

Directors & Officers Liability

Policy

Lumley, a business division of IAG New Zealand Limited, Lumley Centre, 88 Shortland Street, PO Box 2426, Auckland 1140, New Zealand
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Introduction

In consideration of payment of the premium and in reliance on the statements made in the Proposal (which forms 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: Insuring Clauses

1.1 Directors and Officers Individual Cover

Lumley shall pay on behalf of the Insured Persons all Loss arising from any Wrongful Act provided the Insured Persons are not indemnified by the Company.

1.2 Company Reimbursement Cover

Lumley shall pay on behalf of the Insured Person all Loss arising from Company indemnification to the Insured Persons, as permitted or required by law arising from any Wrongful Act.

Section 2: Definitions

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

2.1 Associated Company

'Associated Company' means any entity in which the Company owns, at the time of the Wrongful Act, (either directly or indirectly) between 20% and 50% of the issued or unissued shares.

2.2 Claim

'Claim' means:

- (a) a demand for compensation, damages or other relief; or
- (b) a formal, administrative, disciplinary or regulatory proceeding in which a complaint, charge or other allegation is made; or
- (c) a criminal proceeding; or
- (d) any civil proceeding or alternative dispute resolution process including but not limited to any arbitration or mediation against any Insured which alleges a Wrongful Act.

2.3 Company

'Company' means the entity named in the schedule and its Subsidiaries.

2.4 Crisis

'Crisis' means any of the following unforeseen and unexpected events:

- (a) The loss of the Company's intellectual property rights previously acquired under law by the Company for a patent, trademark or copyright.
- (b) The loss of a major customer or major contract of the Company.
- (c) Any act committed on the Premises that results in any Company employee or customer suffering:
 - (i) physical injury or death; and/or
 - (ii) emotional trauma from witnessing the physical injury or death of any other person.
- (d) Damage to the Premises or other tangible property belonging to the Company caused by oil spills, crashes, fires, building collapse (other than by earthquake, windstorm or other natural events) and other similar events.
- (e) The recall of any product due to its potential to cause property damage or bodily injury which has been produced, prepared, manufactured or packaged by the Company.

Provided that the Crisis:

- (i) Has, in the reasonable opinion of the chief executive officer of the Company (or the equivalent thereof), the potential to cause imminent

Financial Loss to the Company if not managed; and

(ii) Does not include an event that affects the industry in which the Company operates as opposed to an event that is isolated to the Company.

2.5 Crisis Loss

'Crisis Loss' means any reasonable fees, costs, charges and expenses incurred by an Insured following a Crisis as a result of the Company engaging a public relations firm or consultant, crisis management consultant or law firm in order to minimise the effect of a Crisis and to prevent or limit any adverse or negative publicity in respect of a Claim. This cover applies only for the first 45-day period immediately following the day on which the Crisis first occurs.

2.6 Defence Costs

'Defence Costs' means any reasonable fees, costs, charges, fees and expenses, incurred by or on behalf of an Insured whether as Emergency Costs or with Lumley's prior written consent (which shall not be unreasonably delayed or withheld), after a Claim is made, directly in connection with its defence, investigation, settlement or appeal.

'Defence Costs' include the reasonable fees, costs, charges and expenses incurred by or on behalf of an independent third party engaged by the Company to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence, investigation, settlement or appeal of a Claim.

'Defence Costs' do not include any remuneration or reimbursement of time spent by directors, officers or Employees of the Company.

2.7 Deprivation of Assets Expenses

'Deprivation of Assets Expenses' means the payment of expenses in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights or ownership or real property or personal assets of an Insured Person or creating a charge over real property or personal assets of the Insured Person during the Period of Insurance. The expenses will be limited to:

- (a) housing;
- (b) utilities;
- (c) personal insurances; and
- (d) schooling.

Such expenses will only be payable directly to the service provider and in the event of a personal allowance for such costs having been granted by a court shall only apply where such personal allowance has been exhausted.

Such expenses will be payable after 30 days following the event for a period of up to 12 months.

2.8 Emergency Defence Costs

'Emergency Defence Costs' means Defence Costs incurred in accordance with Extension 3.8 (Emergency Costs).

2.9 Employee

'Employee' means:

- (a) any natural person employed by the Company in the course of the business, and
- (b) whom the Company compensates by way of remuneration, and
- (c) the Company has the right to govern and direct the performance of that person's duties.

Employee does not include consultants, contractors, agents or any director of the Company.

2.10 Employment Related Wrongful Act

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

- (a) personal grievance or wrongful dismissal;
- (b) defamation relating to or arising from a personal grievance or wrongful dismissal;
- (c) harassment (sexual or otherwise) or victimisation;
- (d) wrongful demotion, failure or refusal to employ or promote, unfair discipline or negligent employee evaluation;
- (e) wrongful termination or discharge of employment;
- (f) discrimination, humiliation or breach of privacy

brought by an Employee or prospective Employee in relation to actual or proposed employment.

2.11 Extradition Proceeding

'Extradition Proceeding' means, in respect of the provisions of the Extradition Act 1999 or any of its replacements or amendments:

- (a) a formal request for extradition or a warrant for the arrest of an Insured Person or other proceedings; or
- (b) any associated appeal against the request for extradition or a warrant for the arrest of an Insured Person; or
- (c) the same request or warrant and any associated appeal arising from the equivalent legislation in any other jurisdiction.

2.12 Financial Loss

'Financial Loss' means a significant or substantial decrease of the total consolidated annual revenues of the Company as at the end of the Company's last financial year.

2.13 Indemnity Period

'Indemnity Period' means:

- (a) the Period of Insurance; or

- (b) the first 28 days immediately after the Period of Insurance; or
- (c) the Discovery Period, if applicable.

2.14 Insured(s)

'Insured(s)' means the Insured Persons, however in respect of Insuring Agreement 1.2 (Company Reimbursement Cover) and Extension 3.2 (Company Securities Entity Cover) only the Insured means the Company.

2.15 Insured Person

'Insured Person' means any person who was, is, or during the Period of Insurance becomes:

- (a) a director, alternate director, de facto director or secretary of the Company; or
- (b) a company officer who, though not a director, is concerned in, or takes part in, the management of the Company; or
- (c) Employee of the Company:
 - (i) while acting in a managerial or supervisory capacity for that Company; or
 - (ii) with respect to a Claim alleging an Employment Related Wrongful Act; or
 - (iii) named as a co-defendant with a director or officer of the Company; or
- (d) any person who was, is, or may become a trustee of a superannuation fund or pension plan established for the sole benefit of a Company Employee; or
- (e) any person who by virtue of any law is deemed to be a director of the Company; or
- (f) a contractor who acts as a member of a committee elected or appointed by resolution of the board of directors of the Company to perform specific directorial acts on behalf of the Company.

Provided that the term Insured Person shall not include any externally appointed officers, including but not limited to, auditors, receivers, statutory managers, trustees, liquidators or mortgagees in possession.

2.16 Interrelated Wrongful Acts

'Interrelated Wrongful Acts' means all Wrongful Acts that have as a common nexus any single, or series of related, facts, circumstances, situations, events, transactions or causes.

2.17 Jurisdictional Limits

'Jurisdictional Limits' means the Jurisdictional Limits as specified in the Policy schedule.

2.18 Limit of Indemnity

'Limit of Indemnity' means the Limit of Indemnity specified in the Policy schedule.

2.19 Loss

'Loss' means any amount which the Company or Insured Person becomes legally liable to pay on account of any Claim, including:

- (a) damages awarded or judgments entered against the Company or Insured Person; and
- (b) legal costs and expenses awarded against the Company or Insured Person in connection with a covered award, judgment or settlement; and
- (c) settlements negotiated with Lumley's prior written consent; and
- (d) Crisis Loss; and
- (e) Defence Costs and Emergency Defence Costs.

Loss does not include:

- (a) any amount for which the Company or Insured Person is not legally obligated; or
- (b) taxes, except as covered under Condition 5.9 (GST); or
- (c) fines or penalties imposed by law; or
- (d) the multiple portion of any multiplied damage award; or
- (e) punitive or exemplary damages; or
- (f) any amount which is uninsurable under the laws of the country under which indemnity is to be provided.

2.20 Lumley

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

2.21 Non-Profit Entity

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

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

2.22 Outside Entity

'Outside Entity' means any:

- (a) Non-Profit Entity or Associated Company; or

(b) other entity where Outside Position cover is noted in the Policy by endorsement.

2.23 Outside Position

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

2.24 Period of Insurance

'Period of Insurance' means the Period of Insurance specified in the Policy schedule.

2.25 Policy

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

2.26 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 including but not limited to:

- (a) solid, liquid, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials; or
- (b) 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.

2.27 Premises

'Premises' means the interior portion of any building or property owned or occupied by the Company as a place to conduct its business.

2.28 Proposal

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

2.29 Retroactive Date

'Retroactive Date' means the retroactive date specified in the Policy schedule.

2.30 Securities Claim

'Securities Claim' means a demand for compensation, monetary damages or other relief instituted against the Company alleging a Wrongful Act in connection with the purchase or sale, or the offer to purchase or sell, any security representing an equity interest in or debt of the Company.

2.31 Senior Counsel

'Senior Counsel' means a senior lawyer to be mutually agreed between Lumley and the Insured. In the absence of such agreement, the Senior Counsel shall be selected by the President of the New Zealand Bar Association from a list of three nominations from each of Lumley and the Insured.

2.32 Subsidiary

'Subsidiary' means:

- (a) an entity in which the Company, either directly or indirectly through one or more other entities:
 - (i) controls the composition of the board of directors; and/or
 - (ii) controls more than half of the shareholder voting power; and/or
 - (iii) holds more than 50% of the issued share capital; and/or
- (b) any entity over which the Company exercises effective management control.

2.33 Territorial Limits

'Territorial Limits' means the territorial limits as specified in the Policy schedule.

2.34 Transaction

'Transaction' means:

- (a) the 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 named Company.

2.35 Wrongful Act

'Wrongful Act' means:

In respect of Insuring Clause 1.1 (Directors and Officers Individual Cover):

any actual or alleged error, misstatement, misleading statement, act, omission, negligence, breach of duty, breach of trust, breach of authority or other act committed or attempted by any Insured Person solely in their capacity as a director or officer in the course of performing his or her duties to the Company or in an Outside Position.

In respect of Extension 3.2 (Company Securities Entity Cover):

any actual or alleged error, misstatement, misleading statement, act, omission, negligence, breach of duty, breach of trust, breach of authority or other act committed or attempted by the Company but solely in respect of a Securities Claim.

Section 3: Extensions

The following extensions to the Policy are included automatically provided always that each extension is subject to the terms of this Policy (unless otherwise stated).

3.1 Advancement of Defence Costs

Notwithstanding Exclusion 4.4 (Fraud/Personal Profit) Lumley shall advance to or on behalf of the Insured Defence Costs as they are incurred by or on behalf of the Insured in connection with any Claim made against them, and prior to the disposition of such Claim. Provided that to the extent it is finally established by judgment, other adjudication or any settlement that any such Defence Costs are not covered under this Policy the Insured, severally according to their respective interests, agree to repay Lumley such Defence Costs.

This extension is subject to General Condition 5.1 (Allocation).

3.2 Company Securities Entity Cover

Lumley shall pay any Loss incurred by the Company arising from a Securities Claim for a Wrongful Act, subject to payment of the greater of:

- (a) an excess of \$10,000; or
- (b) the excess stated in the Policy schedule.

The maximum aggregate amount payable under this extension shall be the lesser of \$250,000 or the Limit of Indemnity.

3.3 Compensation for Court Attendance

If an Insured Person is legally required to attend a court or employment tribunal as a witness in connection with a Claim for which the Insured is to be indemnified under the Policy, Lumley shall provide cover in respect of the cost for such attendance to an amount not exceeding \$400 for each day on which attendance is required.

The cover provided under this extension shall be subject to a sub-limit of \$20,000 in the aggregate and shall be part of and not in addition to the Limit of Indemnity.

3.4 Continuous Cover

Notwithstanding Exclusion 4.7 (Known Claims and Circumstances) Lumley shall pay all Loss arising from a Claim subject to the following additional conditions:

- (a) the Company maintained without interruption primary directors and officers liability insurance with Lumley between the date when the notification should have been given and the date this Policy came into effect; and
- (b) there has been no fraudulent non-disclosure or fraudulent misrepresentation to Lumley in respect of the circumstance or Claim; and
- (c) Lumley has total discretion to apply either the terms and conditions of the policy in force at the time the notification should have been given, or the terms and conditions of this Policy; and
- (d) Lumley's liability may be reduced by the amount that fairly represents the extent to which liability for the Claim could have been reduced had the circumstance been reported under the earlier policy.

3.5 Crisis Containment

Lumley shall indemnify the Company for Crisis Loss which the Company incurs by reason of a Crisis which first occurs and is notified to Lumley during the Period of Insurance.

The maximum aggregate amount payable under this extension shall be \$250,000 or the policy limit whichever is the lesser. This amount is part of and not in addition to the Limit of Indemnity.

3.6 Discovery Period

If Lumley cancels this Policy or refuses to offer renewal upon expiry, then the Company has the right, upon payment of 100% of the current annual premium, to extend the expiry date of this Policy for a further period of 12 months following the effective date of such non-renewal, hereafter referred to as the 'Discovery Period', subject to the following additional conditions:

- (a) the Discovery Period applies only to a Wrongful Act allegedly committed prior to the effective date on which the Discovery Period begins; and
- (b) the right to extend the expiry date under this extension shall lapse unless written notice of such election, together with payment of the additional premium due, is received by Lumley within 30 days following the effective date of non-renewal. If the right of extension lapses then cover under this Policy ceases as at the effective date of non-renewal; and
- (c) the limit of indemnity under this extension is part of and not in addition to the Limit of Indemnity; and
- (d) this Policy has not been cancelled or replaced with any other directors and officers or management liability policy; and
- (e) the Discovery Period is non-cancellable, except for non-payment of premium. The Company is not entitled to elect the Discovery Period under this extension if an extension of cover is elected pursuant to General Condition 5.19 (Takeover / Merger).

If the Company cancels this Policy or declines to accept renewal terms, Lumley may at its sole discretion elect to grant a similar Discovery Period.

3.7 Discovery Period for Retired Insured Persons

If the Company does not renew, or replace, this Policy with any other directors and officers or management liability policy or purchase the Discovery Period, then a run-off period of 84 months immediately following the Indemnity Period shall be provided for any Insured Person who retired from the Company before the date of non-renewal. During this period notice may be given to Lumley of any Claim arising from a Wrongful Act committed by an Insured Person prior to the date of non-renewal.

This extension is not available if, at the date of non-renewal:

- (a) A Transaction has occurred.
- (b) The Company is in liquidation, receivership, insolvency, bankruptcy or administration.

3.8 Emergency Costs

If Lumley's written consent cannot reasonably be obtained before Defence Costs or Public Relations Expenses are incurred, Lumley will grant retrospective approval for such costs of up to 10% of the Limit of Indemnity provided that Lumley's consent is obtained within 14 days following the first such costs being incurred.

The cover provided under this extension shall form part of, and not be in addition to, the Limit of Indemnity.

3.9 Employment Practices Liability Cover for Insured Persons

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

3.10 Estates and Legal Representatives / Spousal Liability

Lumley shall pay all Loss arising from a Claim made against the estate, heir, legal representatives or assigns of any deceased, incompetent, insolvent or bankrupt Insured Person.

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

- (a) legal status as a partner 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 partner becomes legally obliged to pay by reason of such Claim shall be treated for the purposes of this Policy as Loss which the Insured Person becomes legally obliged to pay on account of the Claim made against the Insured Person.

Provided always that any estate, heirs, legal representatives, spouse or assigns shall observe and be subject to all the provisions of this Policy.

3.11 Extradition Costs

Lumley shall pay any reasonable fees, costs, charges and expenses incurred with Lumley's prior written consent by or on behalf of an Insured Person in challenging, resisting and defending an Extradition Proceeding, including any appeal, brought against such Insured Person. However, fees, costs, charges and expenses under this extension do not include any remuneration or reimbursement of time spent by directors, officers or Employees of the Company.

This extension does not require an Insured to commit a Wrongful Act.

The maximum aggregate amount payable under this extension shall be the lesser of \$1,000,000 or the Limit of Indemnity.

3.12 Family/Personal Expenses

This Policy includes payment of Deprivation of Assets Expenses arising from a Claim or related investigation first made during the Period of Insurance.

The maximum amount payable under this extension shall be the lesser of \$200,000 per Insured Person and \$1,000,000 in the aggregate or the Limit of Indemnity.

3.13 New Subsidiary

The definition of Subsidiary will extend to include any entity which is acquired or created during the Period of Insurance, provided that:

- (a) the total gross assets of the new entity, hereafter referred to as 'New Subsidiary', do not exceed 20% of the total gross consolidated assets of the Company; and
- (b) if the New Subsidiary is located in the USA or Canada the revenue does not exceed NZ\$250m.
- (c) the New Subsidiary has no securities traded or listed in the USA or Canada; and
- (d) the New Subsidiary's business activities are not materially different to the activities conducted by the Company in the Period of Insurance.

The cover provided under this extension shall only apply to a Wrongful Act occurring after the date of creation or acquisition of the New Subsidiary.

3.14 Occupational Health & Safety

Notwithstanding Exclusion 4.2 (Bodily Injury / Property Damage), Lumley will pay Defence Costs in respect of any Claim, or Defence Costs relating to an official investigation or inquiry alleging a breach under New Zealand's Health and Safety in Employment Act 1992 or any amendment or re-enactment thereof, or any other New Zealand or Australian legislation governing health and safety in the workplace.

The maximum aggregate amount payable under this extension shall be the lesser of \$1,000,000 or the Limit of Indemnity.

3.15 Official Investigations and Inquiries

Lumley shall pay Defence Costs arising out of:

- (a) any request for information to an Insured Person by any regulator, government body or authority, governmental or administrative agency or self-regulatory body recognised as at law.
- (b) any legally compellable attendance by an Insured Person at any official investigation, hearing, examination or inquiry in relation to the affairs of the Company, by virtue of the Insured Person's position with the Company, where such official investigation, hearing, examination or inquiry may lead to a Claim.

Provided that:

- (i) the actual or notice of intended investigation, hearing, examination or inquiry is first notified to the Insured Person, and to Lumley, during the Period of Insurance; and
- (ii) the Insured Person shall refund Defence Costs advanced by Lumley to the extent that Lumley is satisfied that the Insured Person was not entitled to such Defence Costs, unless Lumley agrees in writing to waive any such refund.

(iii) cover under (a) and (b) above shall only apply to any investigation, hearing, examination or inquiry brought within the Jurisdictional Limits or Territorial Limits of New Zealand or Australia.

For the purposes of this extension, Claim also includes an official investigation, hearing, examination or inquiry where there is no Wrongful Act alleged against the Insured Person.

3.16 Outside Positions Liability

Lumley shall pay on behalf of any Insured Person Loss arising from a Claim arising out of any Wrongful Act committed whilst serving in an Outside Position.

Any cover provided in this extension:

- (a) is subject to service in any Outside Position being with the knowledge and consent of the Company; and
- (b) shall be specifically in excess of any insurance in force in respect of the Outside Position and is only provided to such Insured Person by reason of serving in such Outside Position; and
- (c) will not extend to the entity to which the Outside Position applies or to any of its other directors, officers or employees who are not also Insured Persons; and
- (d) shall not apply to any Claim made against any Insured Person by, on behalf of, or for the benefit of the entity to which the Outside Position applies or any of its directors or officers, other than a Claim that arises from an Employment Related Wrongful Act; and
- (e) shall not apply to a Claim brought by or on behalf of any past or present shareholder who had or has direct or indirect control or ownership of more than 15% of the shares or rights of the entity to which the Outside Position applies; and
- (f) shall not apply to any Claim that is a derivative action brought or maintained on behalf the entity to which the Outside Position applies and is brought or maintained with the intervention, active assistance or active participation (unless required by law) of such entity or its director, officer or trustee.

3.17 Pecuniary Penalties

Notwithstanding Definition 2.19 (Loss) Lumley shall pay any amount which any Insured Person is legally obliged to pay by virtue of any applicable law in the New Zealand or Australia jurisdictions as a fine or penalty, provided that Lumley is not legally prohibited from indemnifying the Insured Person for such fine or penalty.

The maximum aggregate amount payable under this extension shall be the lesser of \$1,000,000 or the Limit of Indemnity.

3.18 Pollution Legal Defence Costs

Notwithstanding Exclusion 4.9 (Pollution) Lumley shall pay on behalf of any Insured Person any Defence Costs incurred in defending any Claim resulting in Loss arising out of the discharge, release or escape of Pollutants.

The maximum aggregate amount payable under this extension shall be the lesser of \$1,000,000 or the Limit of Indemnity.

3.19 Pollution Loss

Notwithstanding Exclusion 4.9 (Pollution) Lumley shall indemnify the Insured Person for any Claim brought directly or indirectly or derivatively by any shareholder of the Company alleging Loss to the Company or its shareholders in connection with any Wrongful Act resulting in 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.

The maximum aggregate amount payable under this extension shall be the lesser of \$1,000,000 or the Limit of Indemnity.

3.20 Preservation of Indemnity

In the event and to the extent that the Company is permitted or required to indemnify an Insured Person in respect of a Claim but for whatever reason fails or refuses to do so then Lumley shall pay on behalf of the Insured Person any Loss arising from a Claim.

The Excess applicable to Insuring Clause 1.2 (Company Reimbursement Cover) shall apply to such Claims unless the Company is placed in liquidation (other than voluntary liquidation) in which case the Excess applicable to Insuring Clause 1.1 (Directors and Officers Individual Cover) shall apply.

3.21 Public Relations Expenses

Lumley shall pay the reasonable fees, costs, charges and expenses of a public relations consultant retained by or on behalf of an Insured Person to mitigate the adverse effect on that Insured Person's reputation from a Claim first made during the Period of Insurance for any Wrongful Act. The cover under this extension is limited to publicising findings made in a final judicial disposition of that Claim in the Company's favour.

The maximum aggregate amount payable under this extension shall be the lesser of \$250,000 or the Limit of Indemnity.

3.22 Reinstatement of Limit Upon a Recovery

Any amounts which Lumley recover (net of Lumley's reasonable costs and expenses associated with such recovery) following a paid Claim or other Loss covered by this Policy shall reduce the erosion of the Limit of Indemnity to the same extent.

3.23 Run-off Cover in Respect of Subsidiaries

In the event of the sale, dissolution or disposal of a Subsidiary during the Period of Insurance, Lumley will pay Loss for any Claim relating to that Subsidiary but only in respect of a Wrongful Act occurring prior to the sale, dissolution or disposal of the Subsidiary.

3.24 Superannuation Trustees

Lumley shall pay all Loss arising from any Claim made against the Insured Person in their individual or collective capacities as trustees of the Company's own superannuation or pension funds. Such cover shall apply to any Claim by any member of the superannuation or pension funds notwithstanding that they may also be an Insured Person.

Section 4: Exclusions:

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

4.1 Asbestos

for any actual or alleged liability whatsoever in respect of, directly or indirectly arising out of, resulting from or in consequence of asbestos.

4.2 Bodily Injury / Property Damage

for bodily or mental injury, emotional distress, illness, disease or death of any person (other than in respect of an Employment Related Wrongful Act) or for damage to or destruction of any tangible property, including loss of use.

4.3 Consensual Claim

which is brought or maintained with the intervention, active assistance or active participation (unless required by law) of any Insured Person against whom the Claim is brought.

4.4 Fraud / Personal Profit

directly or indirectly arising from or out of:

- (a) the improper use of position or information to gain personal profit or advantage or cause detriment to the Company; or
- (b) any dishonest, fraudulent, criminal, malicious or deliberate act or omission; or
- (c) any wilful violation or breach of any statute or regulation by an Insured Person; or
- (d) the Insured Person gaining any personal profit, remuneration or financial advantage to which they were not legally entitled.

The knowledge and/or conduct of an Insured Person will not be imputed to any other Insured Person when determining the application of this exclusion.

Provided that this exclusion shall only apply if there is a written admission, settlement, judgment or other final adjudication which establishes that such conduct did in fact occur.

4.5 Insured vs Insured

which is brought by or on behalf of the Insured Person or Company; however, this exclusion shall not apply to:

- (i) any Claim against any Insured Person:
 - (a) pursued as a shareholder derivative action brought or maintained on behalf of a Company or Outside Entity; and that has not been solicited or instigated with the voluntary (rather than legally required) intervention, assistance or active participation of the Company or any Insured Person or any Outside Entity director;
 - (b) for any Employment Related Wrongful Act brought or maintained by any Insured Person;
 - (c) brought by an Insured Person for contribution or indemnity, if the Claim directly results from another Claim otherwise covered under this Policy;
 - (d) brought by any past director, officer or Employee of a Company or Outside Entity; or
 - (e) brought by an insolvency administrator, receiver, trustee or liquidator of any Company or Outside Entity either directly or derivatively on behalf of a Company or Outside Entity.
- (ii) Defence Costs.

4.6 Jurisdiction

directly or indirectly arising from or out of any legal action or litigation:

- (a) first brought in a court outside the Jurisdictional Limits; or
- (b) brought in a court within the Jurisdictional Limits to enforce a judgment handed down in a court outside the Jurisdictional Limits whether by way of a reciprocal agreement or otherwise; or
- (c) in which the proper law to be applied to the issue or any of them in that action is that of a country outside the Jurisdictional Limits.

4.7 Known Claims and Circumstances

- (a) made against, threatened against or intimated to the Insured Person prior to the commencement of the Period of Insurance; or
- (b) notified under any previous policy of insurance; or
- (c) arising out of circumstances of which:
 - (i) an Insured was aware, or ought reasonably to have been aware, prior to commencement of the Period of Insurance; and
 - (ii) a reasonable person in the position of the Insured Person would have considered may give rise to a claim against them.

4.8 Major Shareholder Exclusion

brought by or on behalf of any shareholder, directly or beneficially, who holds or controls 15% or more of the voting shares or rights or issued capital of the Company.

4.9 Pollution

directly or indirectly arising from or out of:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, dispersal, migration or disposal of Pollutants into or upon land, property, water or the atmosphere, whether intentional or accidental; or
- (b) any direction or request that the Company or the Insured Persons test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any Pollutants, or any voluntary decision to do so.

4.10 Professional Services

directly or indirectly arising from or out of a breach of professional duty owed in a capacity other than as specified in Definition 2.15 (Insured Person (a), (b), (d), and (e)).

4.11 Prospectus / Capital Raising Exclusion

directly or indirectly arising from or out of:

- (a) any public 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
- (b) the issue of any prospectus, memorandum of information or similar document or the making of any written or oral representation, in connection with (a) above.

4.12 Retroactive date

directly or indirectly arising from or out of any Wrongful Act which occurred prior to the Retroactive Date set forth in the schedule.

4.13 Territory

directly or indirectly arising from or out of any Wrongful Act which occurred outside the Territorial Limits stated in the schedule.

4.14 War / Nuclear / Terrorism

directly or indirectly arising from or out of:

- (a) 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 requisition or destruction 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.

For the purposes of this exclusion, terrorism means an act, 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 with the intention or effect to influence any government or to put the public or any section of the public in fear.

Section 5: General Conditions and Limitations

5.1 Allocation

If in any Claim the Insured incurs a Loss jointly with others, or incurs Loss which is partly covered by this Policy and partly not covered by this Policy then the Company and the Insured Person and Lumley shall 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 shall advance Defence Costs allocated to the covered Loss. If there is no agreement on allocation then Lumley and the Insured agree to refer the dispute to a Senior Counsel to determine the basis for allocation which shall be final and binding on all parties. Lumley shall pay, in addition to the Limit of Indemnity, the Senior Counsel's expenses in providing such determination.

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

5.2 Alteration and Assignment

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

5.3 Authorisation Clause

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

- (a) the giving and receiving of any notice of Claim or cancellation;
- (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 pursuant to Extensions 3.6 (Discovery Period) or 3.7 (Discovery Period for Retired Insured Persons).

By acceptance of this Policy the Insured Persons agree that Lumley may act on their behalf in respect of (a) – (d) above.

5.4 Breach of Condition

Where an Insured Person's breach of any condition of this Policy has resulted in prejudice to the handling and/or settlement of any Claim or 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.

For the purposes of this clause any statements made, particulars provided or acts or omissions by any Insured, shall not be imputed to any other Insured.

5.5 Cancellation

- (a) The Company may cancel this Policy at any time by notifying Lumley in writing.
- (b) Lumley may cancel this Policy at any time by giving 30 days' notice in writing to the Company of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the Company at the address last notified to Lumley. Proof of mailing is sufficient proof of notification.
- (c) Upon cancellation by Lumley or the Company, the Company is entitled to a pro rata refund of the last annual premium based on Lumley's cancellation rates.

5.6 Claims Co-operation

The Insured shall take all reasonable steps to avoid or diminish any Loss in respect of any claim and shall, at its own cost, immediately disclose all information and provide assistance to Lumley in order to investigate and defend the Claim or determine the liability under the Policy. An unreasonable failure to comply with this obligation may entitle Lumley to deny liability for the Claim in whole or in part.

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

The Insured waives all rights to legal professional privilege between themselves and any solicitor retained by Lumley to act on the Insured's behalf in respect to any Claim. The Insured will allow the solicitor to disclose to Lumley and its reinsurers any information obtained in the course of his/her duties.

5.7 Defence and Settlement

The Company and any Insured Person shall not admit liability for or settle any Claim, make any admission, offer or payment, incur any Defence Costs or otherwise assume any obligation with respect to any Claim without Lumley's written consent. Lumley shall not be liable for any settlement, Defence Costs, admission, offer, payment or assumed obligation to which it has not consented.

Lumley shall be entitled, but not obliged, to assume and conduct in the name of the Insured Person the defence or settlement of any Claim and Lumley shall have full discretion in managing any proceedings or in negotiating the resolution of any Claim.

Lumley shall be entitled to appoint legal counsel to represent the Insured Person in defence of any Claim.

The Company or Insured Person shall provide Lumley with all information, assistance and cooperation Lumley reasonably requests. Further, in the event of a Claim the Company and any Insured Person will not prejudice Lumley's position or its potential or actual rights of recovery. Lumley may make any investigation it reasonably deems necessary.

5.8 Excess

Except as otherwise provided in this general condition, Lumley's liability in respect of each Claim applies only to that part of Loss, including Defence Costs, which is over and above of the applicable Excess stated in the schedule. Such Excess shall be borne by the Company uninsured and at its own risk.

No Excess applies to Loss covered by Insuring Clause 1.1 (Directors and Officers Individual Cover). If Loss arising from a single Claim is covered in part under Insuring Clause 1.1 (Directors and Officers Individual Cover) and in part under Insuring Clause 1.2 (Company Reimbursement Cover), the applicable Excess set forth in the Policy schedule applies to that part of the Loss covered by Insuring Clause 1.2, subject to Extension 3.20 (Preservation of Indemnity). The largest applicable Excess in the Policy schedule shall be the maximum Excess applicable to all Loss on account of such Claim.

5.9 GST

The Limit of Indemnity is inclusive of GST, however where the Company or Insured Person 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 or the equivalent legislation in any jurisdiction to which this Policy applies) upon receiving any indemnity payment under this Policy, Lumley shall indemnify the Company or Insured Person for the costs of that tax. Lumley will pay any tax under this condition in addition to the Limit of Indemnity.

5.10 Inadvertent Non-Disclosure

Lumley shall waive its rights to avoid the Policy and confirm indemnity to any individual Insured Person provided always that:

- (a) the Insured Person can establish to Lumley's satisfaction that such non-disclosure or misrepresentation was innocent and free from any dishonesty or intent to deceive; and
- (b) Lumley has continuously been the primary insurer of the Insured Person under a directors and officers insurance policy between the date when such disclosure or representation should have been given and the date when it was in fact given; and
- (c) the premium and terms of this Policy shall be adjusted at Lumley's discretion to reflect those which would have applied had such disclosure or representation been made at the correct time; and
- (d) Lumley's liability to indemnify the Insured shall be no greater than the indemnity for which Lumley would have been liable had the proper disclosure or representation been made at the correct time.

5.11 Insured Persons Right to Contest Claims

If the Insured, against whom the Claim is made, refuses to consent to any settlement which Lumley recommends and shall elect to contest or continue legal proceedings, Lumley's liability shall not exceed the amount for which the Claim or circumstance could have been settled, less any Excess, plus Defence Costs incurred up to the date of such refusal.

5.12 Legal Counsel

Neither Lumley nor any Insured Person shall require each other to contest any legal proceedings in respect to any Claim against the Insured Person, unless Senior Counsel shall recommend that such proceedings should be contested.

In formulating such recommendation, the Senior Counsel shall take into account the economics of the matter, the damages and costs that are likely to be recovered by the plaintiff, the likely Defence Costs and the prospects of the Insured Person successfully defending the action. The cost of Senior Counsel's opinion shall, for the purposes of this Policy, be regarded as part of the Defence Costs and therefore form part of the Limit of Indemnity.

In the event that the Senior Counsel recommends that, having regard to all relevant circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within limits which, in the Senior Counsel's opinion, are reasonable, then the Insured Person shall not object to any such settlement and shall cooperate with Lumley to effect such settlement in accordance with this Policy, subject to Condition 5.7 (Defence and Settlement).

5.13 Limit of Liability

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

Lumley's maximum liability for Loss on account of all Claims first made during the same Period of Insurance shall be the total Limit of Indemnity for the Period of Insurance.

Defence Costs are part of and not in addition to the total Limit of Indemnity.

For the purposes of this general condition, the limit of indemnity for the Discovery Period (if applicable) shall be part of and not in addition to the Limit of Indemnity for the Period of Insurance. The purchase of the Discovery Period does not increase or reinstate the Limit of Indemnity. The Limit of Indemnity is Lumley's maximum liability for all Loss on account of all Claims first made during such Period of Insurance and Discovery Period combined.

5.14 Notice

The Company or any Insured Persons shall give Lumley written notice of any Claim as soon as practicable, but in any event no later than 28 days after expiry of the Period of Insurance or during the Discovery Period (if applicable).

If during the Period of Insurance or during the Discovery Period (if applicable) the Company or Insured Person become aware of circumstances which may give rise to a Claim taking place during the Period of Insurance and give written notice of such circumstances and the other information referenced below to Lumley during the Period of Insurance or Discovery Period (if applicable), then any Claims subsequently arising from such circumstances are considered to have been made during the Period of Insurance or the Discovery Period in which the circumstances were first reported to Lumley.

The Company and any Insured Persons shall:

- (a) include within any notice of Claim or circumstance a description of the Claim or circumstances, the nature of the alleged Wrongful Act (if applicable), the nature of the alleged or potential loss, the names of actual or potential claimants and Insured Persons involved, and the manner in which the Company or Insured Person 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 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,
PO Box 2426,
Level 21, 88 Shortland Street, Auckland, New Zealand
liabilityc@lumley.co.nz

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

5.15 Other Insurance

Upon giving notice of any Claim the Company and any Insured Person agrees to provide to Lumley written details of any other insurance that may cover or partially cover that Claim. In the event that the Company or Insured Person 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. However, this shall not apply if the other insurance or indemnity is a specific excess layer cover over this Policy.

5.16 Policy Disputes

This Policy shall be governed by the laws of New Zealand whose courts shall have sole and exclusive jurisdiction in any dispute which may arise relating to Policy interpretation.

5.17 Proposal Form Representation and Severability

The Proposal will be construed as a separate proposal by each Insured. In respect of statements made and particulars provided in the Proposal, no such statements or particulars, and no information possessed by any Insured, shall be imputed to any other Insured to determine whether cover is available for any Claim against the other Insured.

5.18 Subrogation

In the event of Lumley making any payment under this Policy, it shall be subrogated to the extent of such payment to all the Insured's rights of recovery, including but not limited to the Insured Person's rights to indemnification or advancement from the Company. The Company and the Insured Person shall execute all documents required and do everything reasonably necessary to secure and preserve such rights, including the execution of such documents reasonably necessary to enable Lumley to effectively bring suit in the name of the Insured or Insured Person.

Lumley shall 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, settlement 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.

5.19 Takeover/Merger

If during the Period of Insurance a Transaction occurs, then cover under this Policy is amended to apply only in respect of Wrongful Acts committed prior to the effective date of the Transaction.

The Insured agrees to give Lumley written notice of the Transaction as soon as practicable but no later than 30 days after the effective date of the Transaction.

5.20 Valuation/Currency

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 shall 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.