

**NEBRASKA WORKERS' COMPENSATION PLAN  
AGREEMENT BETWEEN  
THE TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA AND  
THE NEBRASKA DEPARTMENT OF INSURANCE**

Authority and Background

Neb. Rev. Stat. § 44-3,158 provides that a reasonable system shall be implemented to guarantee that each assigned risk employer shall be covered by workers' compensation insurance covering its employees, provided that the assigned risk employer is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods. This statute provides further that the Director of Insurance (hereinafter referred to as "Director") shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers.

Thus, pursuant to § 44-3,158, there is hereby established the Nebraska Workers' Compensation Plan (hereinafter referred to as "NWCP") as the system to guarantee that each assigned risk employer, who is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods, shall be covered by workers' compensation insurance following the assigned risk employer's application to the assigned risk plan and tender of the required premium.

Selection of Contract Insurer

The Director hereby appoints Travelers Property Casualty Company of America as the contract insurer for the NWCP (hereinafter referred to as "Contract Insurer"). This appointment of the Contract Insurer is effective for policies incepting from January 1, 2019 through December 31, 2021. The Director and the Contract Insurer may mutually agree to no more than two renewal periods of one year each.

**ARTICLE I  
DEFINITIONS**

"Contract Insurer" shall mean Travelers Property Casualty Company of America, the insurance carrier for the NWCP.

"Department" shall mean the Department of Insurance for the State of Nebraska.

"Director" shall mean the Director of the Nebraska Department of Insurance.

"Employer" or "Employers" shall mean any ongoing financial concern, whether for-profit or not-for-profit, that is required by Nebraska law to purchase workers' compensation insurance to cover its statutory obligations to its employees.

"Producer" or "Producers" shall mean an insurance professional that is properly licensed in accordance with the state insurance laws to solicit the sale of workers' compensation insurance. In this context, a Producer is acting on behalf of an Employer and is not acting on behalf of the Director, Department or Contract Insurer.

“Workers’ Compensation Insurance” shall mean insurance that provides coverage for an employer’s obligations under the Nebraska Workers’ Compensation Act. It shall also include employers’ liability insurance.

## ARTICLE II GENERAL AGREEMENT

The Contract Insurer shall exercise its duties and have rights as described in the Solicitation for Proposal issued by the Department of Insurance (hereinafter referred to as Exhibit “A”), in the Contract Insurer’s proposal to provide assigned risk coverage (hereinafter referred to as Exhibit “B”), and in this Agreement. In the event of any conflict with these three documents, this Agreement supersedes any conflicting provisions in Exhibit “A” or Exhibit “B,” and Exhibit “B” supersedes any conflicting provisions in Exhibit “A.” This Agreement may be amended at any time when mutually agreed to by both parties.

## ARTICLE III RULES FOR ELIGIBILITY, APPLICATION AND BINDING

### A. ELIGIBILITY:

1. Employer applicants for the NWCP will be deemed eligible provided that the Employer is acting in good faith as described in sections 2 and 3 below and that the Employer attests in the application that they:
  - (a) Have been denied coverage by at least two insurers licensed to write workers compensation coverage;
  - (b) Are not in default on workers’ compensation premiums;
  - (c) Have not failed to reimburse an insurer for amounts to be repaid pursuant to workers’ compensation insurance written on a policy with a deductible;
  - (d) Have not denied an insurer reasonable access to books and records necessary for a premium audit;
  - (e) Have not defrauded or attempted to defraud an insurer; and
  - (f) Have established a safety committee pursuant to Neb. Rev. Stat. §§ 44-443 to 48-445 and are compliant with those statutes.
  
2. An Employer is eligible for coverage in the NWCP, provided that the Employer makes application without fraud or misrepresentation, either by inclusion or omission of information, and is otherwise acting in good faith to meet its legal obligation of securing Workers’ Compensation Insurance. The Contract Insurer will generally assume that an Employer is acting in good faith and without fraud or misrepresentation unless evidence is produced that demonstrates otherwise. Notwithstanding this general practice, the Contract Insurer shall have the authority to perform a preliminary audit where deemed necessary by the Contract Insurer. Failure of an Employer to cooperate with such audit shall constitute adequate cause to cancel or to refuse to provide coverage under the NWCP.

3. An Employer is to be deemed as not acting in good faith and therefore not eligible for coverage in the NWCP when any of the following conditions exist at the time application is made or thereafter:
- (a) A state or federally approved, self-insured Employer having sufficient knowledge, at the time of application, of conditions that would be likely to significantly increase the number of occupational disease or cumulative trauma injury claims which originated from exposures while being a self-insured Employer, may be considered as not eligible for coverage. Such conditions may include, but are not limited to pending bankruptcy proceedings, cessation of operations, insolvency, or any event or series of events that would result in the dismissal of more than 75% of all employees within the first 180 days following the policy effective date.
  - (b) An Employer is not eligible for coverage if it has an outstanding obligation for premium on previous Workers' Compensation Insurance about which there is no formal dispute. For purposes of applying this provision, an Employer includes an enterprise with a common managing (or management) interest, such as where one or more individuals are owners or officers of or perform management functions for two or more entities or a succession of entities. A "formal dispute" exists only where the Employer has documented in writing the amount and rationale for disputed premium and is actively pursuing the administrative or legal remedy for resolving such dispute. In addition, an Employer involved in a formal dispute is not eligible for coverage if undisputed portions of premium have not been paid.
  - (c) An Employer is not eligible for coverage if, when making application to the NWCP or thereafter, the Employer, or its representative, having knowledge to the contrary, makes a material misrepresentation, by omission or otherwise, regarding relevant issues. Relevant issues include, but are not limited to offers of Workers' Compensation Insurance in the voluntary market, nature of business, nature of applicable classifications, name or ownership of business, estimated payrolls, federal employer identification number, outstanding premium obligations, previous insurance history, existence of operations in other states and workers' compensation insurance applying thereto, or other information necessary for proper underwriting and/or policy issuance.
  - (d) An Employer is not eligible for coverage if, when making application to the NWCP or thereafter, the Employer is engaged in operations in other states involving employees that are not covered by other Workers' Compensation Insurance and that have not been reported to and properly rated by the Contract Insurer as Nebraska employees. It is not the purpose of this provision that employees primarily located in and operating in other states should be rated by the Contract Insurer as Nebraska employees; rather, it is the purpose of this provision to avoid situations where the Contract Insurer

may have claims made against it for benefits under Nebraska's workers' compensation law by employees primarily located and operating in other states. It is also not the intent of this provision to impair the Contract Insurer's ability to collect premiums on account of otherwise uninsured employees primarily located in other states when such employees are discovered after the Contract Insurer's coverage has already been in effect. The Contract Insurer may, in its discretion, continue coverage under the Nebraska Workers' Compensation Act should it encounter an Employer with incidental or newly arising operations in another state, provided that the Employer promptly obtains insurance for these operations.

(c) Producers through whom Employers seek Workers' Compensation Insurance coverage are obligated to make a good faith attempt to place such coverage through the voluntary market. The Contract Insurer may remove a risk from the NWCP if it subsequently determines coverage was available through the voluntary market and the Employer or the Producer knew this fact at the time of application. In such an instance where the Producer was found by the Contract Insurer to be aware of coverage in the voluntary market, the Contract Insurer shall notify the Department and provide details.

(f) The reasons for ineligibility are not limited to items (a) through (e). Should the Contract Insurer be presented with an Employer that it believes is not in good faith entitled to coverage under the NWCP, yet that is not described by any one of items (a) through (e), then it shall notify the Director and provide the information that it has, and the Director shall determine the Employer's eligibility for coverage under the NWCP.

4. The Contract Insurer shall review relevant information to determine eligibility. For situations where the Contract Insurer determines the Employer does not meet the eligibility requirements, the Contract Insurer shall explain the basis for its determination to the Employer in writing and advise the Employer of the dispute resolution procedure referenced in Article IV of this Agreement.

#### **B. APPLICATION PROCESS:**

1. An Employer or its Producer is responsible for completing an NWCP application for insurance and submitting it to the Contract Insurer in the manner prescribed by the Contract Insurer.
2. The Contract Insurer has the authority, subject to the approval of the Director, to establish specific rules and procedures governing this application process.

#### **C. BINDING COVERAGE AND MISCELLANEOUS RULES:**

Coverage shall be bound under the NWCP consistent with Exhibits "A" and "B", and in accordance with the following procedures:

1. Processing Application: The Producer is responsible for forwarding the completed application form to the Contract Insurer with an Employer or Producer's check payable to the Contract Insurer for the estimated annual or deposit premium as computed by the Producer or determined by the Contract Insurer prior to submission of the application. This application form, ACORD 130 and 133, shall include all of the following information:
  - (a) The Employer's latest filed federal employer 941, 941E, 942 or 943 form or equivalent federal or state verifiable current payroll record, for example, an unemployment wage report;
  - (b) Any other information or documentation required by the application.
2. Applications by Facsimile: Subject to the terms and requirements of Exhibit "B", the Contract Insurer may allow an application to be filed by facsimile transmission.
3. Electronic Transactions: The Contract Insurer may allow an application to be submitted by electronic means in cases where both parties agree to the use of electronic signatures.
4. Binding of Coverage: Coverage will be bound only after receipt of a complete signed application and receipt of the appropriate deposit or initial premium. The effective date of coverage will be the later of the following:
  - (a) 12:01 a.m. on the date following receipt by the Contract Insurer;
  - (b) The date of expiration of existing coverage; or
  - (c) A date the Employer requested.

For application via U.S. mail with a legible postmark, the postmark will be used instead of the date of receipt to determine the earliest possible effective date.

5. Term: The policy shall be issued for a term of one (1) year, unless the Department approves a continuous policy that utilizes renewal certificates. A policy for a term greater than one (1) year must first be approved by the Department. A copy of the policy declarations and all endorsements, and/or renewal certificate (if approved), shall be retained by the Contract Insurer. The contract carrier, at its discretion, may issue policies with a term of less than one (1) year when circumstances warrant.
6. Renewal: A quotation for renewal shall be forwarded to the Employer and the Producer, if any, at least sixty (60) days prior to the expiration date of the Workers' Compensation Insurance. Concurrently, the Contract Insurer shall send a notice of

impending expiration of coverage to the Employer and the Producer, if any. Once the required deposit premium has been received by the Contract Insurer, and as long as the Employer continues to meet the terms of the NWCP, the policy shall be renewed with all appropriate documents retained by the Contract Insurer.

7. Cancellation/Termination of Policy: The NWCP policy may be canceled at any time following the notice requirements of Neb. Rev. Stat. § 48-144.03 if it is discovered by the Contract Insurer that the Employer was not in good faith entitled to insurance, or has violated the terms and conditions of the insurance policy, or has violated any of the requirements provided in Exhibit "B." The Contract Insurer shall not be required to seek approval of the cancellation from the Department.
8. Voluntary Market Insurance: Any Employer in the NWCP who is able to have its Workers' Compensation Insurance provided by a licensed insurer on a voluntary basis may cancel its policy with the Contract Insurer at any time upon proper notice and evidence that the coverage is being replaced. The Contract Insurer shall cancel such coverage on a *pro rata* basis as of the effective date of the voluntary market insurance.
9. Policy Forms, Rates and other Related Material: The rating systems and policy forms used by the Contract insurer shall be those filed by the National Council on Compensation Insurance (hereinafter referred to as "NCCI") for use by all member insurers in Nebraska, subject to any exceptions contained in this Agreement or that may be approved by the Director for specific use by the Contract Insurer for the NWCP. Specifically, these exceptions include the 2.50 loss cost multiplier, the Nebraska Limited Other States Benefit Endorsement WC 99 03 59 A, premium size discounts, commission schedule, inapplicability of flex rating, minimum premium and any other rate or form exceptions that may be approved from time to time.
10. Reinsurance: The reinsurance provisions in Exhibit "B," which provide for reimbursement by the voluntary market in the event of a loss and loss adjustment expense ratio in excess of 120% in a policy year for the NWCP, are agreed to. It is also agreed that, in the event that the losses in a given policy year for the NWCP call for assessments to occur, the Contract Insurer may utilize the NCCI in the billing of such losses back to voluntary insurers.

#### ARTICLE IV DISPUTE RESOLUTION PROCEDURE

##### A. ELIGIBILITY DISPUTES:

For disputes associated with eligibility for coverage where the Contract Insurer determines, for any reason, that coverage should not or cannot be bound, the Employer may appeal the Contract Insurer's decision to the Department. Such appeal shall be submitted to the Department, in writing, explaining the basis for the disagreement with the Contract Insurer's

decision. After review of the submitted materials, the Department shall issue a written determination to Contract Insurer and Employer.

The Employer and Contract Insurer will have thirty days from receipt of the Department's written determination to request that the Department conduct a hearing on the matter and reconsider its original determination. Upon written request for a hearing from either the Employer or the Contract Insurer, the Department will set the matter for hearing and issue notice of the hearing to the Employer and Contract Insurer. After the hearing, the Director will issue findings of fact and conclusions of law. The Director's post-hearing decision may be appealed by any party in interest. The appeal shall be in accordance with the Administrative Procedure Act.

In the case of any successful appeal, coverage will be bound consistent with the originally requested effective date, but subject to the requirements of Article III, Section C, 3.

**B. CLASSIFICATION, RATING OR OTHER PREMIUM DISPUTES:**

If a dispute regarding rating classifications, rates or other premium-related matters arises between an Employer and the Contract Insurer based on a policy issued through the NWCP, and if the Employer makes a written request of the Contract Insurer, then the Contract Insurer will explain within ten days, in writing, its position to the Employer. If the Contract Insurer does not change its position and the Employer continues to disagree with the position of the Contract Insurer, then the Contract Insurer will ask the Employer to:

1. Document the dispute, in writing, including the specific issue of dispute, including the reasons that the Employer believes that the Contract Insurer is in error;
2. Calculate the amount the Employer believes the premium to be, and
3. Forward a request for a hearing to the **NCCI, Regulatory Assurance Department – Dispute Resolution Services, 901 Peninsula Corporate Circle, Boca Raton, Florida 33487** pursuant to Neb. Rev. Stat. § 44-7517, with copies of the request provided to the Contract Insurer.

The Employer will have thirty days from receipt of the Contract Insurer's written explanation to complete these three items. Absent completion of these items within thirty days, the Contract Insurer may proceed based on a presumption that the Employer no longer disputes the premium-related matter. However, if the Employer completes these three items within thirty days after receipt of the Contract Insurer's written explanation, then the Contract Insurer shall suspend billing and accrual of interest for the disputed portion of this premium pending the outcome of the dispute.

Once the NCCI receives a request from an Employer for dispute resolution services, the NCCI will send a letter to the policyholder and the Contract Insurer advising the name and contact information of the NCCI Regulatory Service Manager assigned to the dispute. Any document submitted to the NCCI under this process must be submitted by the person or party

making such a filing to the Regulatory Service Manager using the contact information provided by the NCCI. The filing party must also provide a copy simultaneously by U.S. mail or facsimile transmission to all other parties to the dispute.

Pursuant to Neb. Rev. Stat. § 44-7517, if the NCCI fails to act upon an Employer's request for review of a rating decision within thirty days, or if the NCCI's decision is not acceptable to an Employer, the Employer affected by the NCCI's decision or determination has the right to appeal to the Director. The appeal must be received at the Department within thirty days after the Employer received written notice of the NCCI's decision, or within thirty days of the NCCI's failure to issue a decision. The Director, after a hearing held in accordance with Neb. Rev. Stat. § 44-7532, may either affirm the action of the NCCI or order remedial action to be taken by the Contract Insurer or NCCI.

Pursuant to Neb. Rev. Stat. § 44-7533, any order or decision from the Director of Insurance made pursuant to the Property and Casualty Insurance Rate and Form Act, Neb. Rev. Stat. §§ 44-7501 to 44-7535, may be appealed by any party in interest. The appeal shall be in accordance with the Administrative Procedure Act.

The Employer will continue to be eligible for coverage through the NWCP during the appeal process provided by Neb. Rev. Stat. §§ 44-7517 and 44-7533.

## ARTICLE V CONFIDENTIALITY OF INFORMATION

### A. DEFINITIONS

1. For purposes of Article V, the term "Contract Insurer" shall include any subcontractors, vendors, or other entities or persons utilized by or associated with those parties in the administration and insuring of the NWCP.
2. "Confidential Information" shall include any Employer-specific information requested or provided as part of the NWCP evaluation, underwriting, and insurance process. Confidential Information shall include information possessed or provided by Employers, producers, agencies, brokers, or other third parties, whether oral, written, or electronic. Confidential Information shall not include information that (a) was already in the Contract Insurer's possession prior to such information being provided pursuant to the NWCP, (b) becomes generally available to the public other than as a result of any disclosure by the Contract Insurer, (c) becomes available to the Contract Insurer on a non-confidential basis from a source not known to the Contract Insurer to be bound by a confidentially agreement or other obligation of secrecy, (d) was developed by the Contract Insurer independently and without the benefit of information disclosed pursuant to this Article, or (e) is required to be disclosed by Contract Insurer by operation of law, regulation or order.

### B. DISCLOSURE OF CONFIDENTIAL INFORMATION

Confidential Information shall be provided by producers, agencies, brokers, or Employers to the Contract Insurer as it may require for evaluation, underwriting and other insurance purposes.

1. The Contract Insurer shall keep in confidence and shall not, except as directed by the Employer, disclose to any third party, or use for the benefit of any third party, such Confidential Information, regardless of the form or format of the disclosure. Confidential Information shall be used by the Contract Insurer solely for the evaluating, underwriting and insuring of Workers' Compensation Insurance coverage under the NWCP, and not for any other purpose without the prior approval of the Employer.
2. The Contract Insurer shall take all reasonable measures necessary to protect Confidential Information in its possession from disclosure to any other third party, except as directed by the Employer.
3. The Contract Insurer shall not use any Confidential Information in furtherance of directly or indirectly requesting, encouraging, or advising any Employer, who has acquired or seeks to acquire coverage through the NWCP, to utilize the services of any specific insurance producer, agency, broker, insurer or group of insurers for Workers' Compensation Insurance.
4. The Contract Insurer shall not give any other person, firm or entity any rights that would circumvent or violate the provisions of Article V.B.3.

Notwithstanding the confidentiality provisions set forth in this plan, the Contract Insurer is expressly authorized to provide the information delineated in this Article to the Department, the Nebraska Workers' Compensation Court and any other organization or entity designated by the Department.

In addition to any other remedies available to the Department regarding any violation of the provisions of this Article, the Department shall consider the nature and severity of any violations of the provisions of this Article during its consideration of the letting of or renewal of any contract for the administration and other services, including insurance and reinsurance, of the NWCP.

#### ARTICLE VI NEBRASKA STATE REQUIRED PROVISIONS

Federal, State, and Local Payroll Taxes. Neither federal nor state income tax nor payroll tax of any kind shall be withheld or paid by the Department on behalf of Travelers Property Casualty Company of America or the employees of Travelers Property Casualty Company of America. Travelers Property Casualty Company of America shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes and is an independent contractor.

Notice to Travelers Property Casualty Company of America regarding its Tax Duties and Liabilities. Travelers Property Casualty Company of America understands that it is responsible to pay, according to law, its income tax.

Fringe Benefits. Because Travelers Property Casualty Company of America is engaged in its own independently established business, Travelers Property Casualty Company of America is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plan, of the Department.

Nebraska Department of Insurance not Responsible for Workers' Compensation. No workers' compensation insurance shall be obtained by the Department concerning Travelers Property Casualty Company of America or the employees of Travelers Property Casualty Company of America. Travelers Property Casualty Company of America shall comply with the workers' compensation laws concerning the employees of Travelers Property Casualty Company of America.

Non-waiver. The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

No Authority to Bind Nebraska Department of Insurance. Travelers Property Casualty Company of America has no authority to enter into contracts or agreements on behalf of the Department. This agreement does not create a partnership between the parties.

Jurisdiction. The parties hereby stipulate and agree that this Agreement shall be executed in Nebraska. In the event that litigation should arise concerning the validity or interpretation of any provision of this Agreement, venue over such litigation shall reside in the District Court of Lancaster County, Nebraska.

Declaration by Travelers Property Casualty Company of America. Travelers Property Casualty Company of America declares that Travelers Property Casualty Company of America has complied with all federal, state, and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

Equal Employment Opportunity and Nondiscrimination. The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract.

Drug Free Work Place. Travelers Property Casualty Company of America certifies that it maintains a drug free work place environment to ensure work safety and workplace integrity. Travelers Property Casualty Company of America agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

Choice of Law. Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the State of Nebraska.

Assignment. The services to be performed by Travelers Property Casualty Company of America shall not be assigned, sublet or transferred without the prior written approval of the Department nor shall Travelers Property Casualty Company of America assign any monies due to or become due under any contract with the Department pertinent to these specifications, without prior approval of the Department. This is a mandatory requirement; it will not be waived for any reason.

New Employee Work Eligibility Status. Travelers Property Casualty Company of America is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designed by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

Statutory Compliance. Travelers Property Casualty Company of America agrees to abide by the laws of the State of Nebraska. Should a provision of this contract, Exhibit A or Exhibit B be in conflict with the law, such provision will be considered amended to comply with the law.

#### AGREEMENT

The Nebraska Department of Insurance and the Travelers Property Casualty Company of America hereby agree to the Nebraska Workers' Compensation Plan effective January 1, 2019.



Director  
Nebraska Department of Insurance



Representative  
Travelers Property Casualty  
Company of America



Date



Date