of duties for you.
- B. "Money" means:
  1. Currency, coins and bank notes in current use and having a face value; and
  2. Travelers checks, register checks and money orders.
- C. "Public Official" means your duly elected or appointed township clerk, township treasurer, town clerk or finance officers.
- D. "Securities" means a security as defined in 15USC78c(a) (10) of the Securities Exchange Act of 1934 and includes evidences of debt issued in connection with credit or charge cards, which cards are not issued by you.
- E. "Suit" means a civil proceeding in which a "loss" to which this Coverage Form applies is alleged. "Suit includes:
  1. An arbitration proceeding to which you must submit or do submit with our consent; or
  2. Any other alternative dispute resolution proceeding to which you submit with our consent.