STATE OF NORTH DAKOTA
DEPARTMENT OF HEALTH

STATE HEALTH OFFICER ORDER RELATING TO DISEASE CONTROL MEASURES TO PREVENT THE SPREAD OF 2019-nCoV/COVID-19 PURSUANT TO NORTH DAKOTA CENTURY CODE § 23-01-05(12)

ORDER # 2020-08.1

SECTION A: FINDINGS

1. The Director General of the World Health Organization has declared that the 2019-nCoV/COVID-19 constitutes a Public Health Emergency of International Concern. The Secretary of the U.S. Department of Health and Human Services has declared that 2019-nCoV/COVID-19 constitutes a public health emergency.

2. On March 13, 2020, President Donald Trump issued a declaration of national emergency due to the growing 2019-nCoV/COVID-19 crisis in the United States.

3. On March 13, 2020, Governor Doug Burgum declared a state of emergency in response to the public health crisis resulting from 2019-nCoV/COVID-19; Executive Order 2020-03 activated the State Emergency Operation Plan (SEOP), implementing appropriate response and recovery actions and future mitigation measures.

4. The number of 2019-nCoV/COVID-19 cases in North Dakota has increased rapidly in recent weeks. The health care system in North Dakota is experiencing critical shortages. Increased transmission of 2019-nCoV/COVID-19 poses a substantial threat to public health and the health care system.

5. The virus that causes 2019-nCoV/COVID-19 is spread from person to person through respiratory droplets produced by an infected person. People who are physically near a person with 2019-nCoV/COVID-19, within six feet, or have direct contact with that person are at greatest risk of infection. As such, 2019-nCoV/COVID-19 transmission is elevated in confined indoor spaces and places where physical distancing measures are not always possible.

6. According to the Centers for Disease Control and Prevention (CDC), face coverings are effective in preventing the transmission of respiratory droplet that may spread 2019-nCoV/COVID-19. The Federal Occupational Health and Safety Administration recommends that employers encourage employees to wear face coverings at work to assist in reducing the risk of transmission of 2019-nCoV/COVID-19 by asymptomatic and pre-symptomatic individuals.

7. Research suggests that universal use of face coverings in enclosed public spaces would substantially reduce the spread of 2019-nCoV/COVID-19. As a result, the use of face coverings is necessary to prevent the spread of 2019-nCoV/COVID-19 and reduce the significant burden on the health care system.

8. Pursuant to N.D.C.C. § 23-01-05(12), the State Health Office is authorized to "issue any orders related to disease control measures deemed necessary to prevent the spread of communicable diseases." Therefore, this Order is authorized pursuant to N.D.C.C. § 23-01-05(12).

SECTION B: REQUIREMENTS

1. Face coverings are required in indoor businesses and indoor public settings, as described in this Order. Face coverings must also be worn in outdoor business and public settings when it is not possible to maintain physical distancing. This order applies to all workers, patrons, customers, visitors or guests unless exempt under Paragraph 4 of this Order.

2. Definitions. For purposes of this Order, the following terms are defined as follows:

a. A "face covering" must be worn to cover the nose and mouth completely and consist of at least two layers. Face coverings can include a paper or disposable face mask, a cloth face mask, a neck gaiter, or a religious face covering. Medical-grade masks and respirators are sufficient face coverings, but to preserve adequate supplies, their purchase and use is discouraged for individuals who do not work in a health care setting or in other occupations that require medical-grade protective equipment (*e.g.*, certain construction occupations). Masks that incorporate a valve designed to facilitate easy exhaling, mesh masks, or masks with openings, holes, visible gaps in the design or material, or vents are **not** sufficient face coverings because they allow exhaled droplets to be released into the air.

b. "Business" and "businesses" are broadly defined to include entities that employ or engage workers, including private-sector entities, public-sector entities, non-profit entities, and state, county, and local governments.

c. "Worker" and "workers" are broadly defined to include owners, proprietors, employees, contractors, vendors, volunteers, and interns.

d. "Physical distancing" means individuals keeping at least 6 feet of distance from other individuals who are not members of their household.

e. "Household" means a group of individuals who share the same living unit.

3. Tribal activities and lands. Activities by tribal members within the boundaries of their tribal reservations are exempt from the restrictions in this Order but may be subject to restrictions by tribal authorities.

4. Exempt individuals. The following individuals are exempt from face covering requirements of this Order:

a. Individuals with a medical condition, mental health condition, or disability that makes it unreasonable for the individual to maintain a face covering. This

includes, but is not limited to, individuals who have a medical condition that compromises their ability to breathe, and individuals who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance. These individuals should consider using alternatives to face coverings, including clear face shields, and staying at home as much as possible.

b. Children who are four years old and under. Those who are under two years old should never wear a face covering due to the risk of suffocation. Those who are at least two are encouraged to wear a face covering if they can do so in compliance with CDC guidance on *How to Wear Cloth Face Coverings*, available at https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/how-to-wear-cloth-face-coverings.html (*i.e.*, without frequently touching or removing the covering).

c. Individuals at their workplace when wearing a face covering would create a job hazard for the individual or others, as determined by local, state or federal regulators or workplace safety and health standards and guidelines.

5. **Situations where face coverings are mandatory.** Except for individuals who are exempt under paragraph 7 of this Order, and except for the circumstances described in paragraph 9, individuals are required to wear a face covering:

   a. In an indoor business or public indoor space, including when waiting outdoors to enter an indoor business or public indoor space.

      i. This requirement does not apply in living units except that workers entering another person's living unit for a business purpose are required to wear a face covering when doing so.

      ii. This requirement also does not apply in a private vehicle that is being used for private purposes.

   b. At an outdoor business or public outdoor space in situations where physical distancing cannot be maintained.

   c. When riding on public transportation, in a taxi, in a ride-sharing vehicle, or with another person in a vehicle that is being used for business purposes.

6. **Circumstances where mandatory face coverings may be temporarily removed.** Face coverings required under Paragraph 8 of this Order may be temporarily removed under the following circumstances:

   a. When participating in organized sports in an indoor business or indoor public space while the level of exertion makes it difficult to wear a face covering.

   b. When testifying, speaking, or performing in an indoor business or public indoor space, in situations or settings such as theaters, news conferences, legal proceedings, governmental meetings subject to N.D.C.C. ch. 44-04,

presentations, or lectures, provided that physical distancing is always maintained. Face shields should be considered as an alternative in these situations.

c. During practices or performances in an indoor business or indoor public space when a face covering cannot be used while playing a musical instrument, provided that physical distancing is always maintained.

d. During activities, such as swimming or showering, where the face covering will get wet.

e. When eating or drinking in an indoor business or indoor public space, provided that at least 6 feet of physical distance is maintained between persons who are not members of the same party.

f. When asked to remove a face covering to verify an identity for lawful purposes.

g. While communicating with an individual who is deaf or hard of hearing or has a disability, medical condition, or mental health condition that makes communication with that individual while wearing a face covering difficult, provided that physical distancing is maintained to the extent possible between persons who are not members of the same household.

h. While receiving a service, including a dental examination or procedure, medical examination or procedure, or personal care service, that cannot be performed or would be difficult to perform when the individual receiving the service is wearing a face covering. Workers performing services for an individual who is allowed to temporarily remove their face covering under this provision must comply with the face covering requirements.

i. When an individual is alone, including when alone in an office, a room, a cubicle with walls that are higher than face level when physical distancing is maintained, a vehicle, or the cab of heavy equipment or machinery, or an enclosed work area.

j. When a public safety worker is actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, in situations where face coverings would seriously interfere in the performance of their public safety responsibilities.

k. When an individual is participating in a religious service at a faith-based organization, provided that physical distancing is maintained to the extent possible between persons who are not members of the same household.

7. **Notice of face covering requirements.** Businesses must post one or more signs that are visible to all persons—including workers, customers, and visitors—instructing them to wear face coverings as required by this Order.

8. Implementation of face covering requirements by businesses.

a. Businesses must require that all persons, including their workers, customers, and visitors, wear face coverings as required by this Order.

b. When possible, businesses must provide accommodations to persons, including their workers and customers, who state they have a medical condition, mental health condition, or disability that makes it unreasonable for the person to maintain a face covering, such as permitting use of an alternate form of face covering (*e.g.*, face shield) or providing service options that do not require a customer to enter the business.

c. Businesses may not require customers to provide proof of a medical condition mental health condition, or disability, or require customers to explain the nature of their conditions or disability.

d. Businesses must follow the requirements of other applicable laws with respect to whether a business may require a worker to provide documentation of a medical condition, mental health condition, or disability related to their inability to wear a face covering and what the business may ask regarding the condition or disability.

e. Nothing in this Order requires businesses or their workers to enforce this requirement when it is unsafe to do so, or authorizes them to restrain, assault or physically remove workers or customers who refuse to comply with this Order.

f. Nothing in this Order authorizes businesses or their workers to violate other laws, including anti-discrimination laws.

9. **More protective policies permitted.** Nothing in this Order should be construed to prevent a business from developing a policy that imposes more protective requirements with respect to face coverings, consistent with applicable law, than those in this Order or applicable industry guidance. This Order does not authorize landlords or property managers to require tenants and others to wear face coverings in tenants' living units. Landlords and property managers must provide a clear means for tenants and others to request a reasonable accommodation to face covering requirements in common areas.

10. **Enhanced local measures permitted**. Nothing in this Order should be construed to prohibit or prevent political subdivisions from implementing, within their jurisdictions and pursuant to applicable law and authority, requirements beyond those contained in this Order. Political subdivisions may not relax or reduce this Order's requirements. In other words, to the extent that they have authority to do so, cities and other political subdivisions may take actions that are more protective of the public health, consistent with applicable law, but may not take actions that are less protective of the public health.

SECTION C: FAILURE TO ADHERE TO ORDER

Notice is further given that a person is guilty of an infraction if that person violates or fails to obey any order issued by the State Health Officer. N.D.C.C. § 23-07-21(1).

SECTION D: REVOCATION AND EFFECTIVENESS

This Order revokes and supersedes the *Order # 2020-08: State Health Officer Order Relating to Disease Control Measures to Prevent the Spread of 2019-nCoV/COVID-19 Pursuant to North Dakota Century Code § 23-01-05(12),* dated November 13, 2020.

The requirements of this Order are effective upon execution of this Order by the State Health Officer and until January 18, 2021, at 12:01 AM.

SECTION E: STATE HEALTH OFFICER EXECUTION

Dated this 9 day of December, 2020.

Dirk Wilke, J.D., M.B.A.
State Health Officer
North Dakota Department of Health