

## Introduction

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.

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, the Insureds agree to abide by the limitations, conditions, provisions and other terms of the following contract of insurance.

## Section 1: Definitions

Any word or expression that this Policy defines as having a particular meaning will have that meaning everywhere it appears.

### 1.1 Acquitted by a Court

'Acquitted by a Court' means dismissal of charges prior to a hearing or, upon completion of a defended hearing of a prosecution of any Insured Persons, the delivery by a presiding judge of either: a dismissal of the charges at the conclusion of the prosecution case, or a verdict of not guilty at the conclusion of the defended hearing (but shall not include a dismissal pursuant to a plea bargain).

### 1.2 Claim

'Claim' means:

- (a) any circumstance that a reasonable person in the position of the Insured would consider may give rise to a demand for compensation;
- (b) the receipt by the Insured of any written or verbal allegation of any Wrongful Act communicated to any Insured; or
- (c) service on the Insured of any statement of claim, summons application or other originating legal or arbitral process, cross-claim, counter-claim or third party or similar notices claiming compensation for an actual or alleged Wrongful Act.

### 1.3 Committee

'Committee' means:

- (a) any auxiliary committee, foundation, trust (other than a superannuation trust), or fundraising committee;
- (b) disciplinary, examining or research body or committee;
- (c) sporting or social club committee.

### 1.4 Defence Costs

'Defence Costs' means that part of Loss consisting of reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred in the defence or investigation of any Claim. 'Defence Costs' does not include charges for time spent by directors or employees of the Insured Entity or reimbursement of any form of remuneration for such people.

### 1.5 Documents

'Documents' means documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank currency notes or other negotiable instruments.

### 1.6 Indemnity Period

'Indemnity Period' means:

- (a) the Policy Period; and
- (b) the first 28 days immediately after the Policy Period.

### 1.7 Insured

'Insured' means the Insured Entity and any Insured Person.

### 1.8 Insured Person

'Insured Person' means any past, present or future director, secretary, officer, trustee, committee member or employee of the Insured Entity (whether salaried or not) or any other member of the Insured Entity, acting on behalf of the Insured Entity at the direction of an officer or board of directors or board of trustees or committee of management of the Insured Entity.

### 1.9 Interrelated Wrongful Acts

'Interrelated Wrongful Acts' means all Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

### **1.10 Loss**

'Loss' means the total amount which an Insured becomes legally liable to pay in respect of a Claim made against such Insured for a Wrongful Act and shall include damages, judgments, settlements, Defence Costs, legal costs and expenses awarded against the Insured to any claimant.

### **1.11 Outside Entity**

'Outside Entity' means any non-profit organisation or other entity that is listed in the Schedule.

### **1.12 Outside Position**

'Outside Position' means the position of director, secretary, officer, trustee, committee member or other equivalent position held by any Insured Person in any Outside Entity.

### **1.13 Policy**

'Policy' means this Policy wording including the Schedule, any additional endorsements and the Proposal form and underwriting information provided to Lumley prior to the period of insurance.

### **1.14 Professional Duty**

'Professional Duty' means the duty arising out of the business of and services provided by the Insured as specified in the Schedule (Profession).

### **1.15 Proposal**

'Proposal' means the written proposal made by the Insured to Lumley containing particulars and statements which, together with other information provided by the Insured, are the basis of this Policy and are considered as incorporated herein.

### **1.16 Lumley**

'Lumley' means Lumley General Insurance (N.Z.) Limited.

### **1.17 Wrongful Act**

'Wrongful Act' means:

- (a) In respect of indemnity provided under insuring agreements 2.1 (Office bearers/trustees Individual cover) and 2.2 (Association/trust reimbursement cover) 'Wrongful Act' shall mean any actual or alleged breach of duty, breach of trust, neglect, omission, misstatement, misleading statement, or other act committed or attempted by an Insured Person, individually or otherwise, in the course of his duties to the Insured Entity.
- (b) In respect of insuring agreement 2.3 (Professional indemnity cover), 'Wrongful Act' shall mean any act, error or omission committed, attempted or allegedly committed or attempted, by the Insured in the course of rendering (or failure to render) services and/or advice.

## **Section 2: Insuring agreements**

### **2.1 Office bearers/trustees individual cover**

Lumley will pay on behalf of the Insured Persons any Loss for a Wrongful Act, provided the Insured Persons are not indemnified by the Insured Entity and are legally obligated to pay on account of any Claim first made against any one or more of them during the Policy Period and notified to Lumley during the Indemnity Period.

### **2.2 Association/trust reimbursement cover**

Lumley will pay on behalf of the Insured Entity any Loss arising from Insured Entity indemnification to the Insured Persons, as permitted or required by law, and which the Insured Persons have become legally obligated to pay on account of any Claim first made against any one or more of them during the Policy Period for a Wrongful Act taking place before or during the Policy Period and notified to Lumley during the Indemnity Period.

### **2.3 Professional indemnity cover**

Lumley will pay on behalf of the Insured any Loss for a Wrongful Act which the Insured has become legally obligated to pay on account of any Claim against such Insured for breach of Professional Duty first made against any one or more of them during the Policy Period for a Wrongful Act taking place before or during the Policy Period and notified to Lumley during the Indemnity Period.

## **Section 3: Extensions**

### **3.1 Advancement of Defence Costs**

Subject to general condition 7.1 (Allocation), Lumley will advance on behalf of the Insureds Defence Costs which the Insureds have incurred in connection with Claims in relation to civil liability made against them, prior to disposition of such Claims, provided that to the extent it is finally established by judgment, settlement or other final adjudication, that any such Defence Costs are not covered under this Policy, the Insureds, severally according to their interests, agree to repay Lumley such Defence Costs.

### **3.2 Committees**

Lumley will pay on behalf of the Insured all Loss arising from any Claim made against any member of any Committee established by the Insured, in respect of any legal liability arising out of the activities of such Committee.

### **3.3 Acquisitions and creations**

The definition of Insured Entity will include any other entity acquired or created by the Insured Entity during the Policy Period. However, Lumley will not pay for Loss arising from Wrongful Acts occurring before any such entity merged or amalgamated with the Insured Entity.

### **3.4 Previous subsidiaries**

The definition of Insured Entity will include any entity that ceased to be a subsidiary before or during the Policy Period, but Lumley will not pay for Loss arising from Wrongful Acts occurring after it ceased to be a subsidiary, nor will Lumley pay for Loss arising from Wrongful Acts occurring before it became a subsidiary.

### **3.5 Discovery period**

If Lumley or the Insureds do not renew this Policy, or if the Insureds or Lumley terminate this Policy, the Insureds have the right, upon payment of 75% of the full annual premium, to an extension of the cover granted by this Policy for the period of 12 months following the effective date of such non-renewal or termination, but only in respect of a Wrongful Act otherwise covered under this Policy taking place prior to the effective date of such non-renewal or termination.

### **3.6 Official investigations and inquiries**

Lumley agrees to pay Defence Costs arising out of any legally compellable attendance by any Insured Persons at any official investigation, examination or inquiry in relation to the affairs of the Insured Entity where such official investigation, examination or inquiry may lead to a Claim under this Policy.

### **3.7 Estates and legal representatives**

This Policy provides cover for Claims for the Wrongful Acts of Insured Persons made against the estates, heirs or legal representatives of Insured Persons who are deceased or against the legal representatives or attorneys of Insured Persons who are incompetent, infirm, disabled, insolvent or bankrupt to the extent that in the absence of such death, infirmity, disability, incompetence, insolvency or bankruptcy, such Claims would have been covered under this Policy.

### **3.8 Spousal liability**

If a Claim against an Insured Person includes a claim against the Insured Person's lawful spouse solely by reason of such spouse's:

- (a) legal status or as spouse of the Insured Person, or
- (b) ownership or interest in property which the claimant seeks as recovery for alleged Wrongful Acts of the Insured Person, all loss which such spouse becomes legally obligated to pay by reason of such Claim will be treated for the purposes of this Policy as Loss which the Insured Person becomes legally obligated to pay on account of the Claim made against the Insured Person. All terms and conditions of this Policy, including without limitation the retention amount, applicable to Loss incurred by such Insured Person in the Claim will also apply to such spousal loss.

The cover provided by this extension does not apply to the extent the Claim alleges any act or omission by the Insured Person's spouse.

### **3.9 Successful defence of criminal prosecution**

Lumley will indemnify any Insured Persons for Defence Costs arising out of any criminal prosecution in which they are Acquitted by a Court.

#### **Provided that**

- (a) no Defence Costs other than those incurred with the prior written consent of Lumley, such consent not to be unreasonably withheld, shall be payable under this extension;
- (b) Lumley shall not be under any obligation to advance Defence Costs as they are incurred, but may advance Defence Costs at its sole and absolute discretion;
- (c) the Insured Persons, according to their respective interests, shall repay any payments advanced by Lumley to Lumley in the event that they are not entitled to such payment under this Policy.

### **3.10 Outside position liability**

Lumley shall indemnify any Insured Person for Loss arising out of any Wrongful Act committed while serving in an Outside Position of any Outside Entity.

Any cover provided in this extension is subject to service in such an Outside Position being with the knowledge and consent of and at the written direction or request of, and as part of the duties regularly assigned to the Insured Person by, the Insured Entity.

Any cover provided in this extension will only be in excess of any indemnity and insurance available from or provided by the entity in which the Insured Person serves in the Outside Position or any other insurance which covers the Insured Person in the Outside Position. Payment by Lumley under another policy as a result of a Claim against an Insured Person in an Outside Position will reduce, by the amount of such payment, Lumley's limit of indemnity under this Policy in respect of such Claim.

### **3.11 Preservation of indemnity**

If any Insured Person is unable to obtain the full benefit of a right to indemnity against the Insured Entity to which he or she is entitled by reason only of the Insured Entity being placed in liquidation (other than voluntary liquidation) and having insufficient funds available so as to indemnify the Insured Person, then it is hereby agreed that Lumley shall indemnify the Insured Person against Loss arising from any Claim. The excess applicable to insuring agreement 2.1 (Office bearers/trustees individual cover) shall apply. The burden of adducing satisfactory proof to obtain the benefit of this extension shall rest entirely with the Insured Person and shall include the production of documentary evidence of the Insured Entity's assets and liabilities and any official statements issued by the liquidator, receiver, statutory manager or compromise manager.

### 3.12 Severability of exclusions and representations

No fact pertaining to or knowledge possessed by any Insured Person is imputed to any other Insured Person for:

- (a) applying any of the exclusions;
- (b) any misrepresentation of or failure to disclose material facts on the Proposal; or
- (c) failure to comply with a condition of this Policy.

### 3.13 Continuous cover

In the absence of fraudulent non-disclosure, where a Claim that would otherwise be covered under this Policy is excluded by exclusion 5.1 (Known Claims and circumstances), Lumley agrees to indemnify the Insured under the terms and conditions of this Policy subject to the following additional conditions:

- (a) Lumley was the Insured's association liability insurer at the primary level under a policy (hereafter referred to 'the former policy') at the time when the Insured first became aware of the circumstances which subsequently gave rise to the Claim;
- (b) Lumley continued without interruption as the Insured's association liability insurer at the primary level from the time when the Insured first became aware of the circumstances up until such time as the Claim was made against the Insured and notified to Lumley;
- (c) the liability of Lumley is limited to the amount for which Lumley would have been liable at the time referred to in extension 3.13 (a) in accordance with the terms and conditions of the former policy; and
- (d) the liability of Lumley will be reduced by the amount that fairly represents the extent by which Lumley could have mitigated its liability under the former policy, had the circumstances been duly reported under the former policy.

### 3.14 Insured v Insured

Lumley will pay on behalf of the Insured all Loss arising from any Claim made against the Insured:

- (a) which is brought or maintained by or on behalf of any other Insured; or
- (b) brought by an Insured Person for actual or alleged wrongful or unfair dismissal, defamation in relation to wrongful or unfair dismissal, sexual harassment, discrimination, denial of natural justice, misleading representations or misleading advertising involving employment with the Insured Entity, provided that this extension (b) only applies to insuring agreements 2.1 (Office bearers/trustees cover) and 2.2 (Association/trust reimbursement cover).

### 3.15 Inadvertent non-disclosure

The Insured acknowledges that the information provided by it to Lumley in their Proposal for insurance is relied upon by Lumley in assessing whether to accept the risk and if so, on what terms.

The Insured also acknowledges that Lumley is entitled to avoid the Policy if the Insured has failed to disclose a material fact or facts in their Proposal (material non-disclosure).

Notwithstanding Lumley's right to avoid the Policy for material non-disclosure Lumley may, in its absolute discretion, waive its right to avoid the Policy and confirm indemnity to any individual Insured Person who:

- (a) provides an explanation which satisfies Lumley that the material non-disclosure of a material fact or facts in the Proposal arose through sheer inadvertence on his or her part; and
- (b) the material non-disclosure did not arise through carelessness, recklessness or dishonesty on the part of the individual Insured; and
- (c) if the individual Insured did not sign the Proposal him/herself, the individual Insured Person had provided a written statement, in a timely manner, for the person who completed the Proposal on behalf of the Insured detailing all information regarding any claims or circumstances which may give rise to a Claim or any facts which Lumley may regard as material to the risk to be insured.

**Provided that:**

- (i) if the Insured Person was aware of a claim or circumstance which might give rise to a Claim which it could or should have notified during a preceding Indemnity Period and the indemnity or cover to which the Insured Persons would have been entitled was more restrictive than the indemnity or cover provided at the time of notification, then Lumley shall only be liable to the extent applicable during such preceding Indemnity Period.
- (ii) the premiums and terms of the current Indemnity Period shall be adjusted at the discretion of Lumley to those which would have applied had such disclosure or representation been made at the appropriate time.
- (iii) if the handling or settlement of a Claim has been prejudiced by the material non-disclosure or misrepresentation, the amount payable in respect of such Claim shall be reduced to the sum Lumley believes would have been payable in the absence of such prejudice.

## **Extensions (applicable to insuring agreement 2.3 (professional indemnity cover only))**

### 3.16 Defamation

Lumley will pay on behalf of the Insured all Loss arising from any Claim made against the Insured arising from unintentional defamation.

### 3.17 Fair Trading Act 1986

Lumley will pay on behalf of the Insured all Loss arising from any Claim made against the Insured under the terms of the Fair Trading Act 1986 (sections 9 to 14).

### 3.18 Intellectual property

Lumley will pay on behalf of the Insured all Loss arising from any Claim made against the Insured arising out of any unintentional infringement of copyright, trademarks, registered designs or patents or plagiarism or any unintentional breach of confidentiality.

### 3.19 Loss of documents

Lumley will pay on behalf of the Insured all Loss arising from any Claim made against the Insured arising out of the loss of, damage to or destruction of any Documents that were in the custody or control of the Insured, or any other person to whom the Insured had delegated custody or had entrusted, lodged or deposited such Documents in the ordinary course of business.

### 3.20 Dishonesty of employees

Lumley will pay on behalf of the Insured all Loss arising from any Claim made against the Insured brought about or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of or on behalf of any person at any time employed by the Insured. Provided always that:

- (a) such indemnity shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of exclusion 5.3 (Dishonesty);
- (b) in respect of Claims involving theft or misappropriation of funds of which the Insured is legally liable to account to another, the liability of Lumley is conditional upon:
  - (i) the Insured maintaining a separate trust account for such funds, which shall be subject to independent audit by a duly qualified accountant at least annually; and
  - (ii) all cheques drawn by employees of the Insured on such trust account being signed by two authorised persons; and
  - (iii) all electronic banking carried out by employees of the Insured on such trust account being first authorised by a secret password entered by a duly authorised person.

## Section 4: Optional extension

### 4.1 Exemplary damages

If this extension is specified as Insured in the Schedule, notwithstanding exclusion 5.8(a) (Bodily injury) and 5.5 (Fines and penalties) Lumley shall indemnify the Insured for Loss arising out of Claims made against the Insured for exemplary damages arising from the provision of medical, welfare, counselling and other social services. The limit of indemnity available under this extension shall be \$1,000,000 in the aggregate, unless specified otherwise in the Schedule. The excess applicable to Claims under this extension shall be \$10,000 each and every Claim, inclusive of costs and expenses.

## Section 5: Exclusions

Lumley shall not be liable for Loss on account of any Claim:

### 5.1 Known claims and circumstances

- (a) made against or intimated to the Insured prior to the commencement of the period of insurance; or
- (b) notified under any previous policy; or
- (c) arising out of or connected with any facts or circumstances which:
  - (i) any Insured Person was aware of prior to commencement of the period of insurance; or
  - (ii) a reasonable person in the position of an Insured Person would have considered may give rise to a claim against the Insured.

### 5.2 Retroactive date

based upon, arising out of, or attributable to any Wrongful Act which occurred prior to the retroactive date (if any) set forth in the Schedule provided that nothing contained within this exclusion is interpreted as releasing the Insured from their obligation to disclose as a material fact all details of Claims made or outstanding or events likely to give rise to a Claim.

### 5.3 Dishonesty

- (a) arising out of or connected with any actual or alleged dishonest, fraudulent, criminal or malicious act or omission of any Insured; or
  - (b) arising out of or connected with a wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted by the Insured with a reckless disregard for the consequences;
- except to the extent to which cover is provided under extension 3.20 (Dishonesty of employees)

### 5.4 Contractual liability

arising out of or connected with any contractual liability, warranty or guarantee assumed or provided by the Insured except if the Insured would have been liable in the absence of the contractual liability, warranty or guarantee.

### 5.5 Fines and penalties

for punitive, aggravated, liquidated, multiple or exemplary damages, or fines or penalties imposed by law other than coverage provided by extension 4.1 (Exemplary damages).

## **5.6 Nuclear**

arising out of or connected with:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive assembly or its nuclear components.

## **5.7 War**

- (a) arising out of or connected with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) arising out of or connected with confiscation, nationalisation or damage to property by or under the order of any government or public or local authority.

## **5.8 Bodily injury and property damage**

- (a) for bodily injury, sickness, disease or death of any person, however this exclusion shall not apply to mental injury, mental anguish, nervous shock or emotional distress.
- (b) for physical loss of, damage to, or destruction of, any tangible property including loss of use thereof or any consequential loss.

## **5.9 Jurisdiction**

- (a) in respect of legal action or litigation first brought in a court outside the jurisdiction of the countries stated in the Schedule; or
- (b) in respect of any legal action or litigation brought in a court within the jurisdiction of the countries stated in the Schedule to enforce a judgment handed down in a court outside the Jurisdiction of the countries stated in the Schedule whether by way of a reciprocal agreement or otherwise; or
- (c) in respect of any legal action in which the proper law to be applied to the issue or any of them in that action is that of a country other than the jurisdiction stated in the Schedule.

## **5.10 Date recognition**

arising directly or indirectly out of or in connection with the failure or inability of any:

- (a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- (b) media or systems used in connection with any of them;

whether the property of the Insured or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including but without being limited to any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- (i) anything referred to in (a) or (b) above recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
- (ii) the operation of any command or logic that has been programmed or incorporated into anything referred to in (a) or (b) above.

## **5.11 Pollution**

attributable to seepage, pollution or contamination howsoever occurring.

## **5.12 Terrorism**

arising from or in any way related to death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with, any act of terrorism regardless of any contributing cause or event.

For the purpose of this exclusion, terrorism means an act, including but not limited to the use or threat of force or violence, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is committed 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.

This Policy also excludes death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to the above exclusions.

## **5.13 Asbestos**

whatsoever, directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

## Section 6: Claims conditions

### 6.1 Reporting of Claims

Irrespective of the quantum, the Insured shall give to Lumley immediate notice in writing of:

- (a) any Claim made against them; or
- (b) the receipt of notice from, or information as to any intention by any party to claim against them.

### 6.2 Notification of circumstances

The Insureds, as a condition precedent to their rights under this Policy, shall give Lumley written notice of any Claim made against the Insureds as soon as practicable but in no event later than 28 days after expiration of the Policy Period.

If during the Policy Period the Insureds become aware of circumstances that could give rise to a Claim for a Wrongful Act taking place before or during the Policy Period and give written notice of such circumstances and the other information referenced below to Lumley during the Policy Period then any Claims subsequently arising from such circumstances are considered to have been made during the Policy Period in which the circumstances were first reported to Lumley.

As a condition precedent to exercising their rights under this Policy, the Insureds shall:

- (a) include within any notice of Claim or circumstance a description of the Claim or circumstances, the nature of the alleged Wrongful Act, the nature of the alleged or potential damage, the names of actual or potential claimants and Insured Persons involved, and the manner in which the Insureds first became aware of the Claim or circumstances; and
- (b) give to Lumley such other information and co-operation as Lumley may reasonably request.

All notices under any provision of this Policy shall be in writing and given by company courier, prepaid express courier, certified mail or fax properly addressed to the appropriate party. Notice to the Insureds may be given to the parent company at the address as shown in the Schedule. Notice to Lumley of any Claim or circumstances will be given to Lumley General Insurance (N.Z.) Limited, PO Box 2426, Auckland, New Zealand. Notice given as described above will be deemed to be received and effective upon actual receipt thereof by the addressee or two days following the date such notice is sent, whichever is earlier.

### 6.3 Defence and settlement of Claims

The Insured shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without the written consent of Lumley.

Lumley is entitled at any time to conduct, in the name of the Insured, the investigation, defence or settlement of any Claim. If Lumley believes that the Claim will not exceed the excess, Lumley may instruct the Insured to conduct the investigation, defence and settlement at the Insured's expense.

### 6.4 Legal counsel

Lumley shall not require the Insured to defend any legal proceedings in respect of any Claim against the Insured, nor shall the Insured require Lumley to defend, on its behalf, any legal proceedings in respect of any such Claim unless a legal counsel (to be mutually agreed upon by the Insured and Lumley) shall advise that such proceedings should be defended.

In formulating such advice, counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion shall be regarded as part of the costs and expenses of any Claim.

In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended but should be settled, provided that settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then the Insured shall co-operate with Lumley to effect such settlement in accordance with this Policy.

### 6.5 Insured's right to contest Claims

If the Insured does not agree with a decision by Lumley to settle a claim, the Insured can elect to contest the Claim at their own expense but the liability of Lumley will not exceed the amount for which the Claim could have been settled in the opinion of counsel appointed under claims condition 6.4 (Legal counsel).

If Lumley believes that the Claim will not exceed the excess, Lumley may instruct the Insured to conduct the investigation, defence and settlement at the Insured's expense. Should the Claim subsequently exceed the excess, Lumley agrees to reimburse the reasonable costs and expenses incurred by the Insured or pay on behalf of the Insured any additional costs and expenses.

### 6.6 Claims co-operation

The Insured agrees to use its best endeavours to avoid or diminish a Claim and will provide at their own cost all information and assistance to Lumley as is required to determine liability under the Policy and investigate, defend and settle a Claim.

Upon receipt of notice from the Insured of any request for indemnity under this Policy, Lumley may take whatever action it considers appropriate to protect the Insured's position in respect of the Claim against the Insured. Such action by Lumley shall not be regarded in any way as prejudicing its position under the Policy and shall not be an admission of the Insured's entitlement to indemnity under the Policy.

Solicitors retained by Lumley to act on behalf of the Insured in relation to any Claim against the Insured shall at all times be at liberty to disclose to Lumley any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and Lumley in respect of such information.

## Section 7: General conditions

### 7.1 Allocation

If in any Claim the Insureds incur Loss jointly with others, including the Insured Entity with respect to any Claim not covered under insuring agreement 2.1 (Office bearers/trustees individual cover), or incur an amount consisting of both Loss covered by this Policy and loss not covered by this Policy because the Claim includes both covered and uncovered matters, then the Insureds and Lumley will allocate such amount between covered Loss and uncovered loss based upon the relative legal exposures of the parties to covered and uncovered matters.

If Lumley and each Insured against whom a Claim is made agree on the allocation of Defence Costs, Lumley will advance on a current basis Defence Costs allocated to covered Loss. If there is no agreement on an allocation of Defence Costs, Lumley will advance on a current basis Defence Costs which Lumley believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined.

Any negotiated, arbitrated or judicially determined allocation of Defence Costs on account of a Claim will be applied retrospectively to all Defence Costs on account of such Claim, notwithstanding any prior advancement to the contrary. Any allocation or advancement of Defence Costs on account of a Claim will not apply to or create any presumption in respect of the allocation of other Loss on account of such Claim or any other Claim.

### 7.2 Limit of liability

Lumley's maximum liability for Loss on account of all Claims first made during the same Policy Period will be the limit of indemnity set forth in the Schedule.

### 7.3 Excess

Lumley's liability under insuring agreements 2.1 (Office bearers/trustees individual cover), 2.2 (Association/trust reimbursement cover) or 2.3 (Professional indemnity cover) shall only apply to that part of each Loss in respect of each Claim which is greater than the excess as specified in the Schedule and such excess shall be borne by the Insured uninsured and at their own risk.

Any costs and expenses incurred by Lumley to determine whether Lumley has a liability to indemnify the Insured under this Policy shall not be subject to the excess but shall be borne by Lumley.

### 7.4 Multiple Claims

All causally connected or Interrelated Wrongful Acts shall jointly constitute a single Wrongful Act under this Policy.

Where a single Wrongful Act gives rise to more than one Claim, all such Claims shall jointly constitute one Claim under this Policy, and only one excess shall be applicable in respect of such Claim.

### 7.5 Fraudulent Claims

If the Insured or any person who is entitled to indemnity under this Policy makes any application for indemnity under this Policy, knowing that such application for indemnity is false or fraudulent, this Policy shall be void ab initio.

### 7.6 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.

### 7.7 GST

Where the Insured is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section or act) upon receiving any indemnity payment under this Policy, Lumley will indemnify the Insured for the costs of that tax. The indemnity under this clause is payable by Lumley in addition to the limit of indemnity.

### 7.8 Policy disputes

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

### 7.9 Insured's warranty

It is agreed between the Insured and Lumley that the written Proposal provided by the Insured forms the basis of the Policy and the Insured warrants the truth of all statements made therein.

### 7.10 Other insurance

Upon giving notice of any Claim, the Insured agrees to provide to Lumley written details of any other insurance that may cover or partially cover that Claim. In the event that the Insured holds other insurance cover with another insurer in respect of any Claim then the indemnity under this Policy shall not be available until the limit of indemnity under any other policy has been exhausted.

### **7.11 Subrogation**

Lumley is entitled to all of the Insured's rights of recovery (before a Claim has been paid and whether or not the Insured has been fully compensated for their actual loss) and the Insured will do everything necessary to secure and preserve such rights. This will include but not be limited to the execution of documents necessary to allow Lumley to take any legal action in the name of the Insured. However, Lumley shall not exercise any subrogated rights of recovery against any employee of the Insured unless the Claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the employee. In the event that a recovery is made, the amount recovered shall be applied first to the costs of effecting the recovery, then the balance shall be paid to Lumley and the Insured pro rata in proportion to the insured and uninsured losses (excluding the excess) of Lumley and the Insured respectively. Any balance shall be paid to the Insured in respect of its excess.

### **7.12 Interpretation of words**

Words referring to persons shall include companies and other legal entities. The singular includes references to the plural and vice versa and any gender includes reference to all other genders.

### **7.13 Breach of conditions**

Where the Insured's breach of any condition of this Policy has resulted in prejudice to the handling and/or settlement of any Loss, which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Loss shall be reduced to such sum as would have been payable by Lumley in the absence of such prejudice.