

directors and officers liability insurance policy

Lumley General Insurance (N.Z.) Limited, Head Office, Lumley Centre, 88 Shortland Street, PO Box 2426, Auckland, New Zealand, Tel 09 308 1100, Fax 09 308 1114

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, the Company and the Insured Persons agree to abide by the limitations, conditions, provisions and other 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.

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 and/or the Company, 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 Associated Company

'Associated Company' means any entity in which the Company owns, at the time the Wrongful Act occurred, either directly or indirectly, between 10% and 50% inclusive of the outstanding securities representing the present right to vote for the election of directors.

1.3 Claim

'Claim' means:

- (a) an oral or written claim or demand for compensation against any Insured Person and/or the Company; or
- (b) a formal civil, administrative, disciplinary or regulatory proceeding against any Insured Person and/or the Company in which a complaint, charge or other allegation is made against an Insured Person and/or the Company; or
- (c) a civil proceeding issued or filed against any Insured Person and/or the Company, including any appeal therefrom.

1.4 Company

"Company" means, individually and/or collectively, the organisation(s) named in the Schedule and their Subsidiaries in existence at the inception date of the Policy Period.

1.5 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 Claims and any amount required to be paid as security for costs. Defence costs do not include charges for time spent by directors or employees of the Company or reimbursement of any form of remuneration for such people.

1.6 Employment Related Wrongful Act

'Employment Related Wrongful Act' means any actual or alleged:

- (a) personal grievance or wrongful dismissal;
 - (b) defamation relating to a personal grievance or wrongful dismissal;
 - (c) sexual harassment;
 - (d) discrimination or breach of privacy;
- in relation to actual or proposed employment.

1.7 Financial Impairment

"Financial Impairment" means the status of the Company resulting from the appointment by any governmental official, agency or court or any receiver, manager, liquidator (including a provisional liquidator), or similar official to take control of, supervise, manage or liquidate the Company.

1.8 Indemnity Period

'Indemnity Period' means:

- (a) the Policy Period;
- (b) the first 28 days immediately after the Policy Period;
- (c) the discovery period, if in force.

1.9 Insured(s)

'Insured(s)' means the Insured Persons and, solely in respect of Insuring Agreement 2.2 (Company Reimbursement Cover) and Extension 3.17 (Entity Coverage), the Company.

1.10 Insured Person

'Insured Person' means:

- (a) any one or more persons who were, now are or will be a director, secretary, officer, or employee of the Company; or any person who was or now is or may hereafter become a trustee of a superannuation fund established for the benefit of the employees of the Company, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position;
- (b) any person who by virtue of any applicable legislation or law is deemed to be a director of the Company.

Provided that the term Insured Person shall not include any externally appointed officers such as receivers, statutory managers, liquidators, mortgagees in possession or the like.

1.11 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.

1.12 Loss

'Loss' means any amount which the Insured Persons and/or the Company becomes legally obligated to pay on account of any Claim made during the Policy Period or (if applicable) the Discovery Period. Such Claim must be made against an Insured Person and/or the Company for Wrongful Acts for which cover applies, including, but not limited to, damages, judgments, settlements and Defence Costs. Loss does not include:

- (a) any amount for which the Insured Persons and/or the Company are absolved from payment; or
- (b) taxes, fines or penalties imposed by law; or
- (c) the multiple portion of any multiplied damage award or punitive or exemplary damages; or
- (d) any other amount which is uninsurable under the law pursuant to which this Policy is construed.

1.13 Lumley

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

1.14 Non-Profit Entity

'Non-Profit Entity' means any corporation, association, trust, fund, institution or foundation:

- (a) not included in the definition of Company; and
- (b) established for charitable, community, industry or social purposes, but not for the purpose of making profits.

1.15 Outside Position

'Outside Position' means the position of director, officer, manager, trustee or other equivalent position held by any Insured Person in:

- (a) any Non-Profit Entity or Associated Company; or
- (b) any other entity if Other Outside Positions cover is granted pursuant to the Schedule.

1.16 Parent Company

'Parent Company' means the organisation first named in the Schedule as the Named Company.

1.17 Policy

'Policy' means, collectively, the Schedule, the Proposal, this Policy wording and any endorsements hereto.

1.18 Pollutants

'Pollutants' means any substance located anywhere in the world exhibiting any hazardous characteristics including without limitation substances identified on a list of hazardous substances issued by any governmental agency in the country where this Policy is issued. Such substances include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants also means any other air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, electric or magnetic or electromagnetic field and noise.

1.19 Proposal

'Proposal' means all signed proposals, including attachments and materials submitted therewith, for this Policy or for any policy of which this Policy is a renewal or replacement. All such proposals, attachments and materials are deemed attached to and incorporated into this Policy.

1.20 Securities Claim

"Securities Claim" means any Claim that in whole or in part is:

- (a) brought by a Security holder of the Company, in their capacity as such; or

(b) based upon, arising out of or attributable to the purchase or sale of, or offer to purchase or sell, any Security issued by the Company, whether such purchase, sale or offer involves a transaction with the Company or occurs in the open market (including without limitation any such Claim brought by a governmental regulatory body or any other claimant);

However, this definition applies only in respect of Security issued by the Company for the purpose of raising capital for the Company and not any other Security issued in the course of the Company's business.

1.21 Security

'Security' means any debt security or equity security (as defined in section 2 of the Securities Act 1978) issued by the Company.

1.22 Subsidiary

'Subsidiary' means any organisation in which the Company holds more than 50% of the voting rights of that organisation or has the ability to control decisions made by the board of directors (whether directly or indirectly).

1.23 Wrongful Act

'Wrongful Act' means:

- (a) any error, misstatement, misleading statement, act, omission, negligence or breach of duty actually or allegedly committed or attempted by any Insured Person in their capacity as such or in an Outside Position; or
- (b) any matter claimed against any Insured Person solely by reason of their serving in such capacity or in an Outside Position; or
- (c) any error, misstatement, misleading statement, act, omission, negligence or breach of duty actually or allegedly committed or attempted by the Company.

Except as specifically provided in Extension 3.3 (Outside Position Liability), Wrongful Act does not include any conduct actually or allegedly committed or attempted by any Insured Person in their capacity as a director, officer, trustee or employee of any organisation other than the Company, even if service in such capacity is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the Insured Person by, the Company.

Section 2: Insuring agreements

2.1 Directors and officers individual cover

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

2.2 Company reimbursement cover

Lumley will pay on behalf of the Company Loss arising from Company indemnification to the Insured Persons, as permitted or required by law, and that 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 or Discovery Period (if applicable), 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 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, incompetence, infirmity, disability, insolvency or bankruptcy, such Claims would have been covered under this Policy.

3.2 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 as a 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 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 3.2 does not apply to the extent the Claim alleges any act or omission by the Insured Person's spouse.

3.3 Outside Position liability

Lumley shall indemnify any Insured Person for Loss arising out of any Wrongful Act committed whilst serving in an Outside Position of any Non-Profit Entity or Associated Company or any entity listed in the Schedule.

Any cover provided in this Extension 3.3 is subject to service in such an Outside Position being with the knowledge and consent of, at the written direction or request of, and as part of the duties regularly assigned to the Insured Person by, the Company.

Any cover provided in this Extension 3.3 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 that covers the Insured Person in the Outside Position. Payment by Lumley or any member company of the Wesfarmers Group of Companies, 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 Liability under this Policy in respect of such Claim.

3.4 Employment practices liability cover For Insured Persons

Lumley shall indemnify any Insured Person for Loss arising from an Employment Related Wrongful Act.

3.5 Discovery period

If Lumley or the Insureds do not renew this Policy or if the Parent Company terminates 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.

This right of extension will lapse unless written notice of such election, together with payment of the additional premium due, is given by the Insureds to Lumley within 30 days following the effective date of termination or non-renewal. If the right of extension lapses then cover under this Policy ceases as at the effective date of termination or non-renewal.

Any Claim made during the Discovery Period will be treated as if it had been made during the Policy Period and is subject to the remaining Limit of Indemnity at the effective date of non-renewal or termination.

The entire premium for the Discovery Period is deemed fully earned and non-refundable upon payment.

The Insureds are not entitled to elect the Discovery Period under this Extension 3.5 if an extension of cover is elected pursuant to General Condition 5.7 (Acquisition Of Parent Company).

3.6 Advancement of Defence Costs

Subject to General Condition 5.5 (Allocation), Lumley will advance on behalf of the Insureds Defence Costs that 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.

3.7 Compensation for court attendance

If, at the request of Lumley, an Insured Person attends court as a witness in connection with a Claim for which the Insured is to be indemnified under this Policy, Lumley will provide compensation to the Insured Person at the rate of \$300 for each day or part day on which attendance is required. The cover provided under this extension shall be subject to a sub-limit of \$10,000 in the aggregate and shall be part of and not in addition to the limit of indemnity on the Schedule. Cover provided by this extension does not increase the limit of indemnity.

3.8 Continuous cover clause

Notwithstanding Condition 5.3 (Notice), where the Insured fails to provide notice of a Claim within the time period specified in this Policy then Lumley shall apply the provisions of Section 9 (b) of the Insurance Law Reform Act 1977 to determine if the Claim is to be indemnified under this Policy and the extent of any indemnity provided.

3.9 Acquisitions and creations

The definition of Company will include any Subsidiary:

- (a) acquired during the Period of Insurance for a period of up to 30 days from the date of acquisition but only in respect of activities carried out after the date of acquisition. The Insured shall provide to Lumley full underwriting details of the new Subsidiary sufficient to enable Lumley to assess the risk and determine the terms and conditions to apply for any coverage to be afforded to the new Subsidiary after the 30 day period. The Insured shall pay the additional premium calculated by Lumley for the new Subsidiary. Coverage for the new Subsidiary shall cease once the 30-day period has elapsed unless Lumley has agreed in writing to extend the coverage to include the new Subsidiary.
- (b) created during the Period of Insurance from the date of creation in respect of activities carried out after the date of creation. Where the activities of the created subsidiary are materially different to the activities of the Company the Insured shall provide Lumley full underwriting details to enable Lumley to assess the risk and determine the terms and conditions to apply.

The definition of Company will not be extended to include any new Subsidiary acquired or created by the Company that has any of its Securities listed on any exchange in North America or is domiciled or incorporated in North America.

3.10 Previous Subsidiaries of the Company

The definition of Company 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.

3.11 Severability of exclusions

With respect to Exclusions 4.1 (Known Claims And Circumstances), 4.10 (Fraud) and 4.11 (Personal Profit) of the Policy no fact pertaining to, nor knowledge possessed by, nor any Wrongful Act committed by any Insured Person will be imputed to any other Insured Person for the purpose of determining the availability of coverage for or with respect to claims made against any Insured Person.

3.12 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 Company where such official investigation, examination or inquiry may lead to a Claim under this Policy.

3.13 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 shall be payable under this Extension; and
- (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; and
- (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; and
- (d) the indemnity available under this provision shall only be available where the criminal prosecution arises directly from the Insured Person's duties as a director or officer of the Company.

3.14 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.

3.15 Preservation of indemnity

If any Insured Person is unable to obtain the full benefit of a right to indemnity against the Company to which he or she is entitled, by reason only of the Company 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 2.2 (Company Reimbursement 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 Company's assets and liabilities and any official statements issued by the liquidator, receiver, statutory manager or compromise manager.

3.16 Employment superannuation scheme

Lumley will pay on behalf of any person for any Claim by reason of any Wrongful Act resulting in Loss arising out of their individual or collective capacities as trustees of the Company's own superannuation or pension funds. Cover provided by this extension shall not be excluded solely on the ground that a Claim is brought by a member of the superannuation or pension scheme who is also a director or officer of the Company.

3.17 Entity Coverage

Lumley will pay on behalf of the Company the Loss that the Company is legally liable to pay by reason of any Wrongful Act first made against the Company during the Policy Period or Discovery Period (if applicable) and notified to Lumley during the Indemnity Period for any actual or alleged Wrongful Act.

Provided that a sub-limit of \$250,000 any one Policy Period shall apply and an excess of \$10,000 each claim shall apply.

Section 4: Exclusions

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

4.1 Known Claims and circumstances

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

4.2 Insured v Insured

brought or maintained by or on behalf of the Company or any Insured Person in any capacity except a Claim:

- (a) that is a derivative action brought or maintained on behalf of the Company without solicitation, assistance or active participation by the Company or any Insured Person;
- (b) brought or maintained by any Insured Person for any actual or alleged Employment Related Wrongful Act;
- (c) brought or maintained by any Insured Person for contribution or indemnity if the Claim directly results from another Claim covered under this Policy; or
- (d) that is brought by or on behalf of the Company at the instigation of a security holder, receiver, a receiver and manager, official manager or liquidator.

4.3 Outside Position

for a Wrongful Act by an Insured Person in an Outside Position if such Claim is brought or maintained by or on behalf of the entity in which the Insured Person serves or by or on behalf of any director, officer or trustee of such entity except:

- (a) a Claim that is a derivative action brought or maintained on behalf of such entity without the solicitation, assistance or active participation of such entity or any director, officer or trustee of such entity; or
- (b) a Claim brought or maintained by a director, officer or trustee of such entity for any actual or alleged Employment Related Wrongful Act.

4.4 Bodily injury and property damage

for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, or for defamation or violation of a person's right of privacy. This exclusion does not apply in respect of: any actual or alleged mental anguish, emotional distress, defamation or violation of a person's right of privacy in any Claim by a past, present or prospective employee of the Company for any Employment Related Wrongful Act.

4.5 Pollution

based upon, arising out of or attributable to:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of Pollutants into or on real or personal property, water or the atmosphere; or
- (b) any direction or request that the Company or the Insured Persons test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants, or any voluntary decision to do so; including without limitation any Security Claim or any other Claim by or on behalf of the Company, its Security holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion.

4.6 Retroactive date

based upon, arising out of, or attributable to any Wrongful Act that 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.

4.7 Jurisdiction

brought in a court of, or determined pursuant to the law of, the United States of America or Canada or their respective territories or protectorates.

4.8 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.

4.9 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.

4.10 Fraud

for any fraudulent act or omission or any wilful violation of any statute or regulation if a judgment or other final adjudication adverse to any Insured establishes that such Insured committed such an act, omission or wilful violation.

4.11 Personal profit

based upon, arising out of or attributable to any Insured gaining any personal profit, remuneration or financial advantage to which such Insured was not legally entitled.

4.12 Products or services

- a) brought by or on behalf of any client or customer of the Company in connection with products or services provided by the Company; or
- b) arising directly or indirectly out of any breach of duty in respect of any professional services or professional advice by the Insured; or
- c) arising directly or indirectly out of any breach of any contract for the provision of professional services or professional advice by the Insured.

4.13 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 this Exclusion 4.13.

4.14 Asbestos

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

4.15 Issuance of Shares

arising out of

- (i) any public or private issue of shares, preference shares (redeemable or otherwise), debentures of whatever kind, promissory notes or any other form of negotiable or non negotiable security for the raising of capital by equity, debt or any other means; or
- (ii) the issue of any prospectus or similar document or the making of any written or oral representation, in connection with (i) above.

4.16 Major Shareholder Exclusion

brought by or on behalf of any shareholder holding or controlling (directly or beneficially) 15% or more of the voting shares or rights or issued capital of the Company.

4.17 Silica

in respect of any liability directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the Insured to indemnify any party because of personal injury arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

4.18 Failure to Maintain Insurance

arising out of any failure or omission to effect or maintain insurance.

Section 5: General conditions and limitations

5.1 Limit of Lumley's liability, excess

For the purposes of this Policy, all Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of the Insureds will be deemed one Claim.

A Claim is deemed to be first made on the date the Claim is initially made against the Insureds, regardless of whether such date is before or during the Policy Period.

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

Except as otherwise provided in this General Condition 5.1, Lumley's liability in respect of Loss arising from each Claim applies only to that part of Loss, including Defence Costs, which is excess of the applicable Excess stated in the Schedule. Such Excess will be borne by the Company uninsured and at its own risk.

No Excess applies to Loss covered by Insuring Agreement 2.1 (Directors and Officers Individual Cover), except as otherwise provided in General Condition 5.2 (Indemnification). If Loss arising from a single Claim is covered in part under Insuring Agreement 2.1 (Directors and Officers Individual Cover) and in part under Insuring Agreement 2.2 (Company Reimbursement Cover), the applicable Excess set forth in the Schedule applies to that part of the Loss covered by Insuring Agreement 2.2. The largest applicable Excess set forth in the Schedule will be the maximum Excess applicable to all Loss on account of such Claim.

Defence Costs are part of and not in addition to the Limit of Indemnity set forth in the Schedule and any Defence Costs paid by Lumley reduce the available Limit of Indemnity.

For purposes of this General Condition 5.1, the Limit of Indemnity for the Discovery Period (if applicable), will be part of and not in addition to the Limit of Indemnity for the Policy Period. The purchase of the Discovery Period does not increase or reinstate the Limit of Indemnity set forth in the Schedule. The Limit of Indemnity set forth in the Schedule is the maximum liability of Lumley for all Loss on account of all Claims first made during such Policy Period and Discovery Period combined.

5.2 Indemnification

If the Company is permitted or required by common or statutory law to advance Defence Costs or indemnify the Insured Persons for Loss but fails or refuses to do so other than for reason of Financial Impairment, then, notwithstanding any other conditions, provisions or terms of this Policy to the contrary, any payment by Lumley of such Defence Costs or other Loss will be subject to:

- (a) the Excess applicable to Insuring Agreement 2.2 (Company Reimbursement Cover) set forth in the Schedule; and
- (b) all of the Exclusions set forth in this Policy.

5.3 Notice

The Insureds, as a condition precedent to their rights under this Policy, will give Lumley written notice of any Claim made against the Insureds as soon as practicable but in no event later than 28 days after expiry of the Policy Period or during the Discovery Period (if applicable).

If during the Policy Period or during the Discovery Period (if applicable) the Insureds become aware of circumstances which 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 or Discovery Period (if applicable), then any Claims subsequently

arising from such circumstances are considered to have been made during the Policy Period or the Discovery 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 cooperation as Lumley may reasonably request.

All notices to the Parent Company or any Insured Person under any provision of this Policy will be in writing and given by courier, certified mail or fax properly addressed to the appropriate party care of the Company's insurance broker. Notice to Lumley of any Claim or circumstances shall be given to Lumley General Insurance (N.Z.) Limited, PO Box 2426, Auckland, New Zealand or the Company's insurance broker. 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.

5.4 Defence and settlement

It is the duty of the Insureds and not the duty of Lumley to defend any Claim.

The Insureds agree not to settle or offer to settle any Claim, incur any Defence Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claim without Lumley's written consent. Lumley will not be liable for any settlement, Defence Costs, assumed obligation or admission to which it has not consented.

In respect of Claims submitted for cover under this Policy Lumley has the right and will be given the opportunity to effectively associate with, and will be consulted in advance by, the Insureds regarding:

- (a) the selection of appropriate defence lawyers and counsel;
- (b) substantive defence strategies, including without limitation decisions regarding the filing and content of pleadings and interlocutory applications; and
- (c) settlement negotiations.

The Insureds agree to provide Lumley with all information, assistance and cooperation Lumley reasonably requests. Further, the Insureds agree that in the event of a Claim the Insureds will do nothing that may prejudice Lumley's position or its potential or actual rights of recovery. Lumley may make any investigation it deems necessary.

Lumley may settle any Claim for any amount that it deems reasonable with the written consent of each Insured against whom the Claim is made. If the Insured withholds consent to such settlement, Lumley's liability for all Loss on account of such Claim will not exceed the amount for which Lumley could have settled such Claim plus Defence Costs accrued as of the date such settlement was proposed in writing by Lumley to the Insured.

Lumley and the Insureds will not unreasonably withhold any consent referred to in this General Condition.

5.5 Allocation

If in any Claim the Insureds incur Loss jointly with others, including the Company, 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 that 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.

5.6 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.

5.7 Acquisition of Parent Company

If during the Policy Period:

- (a) the Parent Company merges into or consolidates with another organisation; or
- (b) another organisation, or person or group of organisations or persons acting in concert acquires Securities or voting rights that result in ownership or voting control by the other organisation or person of more than 50% of the voting rights of the Parent Company or has the ability to control decisions made by the board of directors of the Parent Company

cover under this Policy continues until termination of the Policy Period as set forth in the Schedule to this Policy but only in respect of Claims for Wrongful Acts taking place prior to such merger, consolidation or acquisition. As of the effective date of such merger, consolidation or acquisition, all premiums paid or due at any time under this Policy are deemed fully earned and non-refundable.

The Parent Company agrees to give written notice of such merger, consolidation or acquisition to Lumley as soon as practicable together with such information as Lumley may request. Upon receipt of such notice and information and at the request of the Parent Company, Lumley will promptly provide the Parent Company with a quotation for a three-year (or such lesser or greater period as may be negotiated with Lumley) extension of cover in respect of Claims for Wrongful Acts taking place prior to such merger, consolidation or acquisition.

Any extension of cover pursuant to such quotation will be conditional upon the Insureds:

- (a) giving to Lumley written notice of their desire to elect such extended cover;
- (b) paying any additional premium required by Lumley, which is deemed fully earned upon inception of such extension of cover; and
- (c) accepting any additional terms and conditions required by Lumley

within 60 days after receipt of such quotation.

Such extension of cover will not increase or reinstate the maximum Limit of Indemnity set forth in the Schedule and the Limit of Indemnity for the extension of cover will be part of and not in addition to the Limit of Indemnity for the Policy Period.

The Insureds are not entitled to elect to extend cover under this General Condition 5.7 if the Insureds have elected to extend cover pursuant to Extension 3.5 (Discovery Period).

5.8 Representations

In granting cover under this Policy Lumley relied upon the statements and representations in the Proposal. The Insureds represent that all such statements and representations are true and are deemed material to the acceptance of the risk or the hazard assumed by Lumley under this Policy. This Policy is issued in reliance upon the truth of the statements and representations made in the Proposal and the Proposal is incorporated into this Policy.

Notwithstanding what is stated above in this General Condition 5.8, any act, error, omission, breach, default or knowledge of any director or officer will be imputed to the Company for the purposes of the operation of this Policy.

5.9 Territory and valuation

All premiums, limits, retentions, Loss, Defence Costs and other amounts under this Policy are expressed and payable in the currency of New Zealand. If judgment is rendered, settlement is denominated or another 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 prevailing exchange rate as of closing on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of Loss is due, respectively.

5.10 Subrogation

In the event of any payment under this Policy Lumley will be subrogated to the extent of such payment to all the Company's and the Insured Person's rights of recovery, including without limitation the Insured Person's rights to indemnification or advancement from the Company. The Company and the Insured Persons will execute all papers required and do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable Lumley to effectively bring suit in the name of the Insureds. Lumley will not, however, exercise any right of subrogation against any Insured Person except if such Insured Person has engaged in any fraudulent act or omission or any wilful violation of any statute or regulation where a judgment or other final adjudication establishes that such Insured Person committed such an act, omission or wilful violation. 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 the uninsured losses (excluding the excess) of Lumley and the Insured respectively. Any balance shall be paid to the Insured in respect of its excess.

5.11 Authorisation clause

By acceptance of this Policy, the Parent Company agrees to act on behalf of the Insureds in respect of:

- (a) the giving and receiving of notice of Claim or termination;
- (b) the payment of premiums and the receiving of any return premiums that may become due under this Policy;
- (c) the agreement to and acceptance of endorsements; and
- (d) the giving or receiving of any notice provided for in this Policy except the giving of notice to apply for the discovery period.

By acceptance of this Policy the Insureds agree that the Parent Company may act on their behalf.

5.12 Increase in limit of indemnity

If the limit of indemnity is increased during the Policy Period, such increased limit of indemnity applies only to any Wrongful Act committed after the date of such increase.

5.13 Alteration and assignment

No change in, modification of or assignment of interest under this Policy will be effective except when made by a written endorsement to this Policy which is signed by an authorised representative of Lumley.

5.14 Policy disputes

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

5.15 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. This indemnity under this clause is payable by Lumley in addition to the Limit of Indemnity.

5.16 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.

5.17 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.