

## **PUBLIC SEWER BACK-UP AND WATER MAIN BREAK COVERAGE ENDORSEMENT**

This endorsement modifies the following:

### **LIABILITY MEMORANDUM OF COVERAGE**

With respect to this endorsement, the provisions of the LIABILITY MEMORANDUM OF COVERAGE apply unless modified by this endorsement. Coverage under this endorsement is subject to the following:

<b>COVERAGE</b>	<b>LIMIT OF LIABILITY</b>
Sewer back-up damage	\$1,000,000
Water main break damage	\$250,000

**For the purposes of this endorsement only, SECTION I. COVERAGE is deleted and replaced with the following:**

#### **I. COVERAGE**

Subject to the terms and conditions contained in this Liability Memorandum of Coverage, we will pay any combination of the following coverages reported to you during the Coverage Period specified in the Declarations.

- A. "Sewer back-up damage" to property of others which;
  - 1. Resulted from a condition in the member's sewer system; and
  - 2. Was not caused by "member negligence."
- B. "Water main break damage" to property of others which;
  - 1. Resulted from the rupture of a member water main, line, or pipe; and
  - 2. Was not caused by "member negligence."

**For the purposes of this endorsement only, SECTION II. DEFENSE AND SETTLEMENT is deleted and replaced with the following:**

#### **II. DEFENSE AND SETTLEMENT**

We have the right and duty to defend any claim or "suit" against a "covered party" seeking damages arising out of a sewer back-up or water main break to which this coverage applies, however:

- A. The amount we will pay is limited as described in SECTION IV. LIMIT OF LIABILITY;
- B. "Defense costs" incurred shall be in addition to the applicable Limit of Liability. "Defense Costs" shall not reduce the Limit of Liability; and
- C. We may investigate and settle any claim or "suit" at our discretion.

**For the purposes of this endorsement only, SECTION IV. LIMIT OF LIABILITY is deleted and replaced with the following:**

#### IV. LIMIT OF LIABILITY

- A. The Limit of Liability shown in this endorsement and the rules set below fix the most we will pay regardless of the number of:
- a. "Covered parties";
  - b. Claims made;
  - c. Persons or organizations making claims; or
  - d. Coverage involved.
- B. The maximum limit of liability under any single coverage is the most we will pay, per "occurrence" for all liability.
1. In determining our limit of coverage, all injury, damages, and loss arising out of continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one "occurrence."
  2. An "occurrence" taking place over more than one Coverage Period shall be deemed to have taken place during the Coverage Period when the "occurrence" was discovered and shall be treated as a single "occurrence" during such Coverage Period.
- C. The most we will pay to any claimant under this endorsement is \$**LIMIT** per "occurrence", regardless of the number of properties affected.
- D. The most we will pay for damage to any building under this endorsement is \$**LIMIT** per "occurrence", regardless of the number of claimants. For purposes of this limit:
1. Each connection to the member's sewer system is considered a single building, regardless of the number of structures served by the connection.
  2. For a single structure served by more than one connection to the member's sewer system, each section of the structure served by each connection is considered a separate building.
- E. If the total "sewer back-up damage" or "water main break damage" exceeds the respective limit of liability, the reimbursement to each claimant will be calculated as follows:
1. A base reimbursement amount is established for each claimant, equal to the lesser of the claimant's actual damages or \$**LIMIT**.
  2. The sum of the base reimbursement amounts for all claimants will be calculated.
  3. Each claimant will be reimbursed a proportionate share of their base reimbursement amount. This proportion is determined by dividing the total coverage limit by the sum of all claimants' base reimbursement amounts.
- F. We will not pay more than \$2,000,000 in the aggregate per policy period under this endorsement.

**For the purposes of this endorsement only, SECTION V. EXCLUSIONS is deleted and replaced with the following:**

## **V. EXCLUSIONS**

This coverage does not apply to the following:

- A. Obstructions or other conditions in sewer pipes or lines which are not part of the member's sewer system, or which are not owned or maintained by the member;
- B. Any weather-related or other event which has been declared by the President of the United States to be a major disaster pursuant to 42 U.S.C. §§ 5121-5206, commonly known as the Stafford Act;
- C. Any interruption in the electric power supply to the member's sewer system or to any member sewer lift station which continues for more than 72 hours;
- D. Rainfall or precipitation which exceeds any of the following amounts:
  - 2.0 inches in a 1-hour period; or
  - 2.5 inches in a 3-hour period; or
  - 3.0 inches in a 6-hour period; or
  - 3.5 inches in a 12-hour period; or
  - 4.0 inches in a 24-hour period; or
  - 4.5 inches in a 72-hour period; or
  - 5.5 inches in a 168-hour period.
- E. Any claims arising directly or indirectly out of a "cyber event".

**For the purposes of this endorsement only, SECTION VI. SUPPLEMENTARY PAYMENTS – COVERAGE A. AND C. is deleted.**

**For the purposes of this endorsement only, SECTION VII. LIABILITY CONDITIONS is deleted and replaced with the following:**

## **VII. LIABILITY CONDITIONS**

### **A. Bankruptcy:**

Your bankruptcy or insolvency will not relieve us of our obligations under this Memorandum of Coverage.

### **B. Duties in the event of an "occurrence":**

We have no duty to provide coverage under this endorsement unless there has been full compliance with the following duties:

1. You must see to it that we are notified promptly of any "occurrence" of the "sewer back-up damage" or "water main break damage" by you. Notice should include:
  - a. How, when, and where the "occurrence" took place; and
  - b. The names and addresses of claimants and witnesses.

C. Loss payment:

1. In the event of an “occurrence” of “sewer back-up damage” or “water main break damage”, we will pay the cost of repairing or replacing the damaged property at actual cash value at the time of loss or damage.

D. No “covered party” will, except at their own cost, voluntarily make a payment, assume any obligation or incur any expense, without our consent.

E. Legal action against us:

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

1. To join us as a party or otherwise bring us into a “suit” asking for damage from a “covered party”; or
2. To sue us on this Coverage Part unless all of its terms have been fully complied with.

F. Other coverage or insurance:

This coverage is excess over any other coverage or insurance, whether primary, excess, contingent, or on any other basis, including damages or expenses which are or would be covered under a National Flood Insurance Program flood insurance policy, whether or not such insurance is in effect.

G. Separation of “covered parties”:

Except with respect to the limit of coverage, any rights or duties specifically assigned to the first Named Member apply:

1. As if each Named Member were the only Named Member; and
2. Separately to each “covered party” against whom a claim is made or “suit” is brought.

H. Transfer of rights of recovery against others to us:

If a “covered party” has rights to recover all or part of any payment we have made under this Memorandum of Coverage, those rights are transferred to us. The “covered party” must do nothing after loss to impair them. At our request, the “covered party” will bring “suit” or transfer those rights to us and help enforce them.

**For the purposes of this endorsement only, SECTION VIII. DEFINITIONS is deleted and replaced with the following:**

**VIII. DEFINITIONS**

- A. “Computer System” means any computer hardware, software, firmware, electronic device, electronic data storage device, mobile phones, tablets or any other similar device, electronic data backup facility, networking device, industrial control system, or any components thereof, or any associated input and output devices, network storage equipment, or storage area network, including but not limited to those that have the

capability to be linked together through the internet or internal network or that are connected through data storage or other devices.

- B. "Cyber Event" means the unauthorized access to; the presence of a "malicious cyber act" on; the spread of a "malicious cyber act" by; the unauthorized or malicious use of; the intentional shutdown as a preventative measure of; any interruption in service due to a "non-malicious cyber act" on; the malicious interference with or the threat to damage, destroy, corrupt, alter, delete, or otherwise preclude or hinder the use of any "computer system." However, "cyber event" does not include a "data breach."
- C. "Data" means any non-public personal information, or any other information, in any format and includes, but is not limited to, records, reports, designs, plans, formulas, processes, trade secrets, patents, financial information, medical or healthcare information, or other protected health information, contact information, account numbers, account histories, passwords, credit or debit card details, name, email address, social security number, driver's license number, state identification number, telephone number, personally identifiable photos, personally identifiable videos, internet browsing history, biometric records, or other non-public personal information as may be defined in any privacy or cyber laws.
- D. "Data Breach" means the modification, corruption, loss, destruction, theft, collection, use, illegitimate or unauthorized access, handling, or unlawful or unauthorized processing or disclosure of "data", or the inability to access such "data", or the loss, destruction, or theft of any computer, electronic device, hardware, or component thereof which contains such "data." However, "data breach" does not include a "cyber event."
- E. "Defense costs" means all fees and expenses incurred by us caused by and relating to the adjustment, investigation, defense, or litigation of a claim or "suit" including attorney's fees, court costs, and interest on judgments accruing after entry of judgment.
- F. "Employee" means:
1. Any individual serving as an officer, employee, board member, volunteer, or servant of the Named Member, whether elected or appointed and whether or not compensated; and
  2. A "leased worker."
- "Employee" does not include:
1. An independent contractor;
  2. An officer or employee of an independent contractor;
  3. A person performing tasks the details of which you have no right to control; or
  4. A "temporary worker."
- G. "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 operations. "Leased worker" does not include a "temporary worker."

- H. "Malicious Cyber Act" means any malicious act committed against your "computer system" or malicious access to or hacking of your "computer system," for the purpose of creating, deleting, taking, collecting, altering, encrypting, or destroying your "data" or services. "Malicious cyber act" includes the introduction of any malware, programs, files, or instructions of a malicious nature which may disrupt, harm, impede access to, or in any other way corrupt the operation of a "computer system," or the "data" or software within, including, but not limited to malicious code, ransomware, cryptoware, virus, trojans, worms, and logic or time bombs.
- I. "Member Negligence" means a failure by the member to exercise reasonable care in maintaining or repairing its sanitary sewer system or water main infrastructure, established by all the following elements:
1. The claimant suffered actual and compensable damage; and
  2. The damage was proximately caused by a defect, obstruction, failure, or other condition in the member's sewer line or water main; and
  3. The member had actual or constructive notice of said defect or condition prior to the occurrence of the damage; and
  4. The member failed to exercise reasonable care to correct, repair, or otherwise remedy said defect or condition within a reasonable time after receiving such notice.
- J. "Non-Malicious Cyber Act" means human error, including but not limited to an operating error or omission, an error in the choice of the program used, an error in setting parameters, or any inappropriate single intervention by an employee or a third-party providing services; programming error, including but not limited to an error that occurs during the development or encoding of a program, application or operating system that would, once in operation, result in the malfunction of the "computer system," an interruption of operations or an incorrect result; or power failure, surge or diminution of an electrical system controlled by a "covered party."
- K. "Occurrence" means:
1. All "sewer back-up damage" or "water main break damage" which occurs during any period of 72 consecutive hours.
- L. "Sewer back-up damage" means direct physical damage to property, including removal and clean-up costs, resulting from a sewer back-up.
- M. "Suit" means a civil proceeding initiated by a summons and complaint or statutory notice of direct appeal brought in a court of competent jurisdiction in which damages to which this coverage applies are alleged.
- 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. "Volunteer" means an individual who is not your "employee", who donates his or her work, acts at the direction of and within the scope of duties determined by you and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- P. "Water main break damage" means direct physical damage to property, including removal and clean-up costs, resulting from the rupture of a member water main, line, or pipe.

1. "Water main break damage" does not include "sewer back-up damage" regardless of whether a water main break was involved in causing the "sewer back-up damage".