

# Crime

## Policy

Lumley, a business division of IAG New Zealand Limited, Lumley Centre, 88 Shortland Street, PO Box 2426, Auckland 1140, New Zealand  
Tel 09 308 1100 [www.lumley.co.nz](http://www.lumley.co.nz)

### Introduction

In consideration of payment of the premium and in reliance on the statements made in the Proposal (which is made a part of this Policy), Lumley and the Insured agree to abide by the terms of the following contract of insurance.

All sections of the printed Policy wording and the Schedule must be read as if they are one and the same document.

Marginal notes and headings are only used to help you read this Policy and do not form part of this Policy.

### A: Insuring clauses

Subject to the terms and conditions of this Policy, Lumley agrees to indemnify the Insured as follows:

#### 1. Dishonesty by Employees

Lumley shall indemnify the Insured for any Loss first Discovered during the Period of Insurance and which results from a Dishonest Act of an Employee acting alone or in collusion with others committed with the intention of causing the Insured to sustain that Loss.

#### 2. Dishonesty by Third Parties

Lumley shall indemnify the Insured for any Loss first Discovered during the Period of Insurance and which results from a Criminal Act or Electronic Fraud committed by a Third Party with the intention of causing the Insured to sustain that Loss.

### B: Definitions

#### 1 Act of Terrorism

Act of Terrorism means an act, including but not limited to, force or violence and/or threat thereof, including but not limited to the use or threatened use of force or violence, or an act dangerous to human life, tangible or intangible property or infrastructure, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

#### 2 Change of Control

Change of Control means the consolidation, amalgamation, merger, transfer, assignment, pledge or sale of a majority of the assets or shareholding of the entity named as the Insured in the Schedule with or to any other entity which was not an Insured at the commencement of this Policy or became an Insured during the Period of Insurance.

#### 3 Credit Arrangement

Credit Arrangement means any credit agreement, extension of credit or hire purchase agreement, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account or otherwise evidence of debt, payments made or withdrawals from any customer's account involving items which are not finally paid for any reason.

#### 4 Criminal Act

Criminal Act means Theft or criminal damage.

#### 5 Defence Costs

Defence Costs means the reasonable and necessary legal professional fees, expenses and court costs awarded against the Insured which the Insured establishes were incurred and paid by it in defending any civil proceeding brought against it and which results directly from actual or alleged Dishonest Acts or Criminal Acts.

#### 6 Discovery and Discovered

Discovery and Discovered means the time at which any Management Personnel (excluding a person whose Dishonest Acts have resulted in Loss) first becomes aware of facts which would cause a reasonable person to believe that a Loss had or was likely to have been sustained as a result of a Dishonest Act or a Criminal Act whether or not the amount of such Loss or the means by which the Loss was or may have been caused are known. Discovery by one Management Personnel constitutes Discovery on behalf of each and every Insured.

#### 7 Discovery Period

Discovery Period means the period stated in Optional Extension 3 (Discovery Period).

## **8 Dishonest Act**

Dishonest Act means any act of dishonesty including but not limited to Theft, criminal damage, Forgery, counterfeiting, fraudulent creation, Fraudulent Alteration, Electronic Fraud and Incoming Cheque Forgery. Dishonest Act also includes the fraudulent use of any credit, debit or charge card issued to the Insured or any Employee for business purposes.

## **9 Electronic Fraud**

Electronic Fraud means:

- (a) Theft where the property in question is subject to the direct or indirect control of a computer system caused by manipulation of computer hardware or software programs or systems;
- (b) Money taken from an account maintained by the Insured at a financial institution (from which the Insured or a person or organisation authorised by the Insured may request the transfer, payment or delivery of funds) following fraudulent electronic, telegraphic, facsimile, telex, telephone or written instructions to debit such account and to transfer, pay or deliver funds from such account and which instructions purport to come from the Insured or a person or organisation authorised by the Insured to issue such instructions.

## **10 Employee**

Employee means any natural person, other than a director or partner, who has entered into or works under a contract of service with any Insured and whom such Insured compensates by salary, wages and/or commissions and whom the Insured has the right to govern and direct in the performance of such service. Employee shall also include any:

- (a) director or trustee of the Insured but only in respect of Dishonest Acts performed while acting within the scope of the usual duties of an employee of the Insured;
- (b) part-time or temporary employee performing the duties of an employee under the Insured's supervision;
- (c) retired employee appointed by the Insured under a written contract whom the Insured governs and directs in the performance of their service as an employee;
- (d) student, secondee or volunteer pursuing studies, gaining work experience or performing the duties of an employee under the Insured's supervision;
- (e) ex-employee of the Insured, for a period not exceeding 90 days following the formal termination of their employment with the Insured (other than where such termination is as a result of a Dishonest Act);
- (f) solicitor, other than a sole practitioner, retained by the Insured and any employee of such solicitor whilst performing legal services for the Insured;
- (g) person provided to the Insured by an employment agency (or similar source) to perform the duties of an employee under the Insured's supervision;

Employee does not include any person who is or acts on behalf of any external auditor, external accountant, broker, investment adviser or investment manager, factor, commission merchant, consignee, contractor or other similar agent or representative unless specifically agreed by Lumley and endorsed to this Policy.

## **11 Employee Plan**

Employee Plan means any plan, foundation or body established and maintained by the Insured to provide benefits including pensions, welfare, shares or share options, charity, shares or share options for past, present or future Employees (not including directors, partners or trustees) or their respective beneficiaries. Employee Plan does not include any sports or social club or organisation.

## **12 Excess**

Excess means the amount to be paid by the Insured pursuant to General Condition 9 (Excess) as specified in the Schedule unless otherwise stated.

## **13 Extension**

Extension means an extension included in Section B of this Policy which has not been removed by endorsement to this Policy.

## **14 Extortion**

Extortion means any threat made to any director, partner, trustee, officer or employee of the Insured to make any accusation against any person to disclose something about any person or to cause serious damage to property or endanger the safety of any person with intent:

- (a) to cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and
- (b) to obtain any financial benefit or to cause loss to any other person.

For the avoidance of doubt Extortion includes ransom demands in relation to the kidnapping or abduction of a person.

## **15 Forgery**

Forgery means the handwritten signing or endorsing of the name of a genuine person or a copy of the said person's signature by any other person without authority and with intention to deceive. It does not include the signing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose. Mechanically or electronically produced or reproduced signatures are treated in the same manner as handwritten signatures.

## **16 Fraud Investigator**

Fraud Investigator means, for the purpose of Extension 2 (Costs of Fraud Investigator), an independent fraud investigator either specified in an endorsement to this Policy or as otherwise approved by Lumley at the request of the Insured.

## **17 Fraudulent Alteration**

Fraudulent Alteration means a material alteration for a fraudulent purpose by any person.

**18 Incoming Cheque Forgery**

Incoming Cheque Forgery means the Fraudulent Alteration of, on or in any cheque or draft drawn on any bank or by any company upon itself or any cheque or written order or direction to pay a verifiable sum representing Money drawn by any public body itself, or any warrant drawn by any public body which the Insured receives at the Insured's Premises in payment or purported payment for tangible property sold and delivered or for services rendered.

**19 Insured**

Insured means the named Insured/s specified in the Schedule and any Subsidiary.

**20 Insured's Premises**

Insured's Premises means the interior portion of any building owned or occupied by an Insured and in which it conducts its business.

**21 Limit of Indemnity**

Limit of Indemnity means the amount specified in the Schedule.

**22 Loss**

Loss means the direct financial loss sustained by the Insured which arises from the actual loss of Money, Securities or Other Property owned by the Insured, resulting from:

- (a) a Dishonest Act of an Employee acting alone or in collusion with others; or
- (b) from a Criminal Act or Electronic Fraud committed by a Third Party;

Committed with the intention of causing the Insured to sustain that loss.

All direct financial loss consequent upon a series of acts that are related, or are part of a series of related acts, shall be treated as a single Loss for the purpose of this cover. Loss does not include loss in respect of wages, salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits paid by the Insured in the normal course of business."

**23 Management Personnel**

Management Personnel means the Insured's directors, trustees, partners, members of a management board or those officers who report directly to the Insured's directors, trustees, partners or management board.

**24 Money**

Money means currency, coins, bank notes and bullion, cheques, traveller's cheques, registered cheques, postal or money orders.

**25 Optional Extension**

Optional Extension means the extended indemnities provided under Section C if and only if the Extension is expressly noted in the Schedule or an endorsement to this Policy.

**26 Other Property**

Other Property means any property of any kind other than Money and Securities.

**27 Period of Insurance**

Period of Insurance means the dates specified in the Schedule and includes where applicable the Discovery Period.

**28 Policy**

Policy means this wording, the Schedule and any endorsements thereto.

**29 Lumley**

Lumley means Lumley, a business division of IAG New Zealand Limited.

**30 Securities**

Securities means any negotiable and/or non-negotiable instruments including any notes, stocks, shares, preference shares, debentures, warrants, options, bonds, promissory notes or other equity or debt security.

**31 Schedule**

Schedule means the schedule to this Policy.

**32 Subsidiary**

Subsidiary means:

- (a) any subsidiary of the Insured as defined in section 5 of the Companies Act 1993 (or any equivalent amendments or re-enactments of that provision); or
- (b) any entity which, at the commencement of the Period of Insurance, by virtue of any applicable legislation or law, is deemed to be a subsidiary of the Insured; or
- (c) any entity over which, at the commencement of the Period of Insurance, the Insured is in a position to exercise effective direction or control by means of a direct or uninterrupted succession of Subsidiaries ; or
- (d) any entity with total gross assets in value of 10% or less of the total gross assets of the Insured which becomes a subsidiary of the Insured as defined in clauses (a), (b) or (c) above after the commencement of the Period of Insurance; or
- (e) any entity with total gross assets in value greater than 10% of the total gross assets of the Insured which becomes a Subsidiary of the Insured after the commencement of the Period of Insurance, provided that within 60 days of the completion of the acquisition of such entity the Insured provides Lumley with full particulars of the entity and agrees to the imposition of any additional terms, including as to premium, that Lumley may require. If any part of this proviso is not complied with the entity shall not be an Insured under this Policy.

Provided further that the Subsidiary continues to meet the criteria set out in sub-paragraphs (a) to (e) above at the time that Loss is first Discovered.

**33 Theft**

Theft means the unlawful taking, including by violence or threat of violence, of Money, Securities or Other Property to the permanent deprivation of its owner.

**34 Third Party**

Third Party means any natural person who is not a director, partner, officer, trustee or Employee of any Insured and does not have and does not provide services under any contract of service, written or unwritten, with any Insured and is not acting in collusion with any Employee.

## C: Extensions

Subject otherwise to the terms and conditions of this Policy and unless expressly excluded in the endorsements to this Policy cover is extended as shown below. Unless expressly provided otherwise, the indemnities in the Extensions are subject to the Excess and are subject to and part of the Limit of Indemnity.

**1 Care, Custody and Control**

Claims by the Insured for Loss which is deemed for the purpose of this Extension to include direct financial loss which results from the actual loss of Money, Securities or Other Property owned by any other person or entity but which was at the time of such loss under the care, custody and control of the Insured and for which Loss the Insured is legally liable.

**2 Costs of Fraud Investigator**

Claims by the Insured for the reasonable and necessary fees and expenses of a Fraud Investigator retained by the Insured to investigate, prove and report a Loss covered by this Policy. Such fees and expenses shall in all cases be limited to the costs of investigating the facts surrounding a Loss, determining the quantum of the Loss, advising when and how such Loss occurred, summarising recommendations on future prevention of similar Loss and providing a report to Lumley and the Insured. The prior consent of Lumley must be obtained by the Insured before retaining a Fraud Investigator. The Excess shall not apply to this Extension.

**3 Defence Costs**

Claims by the Insured for Defence Costs provided that:

- (a) The Defence Costs are not recoverable from any other party or under any other insurance policy and in either case this insurance shall not be payable;
- (b) Lumley shall not be liable to make any advance payment for Defence Costs prior to the final disposition of the demand, claim, suit or civil legal proceeding to which the Defence Costs relate.
- (c) Before incurring Defence Costs the Insured must have requested and obtained the written consent of Lumley to incur the Defence Costs and the Insured agrees that no Defence Costs shall be payable by Lumley if consent is not obtained or until consent is obtained.

**4 Disposal of Subsidiary**

Claims by the Insured for Loss covered by this Policy and sustained by any Subsidiary sold, otherwise disposed of or liquidated during the Period of Insurance and which was previously insured by Lumley under this Policy if the Loss:

- (a) is Discovered after the date of sale, disposal or liquidation and before the expiry of this Policy; and
- (b) was caused by a Dishonest Act or a Criminal Act committed before the date of sale, disposal or liquidation.

Any part of such Loss that was caused by a Dishonest Act or a Criminal Act committed after the date of sale, disposal or liquidation is not covered by this Extension.

**5 Employee Plans**

Claims by the Insured for Loss covered by this Policy which is sustained by an Employee Plan. Any amount payable by Lumley under this Extension shall be paid solely for the benefit of the Employee Plan which has sustained the Loss and the Insured shall not be entitled to any payment in respect of the Loss. This Extension extends the definition of Employee to include an employee of an Employee Plan and solely for this purpose the definition of Employee shall be deemed amended to substitute the word "Employment Plan" for "Insured".

**6 Interest Receivable or Payable**

Claims by the Insured for any interest actually lost or paid by the Insured directly in respect of a Loss covered by this Policy provided that Lumley's liability under this Extension shall be calculated by applying the average of the Reserve Bank of New Zealand base rate in force between the time that the Loss is sustained and the date of Discovery of the Loss and shall be limited to 10% of the Limit of Indemnity..

**7 Outsourcing**

This Extension extends the definition of Employee to include employees of any company or firm authorised and retained by the Insured to perform normal administrative services which the Insured outsources to such company or firm provided that:

- (a) such services are provided under a written contract;
- (b) the Insured has the right to audit the performance of such services;
- (c) the Insured can demonstrate that the company or firm has been checked for competency, financial stability and honesty prior to the retention of such company or firm;
- (d) the indemnity provided by this Extension is always in excess of any valid and collectible indemnity, contractual or otherwise, available to

the company or firm or to the Insured or which would be valid and collectible except for the application of an excess or the exhaustion of a policy limit.

#### **8 Physical Loss or Destruction of or Damage to Money or Securities**

Claims by the Insured for any physical loss or destruction of or damage to Money or Securities caused by a Dishonest Act or a Criminal Act provided that such loss, destruction or damage occurs:

- (a) within the Insured's Premises; or
- (b) within the interior of any banking premises or similar recognised place of safe deposit; or
- (c) whilst in the transit and in the care, custody and control of the Insured or any security company or armoured motor vehicle company which is duly authorised by the Insured to have the care, custody or control of such Money or Securities.

And provided that the amount payable under this Extension is always in excess of any valid and collectible indemnity, contractual or otherwise, available to the Insured, or which would be valid and collectible except for the application of an excess or the exhaustion of a policy limit.

#### **9 Pre-loss Consulting Firm**

The Insured may, with the prior approval of Lumley, retain the services of a consulting firm to provide to the Insured and Lumley a written report on risk management advice, information and surveys, all as agreed by Lumley, and Lumley will reimburse the costs of that report provided that:

- (a) the Insured's annual gross premium payable under this Policy exceeds \$10,000;
- (b) the Insured has paid its premium in full;
- (c) the cost of such consultancy services shall be paid by the Insured in the first instance;
- (d) Lumley's liability under this Extension shall not exceed 10% of the Insured's annual gross premium;
- (e) If the Insured does not require such services there shall be no reduction in premium.

#### **10 Software Reconstitution Costs**

Claims by the Insured for reasonable and necessary costs incurred, with the prior consent of Lumley, for re-writing or correcting or amending the Insured's software programs which have been damaged or modified in consequence of a Loss covered by this Policy. For the avoidance of doubt this Extension does not provide indemnity in respect of the costs of rectifying or amending errors or deficiencies in such software programs that existed prior to the acts giving rise to the Loss. The maximum amount payable under this Extension is \$250,000 or 10% of the Limit of Indemnity whichever is the lesser and is part of and not in addition to the Limit of Indemnity.

### **D: Optional Extensions**

If the following extensions are included in an Endorsement, subject otherwise to the terms and conditions of this Policy, cover is extended as follows. Unless expressly provided otherwise, the indemnities in the following Optional Extensions are subject to and not in addition to the Limit of Indemnity and to the Excess.

#### **1 Contractual Penalties**

Claims by the Insured for any penalty for which the Insured is liable under a written contract resulting directly from Loss covered by this Policy provided that Lumley's liability for such Loss shall be limited to 10% of the Limit of Indemnity.

#### **2 Extortion**

Claims by the Insured for Loss caused by Money or Securities being paid or surrendered by an Employee from the Insured's Premises as the direct result of Extortion provided that before such payment or surrender occurs the person receiving the Extortion has made reasonable efforts to inform the Insured of the Extortion and the Insured has reported the Extortion to the police. If this Optional Extension is included in an endorsement Exclusion 4 (Extortion) is deemed to be deleted.

#### **3 Discovery Period**

If the Insured or Lumley chooses not to renew or extend this Policy or the Policy is cancelled by Lumley and the Insured does not replace the Policy with a similar policy or cover with Lumley or any other insurer then the Insured shall be entitled to a Discovery Period of 90 days following the termination of the Policy. The Discovery Period shall not be applicable where General Condition 7 (Change of Control of Insured) applies.

### **E: Exclusions**

This Policy does not insure the following.

#### **1 Asbestos**

Loss resulting from, arising directly or indirectly out of, in consequence of, or in any way involving the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

#### **2 Consequential Loss**

Indirect or consequential loss of any nature which arises or results from a Loss covered under this policy, including but not limited to any loss of income, profits, or dividends not realised by the Insured or any other individual or organisation.

### **3 Credit Risks**

Loss resulting from any of the following acts or omissions by Third Parties:

- (a) default under a Credit Arrangement;
- (b) Fraudulent Alteration or Forgery of documents in connection with a Credit Arrangement.

### **4 Extortion**

Claims for Loss arising from Extortion.

### **5 Fees, Costs or Expenses**

Fees, costs or expenses incurred by the Insured in establishing the existence or amount of any Loss covered by this Policy or in prosecuting or defending any legal proceeding except as provided under Extension 3 (Defence Costs) and Extension 2 (Costs of Fraud Investigator).

### **6 Fire**

Loss caused by fire except as expressly provided in Extension 8 (Physical Loss or Destruction of or Damage to Money or Securities).

### **7 Intellectual Property and Confidential Information**

Loss that is in any way connected with infringement or plagiarism of any copyright, trademark, registered design or patent, breach of any intellectual property right or breach of confidence, or any allegation of such conduct.

### **8 Inventory Computation Losses**

Claims by the Insured in respect of which there is no proof or supporting documentation to prove a covered Loss other than an inventory or profit and loss computations provided that where the Insured has proven to the satisfaction of Lumley that an identifiable Employee has caused the Loss an inventory or profit and loss computations may be submitted in support of a claim under this Policy but subject always to Lumley requiring additional information to prove a covered Loss.

### **9 Liabilities to Third Parties**

Fines, penalties and liabilities to any persons other than as expressly provided for in Extension 1 (Care, Custody and Control), Extension 3 (Defence Costs) and Optional Extension 1 (Contractual Penalties).

### **10 Loss Sustained After Knowledge**

Loss sustained after the Discovery of such Loss.

### **11 Non-Violent Crime**

Claims for Loss in respect of Other Property in the Insured's Premises unless resulting from Theft or attempted Theft by a Third Party following the Third Party's entry to or exit from the Insured's Premises by violent or forcible means or resulting from the Dishonest Acts of an Employee.

### **12 Pollution**

Any Loss directly or indirectly caused by or contributed to by or arising from seepage, pollution or contamination of any kind.

### **13 Premises Damage**

Loss in respect of damage or destruction to any of the Insured's Premises, howsoever caused.

### **14 Prior or Subsequent Discovery of Loss**

Loss Discovered before the commencement of this Policy or Loss Discovered after the expiry date of this Policy regardless of the time at which the act or acts giving rise to the Loss occurred.

### **15 Reckless Conduct**

Loss resulting from recklessness by the Insured.

### **16 Securities**

Loss resulting from any dealing or trading in Securities, futures or foreign currencies or funds.

### **17 Voluntary Exchange or Purchase**

Any Loss arising out of the voluntary giving or surrendering (whether or not such giving and surrendering is induced by deception) of Money, Securities or Other Property in any exchange or purchase unless such Loss is committed by an Employee acting alone or in collusion with others and is covered under Insuring Clause 1 (Dishonesty by Employees) or Insuring Clause 2 (Dishonesty by Third Parties).

### **18 War / Nuclear / Terrorism**

directly or indirectly arising from or out of:

- (a) (i) war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (ii) requisition, confiscation, nationalisation, destruction of or damage to property by or under the order of any government or public or local authority; or
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (c) operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
  - (i) the use of nuclear reactors such as atomic piles, particle accelerators, generators or similar devices; or
  - (ii) the use, handling or transportation of radioactive materials; or
  - (iii) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion; or
- (d) any liability, loss, damage or expenses of whatsoever nature directly or indirectly caused by, resulting from, or happening through any Act of Terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense.

## F: General Conditions

### 1 Alteration of Risk

The Insured must give and it warrants that it will give to Lumley written notice within the time specified in this clause of any material alteration of risk from that disclosed in the written proposal, declaration and any other underwriting information provided for this insurance that occurs during the Period of Insurance including but not limited to:

- (a) any act that amounts to an act of insolvency;
- (b) the appointment to the Insured of receivers, liquidators or statutory managers.

The above notice must be given by the Insured to Lumley within 30 calendar days of the alteration of risk. Lumley may, at its discretion, then impose additional premiums or terms and conditions arising from such alteration of risk. Failure to comply with this condition and warranty will result in the right to claim under this Policy terminating absolutely in respect of Loss caused by acts committed after the expiration of the above period of 30 days.

### 2 Arbitration

After a joint review of the Fraud Investigator's report, if the Insured and Lumley cannot agree upon the settlement of Loss, Lumley, at the Insured's request, will submit the dispute to arbitration. Lumley and the Insured shall agree upon an arbitrator. If no agreement can be reached then the arbitrator will be selected by the President of the Auckland District Law Society. The cost of arbitration will be paid by Lumley and will be in addition to the Limit of Indemnity. The arbitration shall be conducted according to the legal rules governing commercial arbitration in New Zealand. The Insured and Lumley shall enter into an appropriate form of arbitration contract to this effect. The outcome of the arbitration shall be binding with no right of appeal.

### 3. Assignment

This Policy and any rights under it cannot be assigned unless agreed in writing by Lumley.

### 4. Authorisation Clause

By acceptance of this Policy it is agreed that the person or persons who sign the written proposal, declaration and any other underwriting information submitted to Lumley warrant that he, she or they act on behalf of and with the authority of all persons or bodies corporate who are or may be entitled to claim under this Policy with respect to the exercise of their rights and the discharge of their duties under this Policy, including but not limited to binding cover, the giving and receiving of notice of Loss or cancellation, the payment or receiving of premiums payable or returned, the acceptance of endorsements or other notice provided by this Policy and the settlement of any dispute or claim for indemnity under this Policy.

### 5 Basis of Valuation

- (a) Securities and foreign currency

Under no circumstances shall Lumley be liable for more than the actual market value of Securities, foreign currency or precious metals, determined by that value published in the local newspaper in New Zealand at the close of business on the day that the Loss was first Discovered or the actual cost of its replacement, whichever is the lesser value.

- (b) Other Property

The lesser of the actual value of such property or the actual cost of repairing such property or replacing the same with property or material of like quality and value. Lumley may, at its election, pay such actual cash value or make such repair or replacement. Lumley may, with the Insured's consent, settle any claim by the Insured in respect of Loss of property, with the owner of that property. Any property for which Lumley has indemnified the Insured becomes the property of Lumley.

### 6 Cancellation

- (a) Method of cancellation:

- (i) The Insured may cancel this Policy at any time by notifying Lumley in writing.
- (ii) Lumley may cancel this Policy at any time by giving 30 days' notice in writing to the Insured of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the Insured at the address last notified to Lumley. Proof of mailing is sufficient proof of notification.

- (b) Adjustment of premium:

- (i) After cancellation by the Insured, Lumley will retain or be entitled to the premium for the period during which this Policy has been in force based on Lumley's cancellation rates.
- (ii) After cancellation by Lumley, the Insured is entitled to a pro rata refund of the premium.

### 7 Change in Control of Insured

If during the Period of Insurance there is a Change of Control this Policy shall terminate at 4.00pm on the date on which a Change of Control takes effect and the benefits of this Policy shall cease absolutely at that time, subject only to sub-paragraph (b) below. In the event of a Change of Control:

- (a) the Insured shall forthwith give notice of such to Lumley;
- (b) no claim will be payable under this Policy unless it is in respect of Loss covered by this Policy resulting from acts which occurred exclusively before the date on which the Change of Control takes effect and which was first Discovered within 30 days of that date;
- (c) Lumley will be entitled to a pro rata proportion of the premium (subject to any adjustment required by the terms of this Policy) for the time during which the Policy has been in force.

## **8 Claims**

Upon the Insured Discovering a Loss or potential Loss the Insured must:

- (a) immediately notify Lumley;
- (b) take immediate steps to ascertain the full extent of any Loss;
- (c) inform Lumley of any further Losses as they are Discovered;
- (d) as soon as practicable but in any event no later than 30 calendar days thereafter, submit full particulars of the Loss in writing to Lumley;
- (e) provide Lumley with any reasonably required proof and information in respect of the Loss;
- (f) allow Lumley or its nominee to inspect the Insured's accounting records and any accountant's report on those records providing the inspection is reasonably connected with the Loss.

All notices to Lumley under any provision of this Policy shall be in writing and given by courier, certified mail or e-mail properly addressed to the appropriate Lumley personnel. Address of notice to Lumley of any claim or circumstances shall be sent to:

Lumley, a business division of IAG New Zealand Limited,  
Lumley Centre, 88 Shortland Street,  
Auckland 1140, New Zealand  
liabilityc@lumley.co.nz

or the Insured's insurance broker. Notice given as described above shall be deemed to be received and effective upon actual receipt.

## **9 Excess**

Unless otherwise stated, the Excess will apply to each and every Loss net of any amounts recovered from any person.

## **10 Foreign Currency Settlements**

All amounts under this Policy are expressed and payable in New Zealand currency. If settlement is made or any element of Loss under this Policy is stated in a currency other than New Zealand dollars, payment under this Policy will be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars issued by the Reserve Bank of New Zealand on the date that the Loss was first Discovered.

## **11 Fraudulent Claim**

If any claim by the Insured under this Policy is in any way dishonest or fraudulent or if any false declaration is made or used in support thereof or if any fraudulent means or devices are used by the Insured or anyone acting on behalf of the Insured to obtain any benefit under this Policy in respect of a Loss, all benefits under this Policy in respect of that Loss will be forfeited. For the purpose of this condition, and if the Insured comprises more than one person or organisation, each of the Insureds' will be treated as having been issued with a separate policy.

## **12 Goods and Service Tax**

Where the Insured is liable to pay tax under the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Act) on receiving any indemnity payment under this Policy, Lumley will indemnify the Insured for the cost of that tax. The amount payable under this condition is in addition to the Limit of Indemnity specified in the Schedule.

## **13 Limit of Indemnity**

The total amount payable by Lumley for any one Loss and in any event for all Losses in the aggregate during the Period of Insurance, inclusive of any costs and expenses, shall not exceed the Limit of Indemnity.

## **14 Loss Settlement**

Lumley may, with the Insured's consent, settle any claim for Loss of property with the owner. Any property for which Lumley has made indemnification shall become the property of Lumley. At its discretion, Lumley may pay the indemnity value or make applicable repairs or replacements.

## **15 Other Insurance**

If, at the time of Discovery of any Loss, there is any other valid or collectable insurance covering all or part of the same Loss, this Policy will apply only to the amount of any Loss that exceeds that recoverable under any other insurance or indemnity.

## **16 Policy Interpretation**

This Policy shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute that may arise.

## **17 Prior Enquiries**

The Insured must make all reasonable enquiries and take all reasonable steps to satisfy itself about the honesty and good character of each Employee before offering him/her employment, including but not limited to checking with all referees and recent relevant employers.

## **18 Prosecution for Criminal Acts**

The Insured, when required by Lumley, and at the expense of Lumley, must use all diligence in prosecuting or assisting to prosecute any person in respect of whom a Loss is paid under this Policy.

## **19 Recoveries**

Recoveries (except from insurance, reinsurance, sureties or indemnity), less the actual cost of Loss, made after Discovery will be distributed as follows:



- (i) first, the Insured will be reimbursed for any Loss exceeding the Limit of Indemnity or settlement (whichever is less) and any other loss not covered under this Policy, not including the Excess amount;
- (ii) second, Lumley shall be reimbursed for the settlement made; and
- (iii) third, the Insured shall be reimbursed for Loss equal to the Excess amount.

**20 Single Policy/Single Loss**

- (a) If the Insured comprises more than one person, this Policy shall nevertheless be and remain a single contract of insurance for the benefit of the Insureds as joint-insureds except as provided in Condition 11 (Fraudulent Claim).
- (b) Where Loss results from a series of related, continuous or repeated Dishonest Acts of an Employee or Criminal Acts of a Third Party the Loss shall be treated as one Loss and in particular all Loss as a result of the Dishonest Acts of any one Employee acting alone or in collusion with others or as a result of the Criminal Acts of any one Third Party acting alone or in collusion with others will be treated as one Loss regardless of the means by which the Loss was caused.

**21 Subrogation**

In the event of any payment under this Policy, Lumley shall be subrogated to the extent of such payment to all of the Insured's rights of recovery in respect of the Loss. The Insured shall execute all papers required and shall do everything necessary to secure any rights, including the execution of any documents necessary to enable Lumley effectively to bring suit in the name of the Insured, whether such acts shall be or become necessary before or after payment by Lumley.

**22 Territorial Limit**

The insurance provided by this Policy applies only to acts committed in the territorial limit specified in the Schedule unless otherwise stated.

**23 Written Notice**

All notices, including notification of any Loss, shall be sent to Lumley in writing at the address or the facsimile number stated in this Policy.