

## Cyber Liability Endorsement BIA Assoc G3 - 2014

It is declared and agreed that the policy is amended as follows:

### Section 2. Automatic Extensions

It is hereby declared and agreed that for the purposes of this Cyber Liability Endorsement only, Section 2. Automatic Extensions is amended as follows:

Clause 2.19 Continuous Coverage is deleted in its entirety.

The following extension is added to the policy

#### 2.27 Cyber Liability

##### 2.27.1. Third Party Liability

We will indemnify the Insured against civil liability for compensation including the claimant's legal costs and expenses if, during the Policy Period and in the course of the Insured's business, any party brings a Claim against the Insured arising from:

- (a) the Insured's unintentional transmission of a Computer Virus or logic bomb, to any third party;
- (b) the Insured's unauthorised collection or misuse of sensitive information that is either confidential or subject to statutory restrictions on its use and collection;
  - (c) a third party's reliance in good faith on a Hacker's intrusion of the Insured's encrypted electronic signature, encrypted electronic certificate, Website or email where there was a clear intention to cause the Insured to sustain loss or for the Hacker to obtain personal gain through such use;
- (d) the content of the Insured's Website (including domain name, metatags, hyperlinks and the marketing and advertising of the Insured's business on its Website) as a result of any additions or alterations made by a Hacker, but not in connection with any Professional Business activity of the Insured, and are due to:
  - (i) the Insured's infringement of any intellectual property rights, including any trademark, copyright, passing off, linking to or framing of another page;
  - (ii) any defamatory statement on the Insured's Website or email including concerning the Insured's former, current or potential customer or business competitor;
  - (iii) the Insured's infringement of any right to privacy or breach of confidence concerning the Insured's former, current or potential customers or business competitors;

For the purposes of Clause 2.27.1 of this Extension, to the extent that loss includes pecuniary penalties, loss is limited to pecuniary penalties imposed under the Privacy Act 1998 (Commonwealth) and any amended form of this act.

For the purposes of (a) and (b) above, Exclusion 6.16 Professional Duty shall not apply.

##### 2.27.2 First Party Notification Expenses

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We shall pay to or on behalf of the Insured the reasonable costs and expenses in respect of the identification, collection of information, preparation for and notification to any third party affected by the Insured's unauthorised collection or misuse of sensitive information that is confidential or subject to statutory restrictions that arises, during the Policy Period.

Our total aggregate sub-limit of indemnity for all claims under Clause 2.27.2 First Party Notification Expenses shall not exceed \$50,000. This sub-limit is part of and not in addition to the sub-limit for this extension.

#### **2.27.3. First Party Hacker Damage**

We will pay reasonable costs and expenses incurred by the Insured with Our prior written consent to repair or replace the damaged, destroyed or altered part of the Insured's Computer System or Website if, during the Policy Period, a Hacker has damaged, destroyed or altered the Insured's Computer System or Website.

We agree to pay such costs and expenses to repair or replace the damaged, destroyed or altered part of the Insured's Computer System or Website to an equivalent standard with the same or similar contents that is as near as reasonably practicable, immediately before such Computer System or Website was damaged, destroyed or altered.

#### **2.27.4. Extortion Loss**

We will indemnify the Insured against all Extortion Loss that the Insured incurs solely as a result of an Extortion Threat made by a Hacker.

We will also pay any reasonable expenses incurred by the Insured with Our prior written consent for the design and implementation of a public relations enabling the contact of any person who attempted to use the Website whilst it was damaged, destroyed or altered.

The Insured must use its best efforts not disclose to anyone the existence of the insurance for Extortion Loss without Our prior written consent. The Insured may notify the police or other law enforcement authorities of any Extortion Threat.

Our total aggregate liability for all Claims under this extension shall not exceed \$100,000, inclusive of costs and expenses and a separate Excess of \$1,000 inclusive of Costs shall apply under this extension.

### **Section 4. Claims Conditions**

It is hereby declared and agreed that for the purposes of this Cyber Liability Endorsement, Section 4. Claims Conditions is amended as follows:

The following claims conditions are added to the policy.

#### **4.8 Insured's Obligations**

It is a condition of this Policy that the Insured must notify Us immediately or within 72 hours of:

- (a) the Insured first becoming aware of any threatened, suspected or actual fraud involving the Insured's Website or Computer System, electronic signature or electronic mail; or
  
- (b) any damage, destruction or alteration to the Insured's Computer System or Website, or;
  
- (c) the Insured first becoming aware of any threat to damage, destroy or alter the Insured's Website;

within the Policy Period; or

at the latest within three (3) days after the Policy expires for any Claim or loss that the Insured first becomes aware of

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in the three (3) days before expiry of the Policy.

#### **4.9 Cover under Other Sections**

We shall not make any payment for any Claim or loss under extension 2.27 Cyber Liability that is covered under any other section of this policy.

### **Section 5. General Conditions**

It is hereby declared and agreed that for the purposes of this Cyber Liability Endorsement, Section 5. General Conditions is amended as follows:

The following general condition is added to the policy.

#### **5.8 Insured's Obligations**

The Insured must:

- (i) take reasonable steps to use, maintain and upgrade any program that protects the Insured's Computer System and Website against Computer Viruses or any unauthorised use of or access to the Insured's Computer System or Website or electronic link;
- (ii) cancel any password, user name or other security protection as soon as the Insured has knowledge or reasonable grounds to suspect such password, user name or security protection has been made available to any unauthorised person(s);
- (iii) take back-up copies of any data, program or files at not less than daily intervals; and
- (iv) ensure that all back-up copies are located and stored at a secure off-site location and under conditions which will ensure that copies are free from damage and unauthorised access.

### **Section 6. Exclusions**

It is hereby declared and agreed that for the purposes of this Cyber Liability Endorsement, Section 6. Exclusions is amended as follows:

Clause 6.16 Professional Duty is deleted in its entirety and replaced as follows:

#### **6.16 Professional Duty**

any Wrongful Act causing a breach of professional duty by the Insured in the conduct of the Professional Business. However this exclusion 6.16 does not apply to Insuring Clause 1.1.3 or clauses 2.27.1(a) and 2.27.1 (b) of extension 2.27 Cyber Liability.

Clause 6.7 USA/Canada is deleted in its entirety and replaced as follows:

#### **6.7 Territorial / Jurisdictional Limits**

6.7.1 any action, including arbitration brought in any court outside Australia and New Zealand or any judgment registered or lodged in any jurisdiction in connection with such an action; or

6.7.2 any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.

The following additional exclusions are added to the policy:

#### **6.25 Computer Viruses**

any Computer Virus or logic bomb written or created by the Insured.

#### **6.26 Intellectual Property**

any actual or alleged infringement of, violation of, or assertion of any right to or interest (other than as provided under

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Clause 2.26(d) in any:

- a) patent;
- b) software or its source or content or material;
- c) computer code or its source content or material; or
- d) expression, method, or process designed to control or facilitate any operation or other use of a Computer or automated system.

#### **6.27 Gaming**

the use or provision of any games, or any gaming, lottery or auctioneering facilities or gambling.

#### **6.28 Material**

any sexually explicit, pornographic or obscene material unless arising directly from the activities of a Hacker.

#### **6.29 Interruption to Service**

the failure or interruption of the service provided by an internet service provider or any telecommunications or other utility provider.

#### **6.30 Software or Data Developed by the Insured**

exploits or vulnerabilities in any software or data developed by and unique to the Insured.

#### **6.31 Defamation**

any defamatory statement related to any Insured or an independent contractor directly contracted to the Insured and working under the Insured's supervision.

#### **6.32 User Generated Content**

any liability arising from any user generated content.

#### **6.33 Opt-in / Opt-out**

the actual or alleged failure by the Insured to provide natural persons with the ability to opt-in or opt-out from the collection, acquisition or retention of personal information.

#### **6.34 Unlawful collection, acquisition or retention of Personal Information**

the actual or alleged unlawful collection, acquisition or retention of personal information where such collection, acquisition or retention was performed with the knowledge and consent or co-operation of any principal, partner,

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director or officer of the Named Insured.

### **6.35 Violation of Law**

any intentional violation of any law, regulation or by-law used to impose liability in connection with any unsolicited distribution where such violation has occurred with the knowledge and consent or co-operation of any principal, partner, director or officer of the Named Insured.

### **6.36 Date Recognition**

any failure of any equipment including hardware or software to correctly recognise any given date or to process any data.

### **6.37 Maintenance**

costs or expenses incurred to replace, upgrade, update, improve, or maintain a Computer System or Website.

Exclusion 6.37 does not apply to clause 2.27.3.

### **6.38 Rebates**

service credits, rebates, discounts, price reductions, coupons, prizes, awards or other contractual or non-contractual incentives, inducements or promotions offered by the Insured to its customers.

## **Section 7. Definitions and Interpretations**

It is hereby declared and agreed that for the purposes of this Cyber Liability Endorsement, Section 7. Definitions and Interpretations is amended as follows:

Clause 7.10 Indemnity Limit is deleted in its entirety and replaced as follows:

### **7.10 Indemnity Limit**

Means the sum shown in the Schedule which is available to indemnify the Insured in respect of any one Claim and in the aggregate during the Policy Period, subject to extension 2.24 Advancement of Defence Costs and other than coverage under extension 2.27 Cyber Liability.

The cover under extension 2.27 Cyber Liability is payable in addition to and does not form part of the Indemnity Limit.

Clause 7.12 Insured Persons is deleted in its entirety and replaced as follows:

### **7.12 Insured Persons**

Means any person who is was or becomes a principal, partner, trustee, director, officer and/or employee of the Named Insured.

The following definitions are added to the policy:

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### **7.23 Computer System**

Means an information technology and communication system made up of a network of one or more items of computer hardware and/or software and the electronic data stored thereupon, that share a central storage system and various peripheral devices that is proprietary to or licensed to the Insured.

### **7.24 Computer Virus**

Means computer programming code which impairs, denies or adversely affects a Computer System or Website and that is maliciously introduced without the Insured's permission or knowledge. This includes but is not limited to malware, spyware, crime ware, worms, rootkits, Trojans, dishonest adware and other malicious and unwanted software.

### **7.25 Extortion Loss**

Means any:

- (a) reasonable costs and expenses paid by the Insured, with Our prior written consent, to a third party to prevent or end an Extortion Threat; or
- (b) reasonable costs and expenses paid by the Insured with Our prior written consent, to procure or provide goods or services demanded by a third party, to prevent or end an Extortion Threat; or
- (c) reasonable costs and expenses to pay an appropriately qualified and independent expert to conduct an investigation to determine the cause of an Extortion Threat.

### **7.26 Extortion Threat**

Means any threat or series of connected threats communicated to the Insured demanding money, goods or services to prevent or cease damaging, destroying or altering the Insured's Computer System and/or Website.

### **7.27 Hacker**

Means a person or persons who maliciously gains unauthorised access to the Insured's Computer System and/or Website via the internet or any other external electronic link or other devices such as USBs, laptops or Bring Your Own Devices (BYOD) solely by electronically circumventing the Insured's information technology security systems.

Hacker does not include:

- (i) the Insured; and/or
- (ii) any sub-contractor, independent contractor or third party on the Insured's premises without express permission; and/or
- (iii) a person or persons who gain(s) access directly through any computer, BYOD, BYOPC, BYOT or the Insured's Computer System by the being in possession of any password or other security code.

### **7.28 Programme**

Means a set of specific instructions written in code and used to perform a particular task or function such as interacting with ancillary equipment or processing data.

### **7.29 Website**

Means any website, including any intranet or extranet over which the Insured has control of content and which the Insured operates in the promotion of its business.

Subject always to all other policy terms, conditions and exclusions which remain unaltered.

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