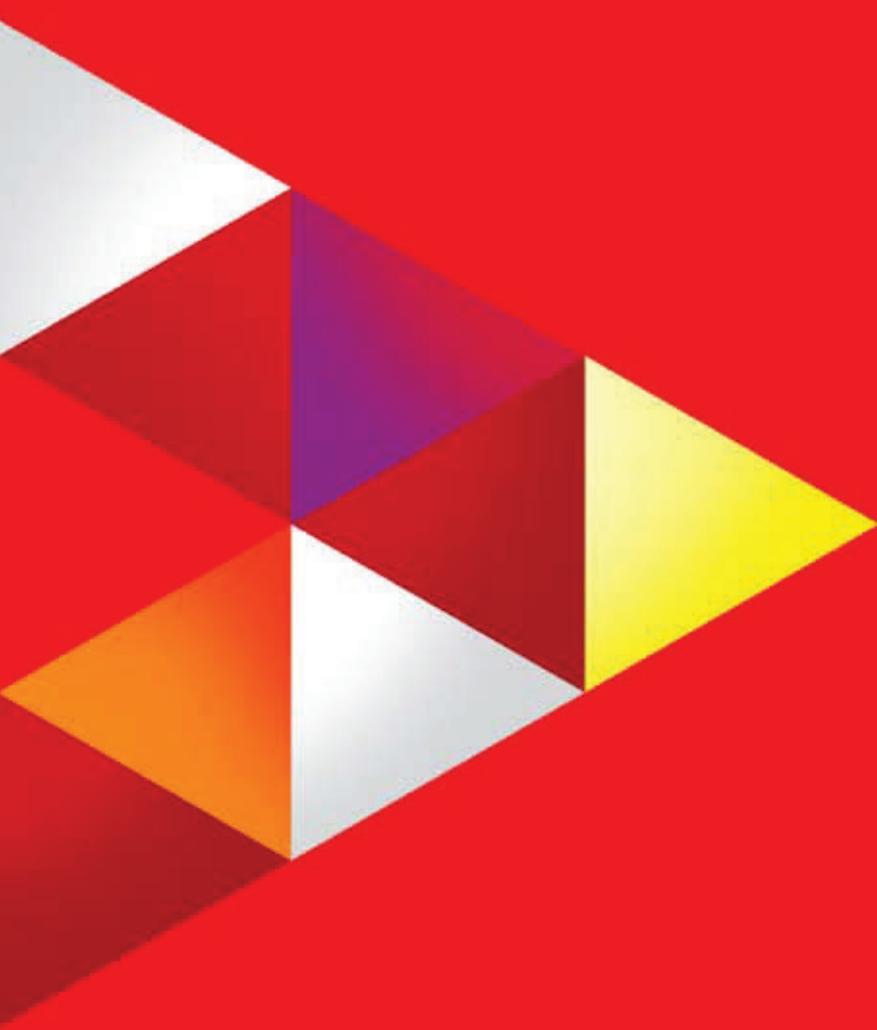


Management Shield

Combined Liability Policies



Contents

Broadform liability policy	1
Statutory liability policy	12
Employers liability policy	19
Employment disputes liability policy	25
Directors and officers liability policy	30
Fidelity liability policy	40
Internet liability policy	46
Legal prosecution of defence policy	53

Broadform Liability

Policy

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

Introduction

All sections of the Policy wording and the Schedule must be read as if they are one and the same document.
Headings are only used to help you read this Policy and do not form part of this Policy.

Section 1 – Definitions

The following defined words and expressions are assigned a particular meaning. That meaning will apply everywhere the word or expression appears and it applies to the plural and derivatives of the word or expressions.

1.1 Aircraft

“Aircraft” means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

1.2 Costs and Expenses

“Costs and Expenses” means legal costs and disbursements, witnesses’ costs, assessors’ or adjusters’ costs or experts’ costs that relate directly to the investigation, defence, compromise or handling of any claim, incurred by Lumley, or by the Insured with Lumley’s prior written consent.

“Costs and Expenses” does not include any costs of the Insured’s time including for the avoidance of doubt, any time spent in assisting Lumley or its appointed solicitors with the conduct of any claim.

1.3 Drone

“Drone” means a remotely piloted aircraft system (RPAS), Unmanned Aerial Vehicle (UAV), Unmanned Aircraft System (UAS), Remotely Piloted Vehicle (RPV), or model aircraft, and that:

- (a) is not used to carry or deliver cargo or equipment of any nature, other than carrying camera, GPS, or audio equipment; and
- (b) does not exceed a gross take-off weight of 5kg, and
- (c) is operated by the Insured from a ground based controller, and
- (d) is not powered by an internal combustion engine.

1.4 Hot Work

“Hot Work” means any work involving:

- (a) the application of heat, a naked flame or an open heat source, or work that produces sparks;
- (b) the use of gas, welding, arc welding, oxyacetylene welding equipment including cutting with such equipment;
- (c) cutting involving the use of rotary disc or grinding equipment;
- (d) soldering, brazing, use of heat guns.

1.5 Insured

“Insured” means:

- (a) the named Insured in the Schedule;
- (b) any subsidiary company (including a subsidiary thereof) of the named Insured provided that it is incorporated in New Zealand;
- (c) any other organisation:
 - (i) where the named Insured exercises more than 50% management control; and
 - (ii) over which the named Insured is exercising active management; and
 - (iii) whose place of incorporation is in New Zealand;
- (d) any director, executive officer, employee or partner of an entity referred to in (a), (b) or (c) but only whilst the person is acting within the scope of their duties in such capacity;
- (e) any principal who is a party to a contract with an Insured referred to in (a), (b) or (c) above, but only in respect of the principal’s liability arising as a result of that Insured entity’s acts or omissions under the contract but limited to the coverage provided by this Policy;
- (f) any office bearer or member of a social or sporting club, welfare organisation or an employee superannuation fund formed with the consent of an entity referred to in (a), (b) or (c), but only in respect of claims arising from duties connected with activities of such club or organisation;
- (g) contractors or sub-contractors but only while they are engaged by, and working in New Zealand for an entity referred to in (a), (b) or (c) above, provided that they are not otherwise insured. Policy Condition 6.4 (Cross Liability) does not apply in respect of such contractors or sub-contractors.

1.6 Insured's Business

"Insured's Business" means the business and undertakings of the Insured, as stated in the Schedule, including any change in the activities undertaken by the Insured provided that the Insured has given prior written notice of such activities to Lumley and has received confirmation of coverage of those activities from Lumley.

1.7 Insured's Products

"Insured's Products" means anything (after it has ceased to be in the possession of or under the control of the Insured) that is manufactured, constructed, erected, assembled, installed, applied, repaired, serviced, grown, treated, sold, supplied or distributed by the Insured, including any packaging or container (other than a Vehicle).

1.8 Limit of Indemnity

"Limit of Indemnity" means the amount stated in the Schedule.

1.9 Lumley

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

1.10 Non-Territorial Country

"Non-Territorial Country" means any country other than the Territorial Limits specified in the Schedule.

1.11 Occurrence

"Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions or liability, which results in Personal Injury or Property Damage that is neither expected nor intended by the Insured.

1.12 Personal Injury

"Personal Injury" means:

- (a) accidental death or accidental bodily injury including sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful entry or wrongful eviction and wrongful detention;
- (c) invasion of rights of privacy;
- (d) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

1.13 Policy

"Policy" means the following:

- (a) the Insured's application for insurance and any oral or written supporting statements or documents supplied; and
- (b) this policy wording (including any amending endorsements); and
- (c) the Schedule.

1.14 Property Damage

"Property Damage" means:

- (a) accidental physical damage to, or destruction of, or accidental physical loss of, tangible property including the resultant loss of use;
- (b) accidental loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use arises out of physical damage to, or destruction or loss of other tangible property.

1.15 Schedule

"Schedule" means the most recent Policy Schedule issued by Lumley.

1.16 Vehicle

"Vehicle" means any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine and includes its accessories, tools, specialised equipment and spare parts.

1.17 Watercraft

"Watercraft" means any vessel, hovercraft, craft or thing made or intended to float on or in, or travel on or through the water.

Section 2 – Coverage

In consideration of payment of the premium and subject to the terms of this Policy, Lumley agrees as follows:

2.1 General and Product Liability

Lumley will indemnify the Insured for legal liability for Personal Injury or Property Damage that:

- (a) is caused by an Occurrence in connection with the Insured's Business; and
- (b) happens during the period of insurance.

2.2 Limit of Indemnity

- (a) The most that Lumley will pay for any claim or any series of claims arising out of an Occurrence shall be:
 - (i) the Limit of Indemnity; or
 - (ii) where one or more Extensions apply, the sub-limit for the Extension/s;whichever is lesser.

- (b) The most that Lumley will pay during any one period of insurance for all claims arising out of the Insured's Products shall not exceed the Goods/Products Limit of Indemnity stated in the Schedule.

2.3 Costs and Expenses

- (a) Lumley will pay Costs and Expenses necessarily and reasonably incurred to defend any civil legal action that if proven, would be covered under this Policy. Payments under this Clause are payable in addition to payments under Clause 2.2 (Limit of Indemnity).
- (b) Provided that:
- (i) Lumley may investigate, negotiate and settle any claim or suit against the Insured; and
 - (ii) if Lumley has paid the Limit of Indemnity in respect of any claim, judgement or settlement, or series of claims arising from an Occurrence, Lumley's liability in respect of any further Costs and Expenses shall cease; and
 - (iii) if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, the liability of Lumley to pay Costs and Expenses shall be limited to such proportion of the Costs and Expenses as the Limit of Indemnity bears to the amount paid to dispose of the claim.
- (c) In respect of all claims and Occurrences that happen during the period of insurance that result in Personal Injury or Property Damage in the United States of America or Canada, (including those territories to which the legal jurisdiction of the United States of America or Canada applies), the most that Lumley will pay for liability and Costs and Expenses is the Limit of Indemnity. For the avoidance of doubt, cover for Costs and Expenses for such claims and Occurrences is included within the Limit of Indemnity and not in addition to it.

2.4 Excess

The excess stated in the Schedule applies for each Occurrence, unless a different amount is specified in the Schedule as applying for an Automatic or Optional Coverage Clause.

Section 3 – Automatic Coverage Clauses

The following Coverage Clauses are included automatically and are subject to the Policy terms, unless otherwise stated. Some clauses have sub-limits and excesses; these are stated in the Schedule. All sub-limits are included in, and are not in addition to, the Limit of Indemnity.

3.1 Advertising Liability

- (a) Lumley will indemnify the Insured in respect of Advertising Liability that happens during the period of insurance caused by an Event in connection with the Insured's Business.
- (b) for the purposes of this Coverage Clause, "Advertising Liability" means legal liability for:
- (i) defamation;
 - (ii) infringement of copyright or passing off of a title or slogan;
 - (iii) unfair competition or idea, concept or design misappropriation, contrary to an implied contract;
 - (iv) invasion of privacy;
- in connection with an advertisement, publicity, article, broadcast, telecast or communication to the public made in connection with the advertising activities of the Insured.
- (c) for the purpose of this Automatic Coverage only, "Event" means: an event, including continuous or repeated exposure to substantially the same general conditions or liability, which results in Advertising Liability that is neither expected nor intended by the Insured.
- (d) Provided that there is no cover under this Coverage Clause for:
- (i) breaches undertaken at the direction of the Insured with the knowledge that it was illegal or false;
 - (ii) breach of contract, other than misappropriation of an idea, concept or design contrary to an implied contract;
 - (iii) incorrect description of the Insured's Products, goods or services;
 - (iv) a mistake in the advertised price of the Insured's Products, goods or services;
 - (v) an alleged failure of the Insured's Products, goods or services to conform with advertised performance, quality, fitness or durability;
 - (vi) any Insured where the Insured's Business includes advertising, broadcasting, publishing or telecasting.
- (e) The most Lumley will pay under this Coverage Clause for Advertising Liability that happens during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.
- (f) Exclusion 5.6 (Defamation) does not apply to this Coverage Clause.

3.2 Business Advice or Service

- (a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage arising out of:
- (i) advice, service, errors or omissions by the Insured in connection with the Insured's Business, provided that no payment is charged for such advice or service;
 - (ii) the rendering of or failure to render professional medical advice by a person engaged or employed by the Insured to provide first aid and other medical services at the Insured's premises.
- (b) Exclusion 5.4 (Business Advice/Error or Omission) does not apply to this Coverage Clause.

3.3 Business Travel to a Non-Territorial Country

- (a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage occurring in any Non-Territorial Country during the period of insurance in connection with the directors, executives or salespersons of the Insured travelling to or in the Non-Territorial Country in the course of the Insured's Business, provided that they are temporarily visiting and not normally resident in the Non-Territorial Country.
- (b) Provided that:
 - (i) the Insured does not have a place of business in that Non-Territorial Country and is not represented by any parent or subsidiary company or joint venture in that Non-Territorial Country; and
 - (ii) any work performed in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement of any product or property is excluded; and
 - (iii) the ownership, possession, control, maintenance or use of any Vehicle or Watercraft is excluded.
- (c) The most that Lumley will pay under this Coverage Clause in respect of Personal Injury or Property Damage that happens during the period of insurance in the United States of America or Canada, (including those territories to which the legal jurisdiction of the United States of America or Canada applies) is the Limit of Indemnity specified in the Schedule. Notwithstanding Clause 2.3 (Costs and Expenses), cover for Costs and Expenses is included within the Limit of Indemnity and not in addition to it.
- (d) Exclusions 5.13 (Legal Jurisdiction) and 5.22 (Territorial Limits) do not apply to this Coverage Clause.

3.4 Care, Custody or Control

- (a) Lumley will indemnify the Insured for liability for Property Damage that happens during the period of insurance to property, including employees' property, while the property is in the care, custody or control of the Insured in connection with the Insured's Business.
- (b) The most Lumley will pay under this Coverage Clause for Property Damage that happens during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.
- (c) Exclusion 5.19 (b) (Property in your Care, Custody or Control) does not apply to this Coverage Clause.

3.5 Drones

- (a) Lumley will indemnify the Insured for liability for Personal Injury or Property Damage that happens in New Zealand during the period of insurance arising from the use or operation of a Drone by or on behalf of the Insured in connection with the Insured's Business.
- (b) Provided that the Insured:
 - (i) does not hold, and is not required to hold, a CAA Part 102 unmanned aerial operations certificate; and
 - (ii) complies with all Civil Aviation Authority rules and regulations regarding the use of the Drone; and
 - (iii) complies with all central or local government laws or bylaws regarding the use of the Drone.
- (c) The most Lumley will pay under this Coverage Clause for Personal Injury or Property Damage that happens during the period of insurance shall not exceed the sub-limit specified in the Schedule, and the excess specified in the Schedule for this Coverage Clause shall apply.
- (d) Exclusion 5.1(a) (Aircraft) does not apply to this Coverage Clause.

3.6 Goods Lifted or Carried by Cranes

- (a) Lumley will indemnify the Insured in respect of liability for Property Damage that happens during the period of insurance, to property being lifted, lowered or carried by a crane operated by the Insured in connection with the Insured's Business.
Provided that there is no cover under this Coverage Clause for:
 - (i) Property being carried under a contract of carriage;
 - (ii) Property that is otherwise insured;
 - (iii) Property or goods being lifted by dual or multi-lifts. For the purpose of this Coverage Clause a dual lift is where two cranes are used for any one lift and multi-lifts are where more than two cranes are used for any one lift.
- (b) The most Lumley will pay under this Coverage Clause for Personal Injury or Property Damage that happens during the period of insurance shall not exceed the sub-limit specified in the Schedule, and the excess specified in the Schedule for this Coverage Clause shall apply.
- (c) Exclusions 5.8 (Faulty Workmanship), 5.19 (b) (Property in your Care, Custody or Control) and 5.25 (a) (Vehicles) do not apply to this Coverage Clause.

3.7 Hot Work Away From Own Premises

- (a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage that happens during the period of insurance arising from Hot Work carried out by the Insured in connection with the Insured's Business, away from the Insured's own premises.
- (b) Provided that:
 - (i) The area of the Hot Work will be cleared of combustible material for a safe distance from or beneath the area of Hot Work. A safe distance will be not less than ten metres from where the Hot Work is being carried out. Where such distance is impracticable, combustible material will be covered with fireproof blankets or similar protective equipment. Combustible parts of the premises will be similarly protected; and
 - (ii) hose reels or fire extinguishers of a type and capacity suitable for the combustible material and the premises will be kept adjacent to the area of Hot Work and available for immediate use; and
 - (iii) equipment will be lit or switched on for as short a time as possible before use and extinguished immediately after use; and
 - (iv) lighted or heated Hot Work equipment will not be left unattended; and

- (v) a thorough examination for any signs of combustion will be made around the area of Hot Work immediately after completing the Hot Work and then an hour after the termination of each period of Hot Work; and
- (vi) before applying heat to metal built into or projecting through walls, floors or ceilings an examination will be made to ensure that the other end of the metal is cleared of combustible material or such material is covered; and
- (vii) any specific site Hot Work permit is complied with.

(c) Exclusion 5.11 (Hot Works Away From Own Premises) does not apply to this Coverage Clause.

3.8 Innkeeper's Liability

(a) Lumley will indemnify the Insured for liability arising under the Innkeeper's Act 1962 for Property Damage that happens in connection with the Insured's Business, during the period of insurance.

(b) Exclusion 5.19 (b) (Property in your Care, Custody or Control) does not apply to this Coverage Clause.

3.9 Landlord's Liability

Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage arising from the Insured's legal ownership, but not physical occupation of any premises, during the period of insurance.

3.10 Lost or Stolen Keys

(a) Lumley will indemnify the Insured for the costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations if the keys or combinations are stolen or believed on reasonable grounds to have been duplicated without proper authority.

(b) Provided that:

- (i) the keys or combinations are in the Insured's possession in connection with the Insured's Business; and
- (ii) the Insured does not own, hire, lease or rent such property.

(c) Exclusion 5.19 (b) (Property in your Care, Custody or Control) does not apply to this Coverage Clause.

3.11 Product Withdrawal Costs

(a) Lumley will indemnify the Insured for 80% of the costs reasonably and necessarily incurred in the withdrawal or recall of the Insured's Products during the period of insurance, in New Zealand, where the Insured's Products have the same defect as a product that has already given rise to a claim in respect of which the Insured is entitled to indemnity under this Policy.

(b) The most Lumley will pay under this Coverage Clause during the period of insurance inclusive of Costs and Expenses shall not exceed the sub-limit specified in the Schedule, and the excess specified in the Schedule for this Coverage Clause shall apply.

(c) Exclusion 5.18 (Product Recall) does not apply to this Coverage Clause.

3.12 Punitive or Exemplary Damages

(a) Lumley will indemnify the Insured for liability to pay punitive or exemplary damages awarded by a New Zealand Court for Personal Injury that happens during the period of insurance, in New Zealand, in connection with the Insured's Business.

(b) Provided that there is no cover for any punitive or exemplary damages:

- (i) arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse;
- (ii) connected with any dishonest or fraudulent act or omission by the Insured.

(c) The most Lumley will pay under this Coverage Clause for Personal Injury that happens during the period of insurance shall not exceed the sub-limit specified in the Schedule, and the excess specified in the Schedule for this Coverage Clause shall apply.

(d) Exclusion 5.9 (Fines and Exemplary Damages) and Condition 6.14 (Reasonable Care) do not apply to this Coverage Clause.

3.13 Service/Repair - Machinery

(a) Lumley will indemnify the Insured in respect of liability for Property Damage that happens during the period of insurance, in New Zealand arising out of an Occurrence in connection with the Insured's Business, and arising from the service, repair, modification or installation of machinery by the Insured.

(b) Provided that the machinery is not hired, leased, or rented by the Insured.

(c) The most that Lumley will pay under this Coverage Clause for all Property Damage that happens during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.

(d) Exclusions 5.8 (Faulty Workmanship), 5.19 (b) (Property in your Care, Custody or Control) and 5.20 (Reinstatement, Repair or Replacement of Insured's Products) do not apply to this Coverage Clause.

3.14 Service/Repair - Vehicle and Watercraft

(a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage that happens during the period of insurance, in New Zealand, arising out of an Occurrence in connection with the Insured's Business and arising from:

- (i) the service, repair, modification or installation of or to a Vehicle or Watercraft not exceeding ten metres in length by the Insured; or
- (ii) Property Damage to a Vehicle or Watercraft not exceeding ten metres in length, which is in the care, custody or control of the Insured for the purposes of service, repair, modification or installation, including while it is being driven or operated by the Insured.

(b) Provided that the Vehicle or Watercraft is not owned, hired, leased, or rented by the Insured.

(c) The most that Lumley will pay under this Coverage Clause for an Occurrence resulting in Property Damage to a Vehicle or Watercraft shall not exceed the sub-limit specified in the Schedule. This sub-limit does not apply to any resultant Property Damage to other property.

- (d) The excess specified in the Schedule for this Coverage Clause shall apply.
- (e) Exclusions 5.8 (Faulty Workmanship), 5.19 (b) (Property in your Care, Custody or Control), 5.20 (Reinstatement, Repair or Replacement of Insured's Products) and 5.25 (a) (Vehicles) do not apply to this Coverage Clause.

3.15 Tenant's Liability

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for Property Damage that happens during the period of insurance to premises (including landlords' fixtures and fittings) occupied, but not owned by the Insured, arising out of an Occurrence in connection with the Business.
- (b) Exclusion 5.19 (b) (Property in your Care, Custody or Control) does not apply to this Coverage clause.

3.16 Underground Services

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for Property Damage that happens during the period of insurance to existing underground services, cables, pipes or equipment, arising out of an Occurrence, in New Zealand, in connection with the Business.
- (b) Provided that prior to commencement of any work the Insured:
 - (i) made enquiries with the appropriate authorities or owners to verify the existence of the cables, pipes or other underground facilities; or
 - (ii) has sighted a plan of their location; or
 - (iii) has utilised a competent third party to confirm their location; and
 - (iv) took all reasonable precautions to prevent Property Damage.
- (c) Exclusion 5.24 (Underground Services) does not apply to this Coverage Clause.

3.17 Vehicles/Mobile Mechanical Plant Liability

- (a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage that happens during the period of insurance, arising out of an Occurrence, in connection with the Insured's Business in New Zealand and arising from:
 - (i) loading or unloading or bringing to or removal of a load from a Vehicle;
 - (ii) the use of any Vehicle while it is being operated or used by the Insured as mobile mechanical plant or machinery at the time of the Personal Injury or Property Damage and not being driven as a Vehicle;
 - (iii) Property Damage to a Vehicle (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such Property Damage occurs whilst the Vehicle is in a car park owned or operated by the Insured;
 - (iv) Property Damage to a bridge, viaduct, culvert, weigh bridge or road beneath a Vehicle, where the Property Damage is caused by vibration or by the weight of the Vehicle and/or its load, provided that any designated weight restrictions were not exceeded.
- (b) Exclusion 5.19 (b) (Property in your Care, Custody or Control) does not apply to claims under part (a) (iii) of this Coverage Clause. Exclusion 5.25 (a) (Vehicles) does not apply to this Coverage Clause.

3.18 Vibration and Removal of Support

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for Personal Injury or Property Damage that happens during the period of insurance in New Zealand, arising out of an Occurrence in connection with the Insured's Business and arising from vibration, or removing, weakening or interfering with, the support of land, structures or buildings.
- (b) Provided that:
 - (i) the land, structures or buildings are not owned or occupied by the Insured; and
 - (ii) the Personal Injury or Property Damage arises from the actions of the Insured.
- (c) The most that Lumley will pay under this Coverage Clause for Personal Injury or Property Damage that happens during the period of insurance shall not exceed the sub-limit specified in the Schedule, and the excess specified in the Schedule for this Coverage Clause shall apply.
- (d) Exclusion 5.26 (Vibration and Removal of Support) does not apply to this Coverage Clause.

Section 4 – Optional Coverage Clause

This Optional Coverage Clause only applies if it is shown in the Schedule and is subject to the Policy terms. Cover under the Optional Coverage Clause is included in, and is not in addition to the Limit of Indemnity.

4.1 Property Being Worked On

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for:
 - (i) Property Damage to property the Insured is or has been working on, where the Property damage happens in New Zealand during the period of insurance as a result of an Occurrence in connection with the Insured's Business. Provided that the property is not owned, hired, leased or rented by the Insured.
 - (ii) Faulty Products where the Insured's Product has caused accidental physical loss or destruction to other tangible property, where the accidental physical loss or destruction happens in New Zealand during the period of insurance, and is caused by an Event in connection with the Insured's Business.

For the purposes of this Optional Extension:

"Event" means an event including continuous or repeated exposure to substantially the same general conditions or liability neither expected nor intended from the standpoint of the Insured.

"Faulty Products" means the cost of repairing, correcting, removing, or replacement of the whole or part of the Insured's Product which is faulty, defective, harmful or has failed to perform the function for which it was sold, supplied, manufactured or installed.

(b) There is no cover under this Optional Coverage Clause for liability:

- (i) in connection with any defect in any design, plan or specification;
- (ii) in relation to property that is machinery, a Vehicle or Watercraft.

(c) The most that Lumley will pay under this Optional Coverage Clause during the period of insurance shall not exceed the sub-limit specified in the Schedule, and the excess specified in the Schedule for this Optional Coverage Clause shall apply.

(d) Exclusions 5.8 – (Faulty Workmanship), 5.19 (b) – (Property in Your Care, Custody or Control) and 5.20 – (Reinstatement, Repair or Replacement of Your Products) do not apply to this Optional Coverage Clause.

Section 5 – Exclusions

5.1 Aircraft

There is no cover for liability in connection with:

- (a) the Insured's ownership, possession, control, service, repair, maintenance, operation, loading, unloading or use of an Aircraft;
- (b) the Insured's Products that are knowingly incorporated in any Aircraft or aerial device.

5.2 Asbestos

There is no cover for liability in connection with asbestos.

5.3 Building Defects

There is no cover for liability in connection with:

- (a) the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose in relation to leaks, water penetration, weatherproofing, moisture or any effective water exit or control system;
- (b) the action of fungi, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms in any building or structure;
- (c) the costs and expenses of abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating, disposal of or in any way responding to or assessing the effects of micro-organisms, mould, fungi, mildew, rot or decay, gradual deterioration, bacteria, protozoa or similar or like forms, in any building or structure.

This Exclusion does not exclude indemnity for liability for Personal Injury or Property Damage that is caused by leakage of internal water pipes or cisterns.

5.4 Business Advice/Error or Omission

There is no cover for liability in connection with the rendering of, or failure to render, advice or service or any error or omission in the rendering of advice or a service.

5.5 Contractual Liability

There is no cover for liability in connection with any liability assumed by the Insured under any contract or agreement except to the extent that such liability would have been imposed by law in the absence of the contract. This includes a contractual obligation that excludes or limits the Insured's rights of recovery from a third party.

This Exclusion shall not apply to:

- (a) written contracts that have been notified to and agreed by Lumley and are referred to in the Schedule.
- (b) liability assumed by the Insured under a warranty of fitness or quality in respect of the Insured's Products but subject always to the Policy, including for the avoidance of doubt, Exclusions 5.8 (Faulty Workmanship) and 5.14 (Loss of Use).
- (c) liability assumed by the Insured under any lease or hire of real or personal property.

5.6 Defamation

There is no cover for liability in connection with libel or slander being the publication or utterance of any defamatory or disparaging material.

5.7 Employer's Liability

There is no cover for liability in connection with:

- (a) Personal Injury to any employee of the Insured arising out of or in the course of employment of such employee;
- (b) any obligation for which the Insured may be held liable under the Accident Compensation Act 2001;
- (c) any liability in respect of which the Insured is entitled to seek compensation under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation whether or not the Insured has effected such a policy.

5.8 Faulty Workmanship

There is no cover for liability for the cost of performing, completing, repairing, correcting or improving any work undertaken by or on behalf of any Insured.

This Exclusion does not apply to liability for resultant damage to other property.

5.9 Fines and Exemplary Damages

There is no cover for liability in connection with any aggravated, punitive or exemplary damages, fines, penalties, performance warranties or liquidated damages, whether imposed under contract or statute.

5.10 GMO (Genetically Modified Organisms)

There is no cover for liability in connection with any genetically modified or engineered organisms or material, transgenic seeds or any other products of a similar nature.

5.11 Hot Work Away From Own Premises

There is no cover for liability in connection with Hot Work carried out away from the Insured's own premises.

5.12 Information Technology Hazards

There is no cover for liability in connection with:

- (a) the Insured's Internet Operations;
- (b) computer data or programs and their storage media where the loss, liability or expense is in connection with:
 - (i) the use of any computer hardware or software;
 - (ii) the provision of computer or telecommunication services by or on behalf of the Insured;
 - (iii) the use of any computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

"Internet Operations" means:

- (i) use of electronic mail systems by the Insured's employees, including part-time and temporary staff and others within the Insured's organisation;
- (ii) access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including part-time and temporary staff and others within the Insured's organisation;
- (iii) access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the Insured's customers or others outside the Insured's organisation;
- (iv) the operation and maintenance of the Insured's web site.

Nothing in this Exclusion shall be construed as extending this Policy to any liability which would not have been covered in the absence of this Exclusion.

5.13 Legal Jurisdiction

There is no cover for liability in connection with:

- (a) any legal action brought in a court or tribunal in a Non-Territorial Country;
- (b) any legal action brought in a court or tribunal within New Zealand to enforce a judgement handed down in a court or tribunal in a Non-Territorial Country whether by way of a reciprocal agreement or otherwise;
- (c) any legal action to which the proper law to be applied is that of a Non-Territorial Country;
- (d) liability under the law of any country, state or territory (outside of New Zealand) that requires such liability to be insured or secured with an insurer or organisation in that country, state or territory to grant such insurance or security.

5.14 Loss of Use

There is no cover for liability in connection with loss of use of tangible property which has not been physically damaged or destroyed, where that loss of use is caused by:

- (a) a delay in, or lack of performance by or on behalf of the Insured, of any contract or agreement;
- (b) the failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured.

This Exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the Insured's Products after they have been put to use by any person or entity other than the Insured.

5.15 Nuclear Fuel/Weapons

There is no cover for liability in connection with the:

- (a) use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- (b) use, handling or transportation of radioactive materials;
- (c) use, handling, transportation of any weapon of war or explosive device employing nuclear fission or fusion.

5.16 Offshore Oil or Gas Platforms

There is no cover for liability in connection with any offshore oil or gas platform.

5.17 Pollution

There is no cover for liability in connection with Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water, including for the prevention, removal or clean-up of any Pollutants.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

However, this Exclusion shall not apply if the discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended event and takes place in its entirety at a specific time and place.

Provided that, the Exclusion stands and there is no cover whatsoever under this policy for liability in connection with Pollution that occurs in the United States of America or Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

5.18 Product Recall

There is no cover for liability in connection with the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of the Insured's Products, or of any property which the Insured's Products form a part of, if such products or property are withdrawn from the market or from use because of any known, or suspected defect or deficiency therein, or because of any Government or statutory ban, order or notice.

5.19 Property in your Care, Custody or Control

There is no cover for liability for Property Damage to:

- (a) property owned by any Insured;
- (b) property in the physical or legal control of any Insured.

5.20 Reinstatement, Repair or Replacement of Insured's Products

There is no cover for liability for Property Damage to any Insured's Product arising out of such Insured Product or any part of such Insured Product.

5.21 Sanctions

There is no cover for liability to the extent it would expose Lumley to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

5.22 Territorial Limits

There is no cover for liability in connection with:

- (a) an Occurrence in a Non-Territorial Country;
- (b) claims made upon the Insured outside the Territorial Limits specified in the Schedule;
- (c) claims that arise out of any contract entered into by the Insured under the terms of which the work is to be performed outside the Territorial Limits specified in the Schedule.

However, this Exclusion does not apply to liability arising from the Insured's Products where they have been exported to a Non-Territorial Country without the knowledge of the Insured.

5.23 Terrorism

There is no cover for liability in connection with any Act of Terrorism, regardless of any contributing cause or event, including in connection with controlling, preventing, suppressing, retaliating against, or responding to an Act of Terrorism.

"Act of Terrorism" means any act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public, or a section of the public, of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:

- (a) involves violence against one or more persons;
- (b) involves damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public;
- (e) is designed to interfere with or disrupt an electronic system.

5.24 Underground Services

There is no cover for liability in connection with Property Damage to any existing underground services, cables, pipes or equipment.

5.25 Vehicles

There is no cover for liability in connection with:

- (a) the ownership, maintenance, service, repair, possession, operation, use or legal control of any Vehicle by the Insured;
- (b) any Vehicle being used or driven when the Insured:
 - (i) does not hold an appropriate driver's licence or does not comply with the conditions of his or her driver's licence;
 - (ii) has a proportion of alcohol in their breath or blood that exceeds the legal limit;
 - (iii) is under the influence of any other intoxicating substance or drug;
 - (iv) fails or refuses to supply a breath or blood sample as required by law;
 - (v) fails or refuses to stop, or remain at the scene, following an accident (as required by law);
 - (vi) is using the Vehicle outside the manufacturer's recommended specifications;
- (c) driving a Vehicle in an unsafe condition if:
 - (i) the condition of the Vehicle causes or contributes to, the Personal Injury and/or Property Damage; and
 - (ii) the Insured was aware, or ought to have been aware, of the unsafe condition of the Vehicle.

5.26 Vibration and Removal of Support

There is no cover for liability in connection with vibration, weakening of or removal of support of any buildings, structures or land.

5.27 War

There is no cover for liability in connection with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority.

5.28 Watercraft

There is no cover for liability in connection with the Insured's:

- (a) ownership, possession, repair or use of any Watercraft that exceeds ten metres in length;
- (b) operation of any Watercraft:
 - (i) while under the influence of alcohol or any other intoxicating substance or drug; or
 - (ii) outside the manufacturer's recommended specifications.

Section 6 – Conditions

6.1 Assignment

No assignment of interest under this Policy shall bind Lumley unless Lumley's written consent is obtained and endorsed on this Policy.

6.2 Cancellation

The Insured may cancel this policy at any time by notifying Lumley in writing.

Lumley may cancel this policy at any time by giving notice in writing or by electronic means to the Insured (or the Insured's broker or agent). The policy will be cancelled from 4pm on the 30th day after the date of the notice.

Adjustment of Premium:

- (a) 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.
- (b) After cancellation by Lumley, the Insured is entitled to a pro-rata refund of any unused premium.

6.3 Conduct of Claims

- (a) The Insured shall not make any admission, offer, promise or payment in connection with any Occurrence or claim without Lumley's prior written consent.
- (b) Lumley shall be entitled to take over and conduct in the name of the Insured, the defence or settlement of any claim brought against the Insured in respect of which indemnity is granted under this Policy. Lumley shall be entitled to appoint its own solicitors to conduct the defence of such claim and shall have full discretion in the conduct of any proceedings. The Insured shall give all information and assistance as Lumley may require. The solicitors shall at all times be at liberty to disclose to Lumley any information obtained in the course of so acting, whether from the Insured or otherwise. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and Lumley in respect of such information.
- (c) The Insured shall use its best endeavours to preserve all property, products, appliances, plant and all other things that may assist in the investigation and defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable, no alteration or repair shall be effected without the prior written consent of Lumley and until Lumley shall have had an opportunity to inspect and give authorisation for such repairs.
- (d) In the event of an Occurrence, or the likelihood of an Occurrence, the Insured shall, at its own expense, promptly take all reasonable steps to prevent Personal Injury or Property Damage from arising or continuing out of the same or similar conditions, but such expense shall not be recoverable from Lumley.
- (e) Lumley may at any time pay the Insured, in respect of all claims against the Insured arising directly or indirectly from one Occurrence, the amount of the Limit of Indemnity or the applicable sub-limit (after deduction for any amounts already paid in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment, Lumley shall relinquish conduct and/or control of the claim or claims, and Lumley will be under no further liability under this Policy in connection with such claim or claims except for its proportion of Costs and Expenses incurred prior to the date of such payment.

6.4 Cross Liability

Where the Insured consists of more than one legal entity, the word "Insured" shall apply to each as if a separate Policy had been issued to each. Except that this Condition shall not apply to entities that are deemed insured pursuant to the definition of Insured at 1.5(g) (contractors or sub-contractors).

Nothing contained in this Condition increases the Limit of Indemnity in respect of any Occurrence or period of insurance.

6.5 Defence of Legal Proceedings

- (a) If the lawyer appointed to defend the Insured advises that the claim should not be defended, then Lumley is not required to defend a claim. If the Insured disagrees with the lawyers advice not to defend a claim, a second lawyer that Lumley and the Insured agree to will be instructed to provide a second opinion.
- (b) If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. In formulating their advice, the lawyer must be instructed to consider the:

- (i) economics of the matter; and
 - (ii) damages and costs likely to be recovered; and
 - (iii) likely costs of defence; and
 - (iv) prospects of successfully defending the claim.
- (c) The cost of the second lawyer's opinion is to be taken as part of the Costs and Expenses covered under this Policy.
- (d) If the second lawyer advises that the claim should be settled and if the terms of settlement that Lumley recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters they are required to consider), then:
- (i) the Insured cannot object to the settlement, and
 - (ii) the Insured must immediately pay the excess shown in the Schedule.

6.6 Fraudulent Claims

If the Insured makes any claim knowing it to be false or fraudulent in any respect, this Policy shall become void and any claims hereunder shall be forfeited.

6.7 Goods and Services Tax

Where the Insured is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985, upon receiving any indemnity payment under this Policy, Lumley will indemnify the Insured for the costs of that tax. The indemnity under this Condition is payable by Lumley in addition to the Limit of Indemnity.

6.8 Disputes about this Policy

The law of New Zealand applies to disputes about this policy and the New Zealand Courts have exclusive jurisdiction.

6.9 Inspection of Property

Lumley shall be permitted, but is not obliged, to inspect the Insured's property and operations at any time. Neither Lumley's right to make inspections, the making of any inspections, or any report issued following such an inspection, shall constitute an undertaking or warranty that such property or operations are safe.

6.10 Insured's Warranty

It is agreed between the Insured and Lumley that the written proposal provided by the Insured and any other underwriting information shall be deemed to be incorporated into and forms the basis of this Policy and the Insured warrants the truth of all statements made therein.

6.11 Legislation Changes

Any reference to any Act of Parliament or subordinate rules referred to in this Policy includes any amendments made or substitutions to that law.

6.12 Material Change of Facts or Circumstances

The Insured shall give Lumley notice in writing as soon as possible, of every change that materially varies any of the facts or circumstances that existed, or that the Insured thought existed, at the commencement of this Policy. Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

6.13 Other Insurance

The Insured shall give notice to Lumley of any other insurance policy that covers any of the risks covered under this policy.

This policy does not indemnify any claim or Occurrence if it is indemnified to any extent under any other insurance policy. Lumley will not contribute towards any claim under any other insurance policy.

6.14 Reasonable Care

The Insured shall take reasonable care at all times to avoid circumstances that could result in a claim and shall take all reasonable steps to minimise any claim and avoid any further loss or liability arising. Lumley shall not be liable if the Insured is reckless or grossly irresponsible.

6.15 Reporting of Claims

Irrespective of the anticipated quantum of a claim, the Insured shall give immediate notice in writing to Lumley of every Occurrence, claim, summons, proceedings, impending prosecution or inquest and all information in respect of which a claim may be made under this Policy, irrespective of whether the Insured believes that no claim will proceed or that any claim would be groundless.

6.16 Subrogation

If Lumley accepts any part of an Insured's claim under this Policy, Lumley is entitled to assume the Insured's legal right of recovery.

If Lumley initiates a recovery, Lumley will include the excess and any other uninsured losses suffered by the Insured. Where this happens, the Insured agrees to pay its proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis, except that the excess will be reimbursed to the Insured first.

The Insured shall execute all papers and do all that is necessary to assist Lumley in the full exercise of such rights. If the Insured makes any recovery in respect of any amount for which it received indemnity under this Policy, it shall account to Lumley for the full amount received.

Statutory Liability Policy

Costs In Addition (Claims Made Wording)

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

Introduction

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

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

Section 1 – Definitions

The following defined words and expressions are assigned a particular meaning. That meaning will apply everywhere the word or expression appears and it applies to the plural and derivatives of the word or expressions.

1.1 Act of Parliament

“Act of Parliament” means any Act of the New Zealand Parliament, including any amendment, enactment, or replacement legislation or any regulations, rules or codes issued under an Act.

1.2 Claim

“Claim” means:

- (a) any threatened or actual prosecution or investigations or inquiry regarding an Event which may give rise to a Fine, Reparation or Statutory Damages;
- (b) any circumstance which indicates to a reasonable person in the position of the Insured that a prosecution, investigation or inquiry regarding an Event may give rise to a Fine, Reparation or Statutory Damages.

1.3 Defence Costs

“Defence Costs” means reasonable costs, charges, fees and expenses (including but not limited to lawyers’ fees, investigators’ fees and experts’ fees) incurred with the prior written consent of Lumley.

“Defence Costs” does not include charges for time spent by sole traders, partners, directors, officers or employees of the Insured or reimbursement of any form for remuneration of such people.

1.4 Event

“Event” means an act or omission by the Insured in connection with the Insured’s Business that is the accidental commission of an offence under an Act of Parliament.

1.5 Fine

“Fine” means any monetary penalty or costs for which the Insured is liable to pay on conviction of any offence under an Act of Parliament.

1.6 Insured

“Insured” means the entity specified in the Schedule and if the Insured is a company it includes its directors, officers or employees and any subsidiary company and its directors, officers or employees, but only while the person is acting within the scope of their duties in such capacity.

1.7 Insured’s Business

“Insured’s Business” means the business and undertakings of the Insured, as stated in the Schedule.

1.8 Limit of Indemnity

“Limit of Indemnity” means the amount stated in the Schedule.

1.9 Lumley

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

1.10 Official Investigation

“Official Investigation” means an investigation:

- (a) by a body empowered under an Act of Parliament to investigate, and
- (b) relating to a breach or potential breach of an Act of Parliament.

1.11 Policy

“Policy” means the following:

- (a) the Insured’s application for insurance and any oral or written supporting statements or documents supplied;
- (b) this policy wording (including any amending endorsements), and
- (c) the Schedule.

1.12 Reparation

“Reparation” means an amount of money the Insured is ordered to pay as reparation under Section 32 of the Sentencing Act 2002.

1.13 Retroactive Date

“Retroactive Date” means the date shown in the Schedule.

1.14 Schedule

“Schedule” means the most recent policy schedule, issued by Lumley.

1.15 Statutory Damages

“Statutory Damages” means damages payable by the Insured under either the Privacy Act 1993 or the Human Rights Act 1993 for an accidental breach of the applicable Act.

Section 2 – Coverage

In consideration of payment of the premium and subject to the terms of this Policy, Lumley agrees as follows:

2.1 Insured Liability

Lumley will pay any Fine arising out of a Claim made against the Insured in connection with the Insured’s Business.

Provided that:

- (a) the Insured first became aware of, or ought to have been aware of, the Claim during the period of insurance; and
- (b) the Claim is notified to Lumley during the period of insurance or no later than 30 days after the period of insurance ends; and
- (c) the Event giving rise to the Claim occurred on or after the Retroactive Date; and
- (d) Lumley is not legally prohibited from indemnifying the Insured.

2.2 Limit of Indemnity

- (a) The liability of Lumley for all Claims and Events during the period of insurance shall not exceed the Limit of Indemnity.
- (b) The Limit of Indemnity is inclusive of GST unless specifically provided for under Condition 5.10 (Goods and Services Tax).

2.3 Defence Costs

In addition to the applicable Limit of Indemnity, Lumley shall pay the Defence Costs necessarily and reasonably incurred by the Insured with Lumley’s prior written consent, to defend:

- (a) a prosecution that if proven could result in a Fine that would be indemnified under this Policy;
- (b) a proceeding that if proven could result in Statutory Damages that would be indemnified under this Policy;
- (c) a prosecution under the Health and Safety at Work Act 2015.

Provided that:

- (a) Lumley’s maximum liability in the aggregate in respect of all Defence Costs during the period of insurance shall not exceed the amount of the Limit of Indemnity.
- (b) upon payment by Lumley of the Limit of Indemnity in respect of any Fine, Reparation or Statutory Damages, Lumley’s liability in respect of any further Defence Costs in connection with that Claim shall cease.
- (c) if a payment exceeding the Limit of Indemnity has to be made to dispose of a Claim, the liability of Lumley to pay Defence Costs in connection with that Claim shall be limited to such proportion of the Defence Costs as the Limit of Indemnity bears to the amount paid to dispose of the Claim.

2.4 Separate Limits

For the avoidance of doubt, the limits under Clause 2.2 (Limit of Indemnity) and Clause 2.3 (Defence Costs) are separate. This means the Limit of Indemnity to meet Claims under Clause 2.2 (Limit of Indemnity) cannot be used to meet Defence Costs, and the Limit of Indemnity under Clause 2.3 (Defence Costs) cannot be used to meet any Claim.

2.5 Excess

The Insured must pay the excess specified in the Schedule in respect of each and every Claim including Defence Costs.

Section 3 – Extensions

The following Extensions apply automatically and are subject to the terms of this Policy unless stated otherwise. The amounts payable under these Extensions are included within the Limit of Indemnity; they are not in addition to it.

3.1 Defence Costs if Acquitted

Lumley shall reimburse the Insured’s reasonable Defence Costs incurred to defend a prosecution where it is alleged that the Insured has acted or omitted to act knowingly, wilfully or intentionally and the Insured is subsequently Acquitted.

For the purposes of this Extension “Acquitted” means the dismissal of charges before or after a defended hearing, or the entry of a not guilty verdict. “Acquitted” does not include the disposition of a charge pursuant to a plea bargain where multiple charges or informations have been laid.

3.2 Enforceable Undertakings

Lumley will indemnify the Insured for:

- (a) Any amount Lumley agrees to pay as part of an enforceable undertaking under the Health and Safety at Work Act 2015 in respect of a Claim arising out of an Event in connection with the Insured’s Business.
- (b) Defence Costs necessarily and reasonably incurred with Lumley’s written consent,

Provided that:

- (i) The Claim could result in an order for Reparation if the Insured was convicted, and
- (ii) The amount paid is no greater than the amount Lumley would expect to pay as Reparation if the Insured was convicted.

There is no cover for:

- (a) Any amounts in respect of an undertaking or agreement made without Lumley's prior written consent, or
- (b) Any costs in connection with compliance, training or remedial actions, or
- (c) Any costs of compliance monitoring activities or meeting any non-financial terms of the enforceable undertaking, or
- (d) Any amount payable to any party other than a person who would be a victim under the definition of "victim (a)" under the Sentencing Act 2002 had the Event resulted in a conviction (or their estate in the event of death), or
- (e) Any amount, Fine, Defence Costs or Reparation that may result from a failure to comply with the contravention of any of the terms of the enforceable undertaking.

The amount Lumley agrees to pay as part of an enforceable undertaking is included in the Limit of Indemnity 2.2 (a)

3.3 Extended Reporting Period

If Lumley cancels or refuses to offer renewal terms for this Policy, the Insured has the right, upon payment of 90% of the annual premium, to an extension of the cover granted by this Policy for the period of 12 months following the effective date of such cancellation or non-renewal, but only in respect of an Event otherwise covered under this Policy that takes place prior to the effective date of such cancellation or non-renewal.

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

Any Claim made during the extended reporting period will be treated as if it had been made during the last period of insurance and is subject to the remaining Limit of Indemnity at the effective date of cancellation or non-renewal.

The entire premium for the extended reporting period is deemed fully earned and non-refundable upon payment.

3.4 Mergers and Consolidations

If the company named as Insured in the Schedule:

- (a) is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company;
- (b) sells all or substantially all of its assets to another company;

this Policy will be extended to insure the new company, provided that:

- (a) the operations and activities of the merged, amalgamated or consolidated company are the same as those undertaken by the Insured described in the Schedule; and
- (b) the Insured gives Lumley notice that it wishes to extend cover to the new company within 30 days of the merger, amalgamation consolidation or sale; and
- (c) Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

There is no cover for any Claim in connection with any Event that has occurred prior to the date of the merger, amalgamation or consolidation.

3.5 New Subsidiary Companies

This Policy is extended to insure a subsidiary company created or acquired by the Insured during the period of insurance provided that:

- (a) the operations and activities of the new subsidiary company are the same as those undertaken by the Insured described in the Schedule; and
- (b) the Insured gives Lumley notice that it wishes to extend cover to the new subsidiary within 30 days of the acquisition or creation of the new subsidiary company; and
- (c) Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

There is no cover for any Claim in connection with any Event that has occurred prior to the date of the acquisition of the subsidiary company.

3.6 Official Investigations

Lumley will indemnify the Insured for Defence Costs necessarily and reasonably incurred for the Insured to be represented at any Official Investigation, public examination or commission, provided that:

- (a) the investigation arises out of an Event, or potential Event, that occurred after the Retroactive Date in New Zealand in connection with the Insured's Business; and
- (b) the Insured first knew, or ought to have known, during the period of insurance, of the Official Investigation, public examination or commission in relation to that Event; and
- (c) The Insured has advised Lumley of the Official Investigation, public examination or commission, as soon as possible, but no later than 30 days after the period of insurance ends.

3.7 Previous Subsidiary Companies

The definition of Insured will include any entity that ceased to be a subsidiary before or during the period of insurance.

However, Lumley will not indemnify any subsidiary for any Claim arising out of an Event that occurs before the Retroactive Date or after it ceased to be a subsidiary of the Insured.

3.8 Statutory Damages and Reparations

Lumley will indemnify the Insured for its legal liability to pay Statutory Damages or Reparations arising out of an act or omission that occurred after the Retroactive Date in connection with the Insured's Business.

Exclusion 4.16 (Punitive or Exemplary Damages) does not apply to Claims under this Extension.

Section 4 – Exclusions

4.1 Asbestos

There is no cover for liability in connection with asbestos.

4.2 Commerce Act

There is no cover for any Claim in connection with a breach of the Commerce Act 1986.

However, this exclusion does not apply to any individual person(s) covered under this Policy.

4.3 Compliance Costs

There is no cover for:

- (a) any costs incurred in complying with any abatement, compliance, enforcement or remedial notice or order;
- (b) any Fine (or part of a Fine) which is a penalty imposed for failing to comply with any abatement, compliance, enforcement or remedial notice or order.

4.4 Continuing Offences

If a Fine, Statutory Damages or Reparation is imposed for a continuing offence under an Act, there is no cover for the part of the Fine, Statutory Damages or Reparation relating to the period after the Insured:

- (a) knows an offence was being committed;
- (b) ought to have known that an offence was being committed.

4.5 Dishonesty or Fraud

There is no cover for any dishonest, fraudulent, criminal or malicious act or omission of any Insured.

4.6 Excluded Acts

There is no cover for any Claim under the following Acts of Parliament:

- Arms Act 1983
- Aviation Crimes Act 1972
- Crimes Act 1961
- Land Transport Act 1998
- Misuse of Drugs Act 1975
- Proceeds of Crime Act 1991
- Summary Offences Act 1981

and any other Act of Parliament specified in the Schedule as an excluded Act of Parliament.

4.7 Health and Safety at Work Act 2015

There is no cover for any fine the Insured is ordered to pay following conviction under the Health and Safety at Work Act 2015.

4.8 Infringement Fees

There is no cover for any infringement fees of any kind.

4.9 Intentional or Reckless Breach

There is no cover for any intentional or reckless breach of any Act of Parliament.

4.10 Known Claims and Circumstances

There is no cover for any Claims:

- (a) made against, or intimated to, the Insured prior to the commencement of the period of insurance;
- (b) notified under any previous Policy;
- (c) arising out of or connected with any Event that:
 - (i) the Insured was aware of prior to commencement of the period of insurance; and
 - (ii) a reasonable person in the position of the Insured would have considered may give rise to a Claim.

4.11 Legal Jurisdiction

There is no cover for:

- (a) any Claim where the threatened or actual prosecution, investigation or inquiry, is brought or may be brought, in a court or tribunal outside New Zealand;
- (b) any Claim which is brought or may be brought, in a court or tribunal within New Zealand to enforce a Fine ordered in a court or tribunal outside New Zealand whether by way of a reciprocal agreement or otherwise;
- (c) any Claim in which the proper law to be applied is that of a country other than New Zealand.

4.12 Monetary Amounts Paid or Offered Before Sentence

There is no cover for any sum paid, or offered to be paid, by the Insured prior to sentencing by the Court where the sum is paid or offer made without the prior written consent of Lumley.

4.13 Nuclear

There is no cover for loss, legal liability or expense of any kind arising from or in connection with:

- (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- (b) the use, handling or transportation of radioactive materials;
- (c) the use, handling, transportation of any weapon of war or explosive device employing nuclear fission or fusion.

4.14 Personal Grievances

There is no cover for anything arising out of any contract of employment or service or any intended contract of employment or service with any current, former or prospective employee, including any personal grievance or similar action by an employee.

4.15 Private Prosecutions

There is no cover for any investigation, defence, proceeding, inquiry, or prosecution taken by a person or entity other than the statutory authority or enforcement agency given responsibility for administering enforcement of an Act of Parliament.

4.16 Punitive or Exemplary Damages

There is no cover for any damages, including punitive, aggravated, liquidated, multiple or exemplary damages imposed by a court for the breach of any Act of Parliament.

4.17 Retroactive Date

There is no cover for any Claim that arose out of any Event that occurred prior to the Retroactive Date.

4.18 Sanctions

There is no cover for liability to the extent it would expose Lumley to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

4.19 Taxes

There is no cover for the payment of any tax, including any Fine or penalty resulting from the failure to pay any tax.

4.20 Terrorism

There is no cover for liability in connection with any Act of Terrorism, regardless of any contributing cause or event, including in connection with controlling, preventing, suppressing, retaliating against, or responding to an Act of Terrorism.

“Act of Terrorism” means any act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public, or a section of the public, of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:

- (a) involves violence against one or more persons;
- (b) involves damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public;
- (e) is designed to interfere with or disrupt an electronic system.

4.21 War

There is no cover for liability in connection with war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority.

Section 5 – Conditions

5.1 Allocation of Costs

If Defence Costs are incurred in respect of both a Claim insured under this Policy and a matter that is not insured under this Policy then Lumley shall be liable to pay only a fair proportion of the Defence Costs. In the event that the Insured and Lumley are unable to agree a fair proportion, then a lawyer, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

5.2 Assignment

Unless Lumley’s written consent is obtained and endorsed on this policy, no assignment of interest under this Policy shall bind Lumley.

5.3 Cancellation

The Insured may cancel this policy at any time by notifying Lumley in writing.

Lumley may cancel this policy at any time by giving notice in writing or by electronic means to the Insured (or the Insured’s broker or agent). The policy will be cancelled from 4pm on the 30th day after the date of the notice.

Adjustment of Premium:

- (a) 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;
- (b) After cancellation by Lumley, the Insured is entitled to a pro-rata refund of any unused premium.

5.4 Change of Terms

Lumley may change the terms of this Policy (including the excess) by giving notice in writing or by electronic means to the Insured (or the Insured's broker or agent). Unless otherwise specified in this Policy, the change in terms will take effect from 4pm on the 30th day after the date of the notice.

5.5 Compliance with the Policy

The Insured (and any other person or entity covered) must comply with the conditions of this Policy at all times. If the Insured, or any other person or entity covered under this Policy, or anyone acting on the Insured's behalf, breaches any of the terms and/or conditions of this Policy, Lumley may:

- (a) decline the Claim either in whole or in part; and/or
- (b) declare either this Policy, or all insurance the Insured has with Lumley to be of no effect and to no longer exist.

5.6 Conduct of Claims

The Insured must not, without Lumley's prior written consent, admit liability for or make any decision that affects the conduct of a Claim including the defence, compromise or handling of the Claim on behalf of the Insured, or incur any costs or expenses in connection with a Claim.

Lumley shall be entitled to nominate a solicitor to act as the Insured's lawyer and subject to clause 5.8 (Defence of Prosecutions) shall have total discretion as to the conduct of a Claim in the name of the Insured. The lawyer shall at all times be at liberty to disclose to Lumley any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and Lumley in respect of such information.

If Lumley believes that the Claim will not exceed the excess, Lumley may instruct the Insured to assume responsibility for the conduct of the Claim at the Insured's expense. Should the Claim subsequently exceed the excess, Lumley agrees to reimburse the reasonable costs and expenses incurred by the Insured that exceed the excess. The Insured must advise Lumley as soon as the total costs of the Claim exceed the excess or it becomes apparent that they are likely to do so.

5.7 Cross Liability

Where the Insured consists of more than one legal entity, the word "Insured" shall apply to each as if a separate policy had been issued to each. Nothing contained in this Condition increases the Limit of Indemnity in respect of any Claim or period of insurance.

5.8 Defence of Prosecutions

- (a) If the lawyer instructed to defend the Insured advises Lumley that the Claim should not be defended, Lumley will not be required to defend the Claim against the Insured. If the Insured disagrees with the lawyer's advice not to defend the Claim, a second lawyer that Lumley and the Insured agree to, will be instructed to provide a second opinion. Lumley will defend the Claim if the second lawyer advises that the Claim should be defended. If the parties cannot agree on a second lawyer, then the second lawyer will be appointed by the President of the New Zealand Law Society.
- (b) The cost of the second lawyer's opinion is to be taken as part of the Defence Costs covered under this policy.
- (c) In formulating their advice, the lawyer must be instructed to consider the:
 - (i) economics of the matter; and
 - (ii) damages and costs likely to be recovered; and
 - (iii) likely costs of defence; and
 - (iv) prospects of successfully defending the Claim.
- (d) If the second lawyer advises that the Claim should be settled and if the terms of settlement that Lumley recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters they are required to consider), then:
 - (i) The Insured cannot object to the settlement; and
 - (ii) The Insured must immediately pay the excess shown in the Schedule.

5.9 Disputes About This Policy

The law of New Zealand applies to disputes about this Policy and the New Zealand Courts have exclusive jurisdiction.

5.10 Goods and Services Tax

Where the Insured is liable to pay tax under Section 5 (13) of the Goods and Services Tax Act 1985, upon receiving any indemnity payment under this Policy, Lumley will indemnify the Insured for the costs of that tax. The indemnity under this condition is payable by Lumley in addition to the Limit of Indemnity.

5.11 Insured's Warranty

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

5.12 Legislation Changes

Any reference to any Act of Parliament or subordinate rules referred to in this Policy includes any amendments made or substitutions to that law.

5.13 Material Change of Facts or Circumstances

The Insured shall give Lumley notice in writing as soon as possible of any change that materially varies any of the facts or circumstances that existed or the Insured thought existed at the commencement of this Policy. Lumley shall be entitled to vary the Policy terms, conditions and exclusions and charge an additional premium.

5.14 Other Insurance

The Insured agrees to provide Lumley with written details of any other insurance that may cover or partially cover that Claim.

This policy does not indemnify any claim if it is indemnified to any extent under any other insurance policy. Lumley will not contribute towards any claim under any other insurance policy.

5.15 Reasonable Precautions

The Insured shall take reasonable care at all times to avoid circumstances that could result in a Claim and shall take all reasonable steps to minimise any Claim and avoid any further loss or liability arising. Lumley shall not be liable if the Insured is reckless or grossly irresponsible.

5.16 Reporting of Claims

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

- (a) any Claim made against them; or
- (b) the receipt of notice from, or information as to any intention by, any party to make a Claim; or
- (c) any Event that a reasonable insured in the position of the Insured would consider may give rise to a Claim. Where such notice is given to Lumley by the Insured, any Claim that may subsequently be made against the Insured shall be deemed to be a Claim made during the period of insurance when the Event was first reported to Lumley.

Provided that in order to qualify as a Claim capable of being covered by this Policy, the Insured's notice in writing must:

- (i) relate to an Event that occurred during the period of insurance; and
- (ii) be given during the period of insurance or within 30 days after its expiry.

Employers Liability Policy

Costs in Addition (Claims Made Wording)

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

Introduction

All sections of the policy wording and the Schedule must be read as if they are one and the same document.
Headings are only used to help you read this Policy and do not form part of this Policy.

Section 1 – Definitions

The following defined words and expressions are assigned a particular meaning. That meaning will apply everywhere the word or expression appears and it applies to the plural and derivatives of the word or expressions.

1.1 Claim

“Claim” means:

- (a) legal proceedings instituted and served upon the Insured;
- (b) any threat or intimation that legal proceeding will be issued against the Insured;
- (c) any circumstance that a reasonable person in the position of the Insured would have considered may give rise to a demand for Damages.

1.2 Damages

“Damages” means monetary compensation ordered to be paid or agreed to be paid pursuant to a judgment or settlement of any common law action brought or capable of being brought in a New Zealand court in respect of Personal Injury to an Employee of the Insured, but does not include any such monies payable pursuant to any remedy, relief or penalty provided in any statute of New Zealand, whether by way of damages, fine, reparation or other order.

1.3 Defence Costs

“Defence Costs” means reasonable costs, charges, fees and expenses (including but not limited to lawyers’ fees, investigators’ fees and experts’ fees) incurred with the prior written consent of Lumley that:

- (a) relate directly to the conduct of the Claim;
- (b) are associated with the Insured making an application to the Court to determine whether a Personal Injury is properly the subject of cover under the Accident Compensation Act 2001;
- (c) is an amount required to be paid by the Insured as security for costs in any legal proceeding.

“Defence Costs” does not include charges for the Insured’s time including any time spent by directors, officers, partners or Employees or reimbursement of any remuneration for such people.

1.4 Employee

“Employee” means any person who is employed by the Insured in connection with the Insured’s Business and in respect of whose remuneration the Insured deducts PAYE tax at source.

1.5 Insured

“Insured” means the entity specified in the Schedule and if the Insured is a company it includes its directors, officers or employees and any subsidiaries and their directors, officers or Employees, but only while the person is acting within the scope of their duties in such capacity and does not extend to include any person or Employee who is bringing a Claim.

1.6 Insured’s Business

“Insured’s Business” means the business and undertakings of the Insured, as stated in the Schedule.

1.7 Limit of Indemnity

“Limit of Indemnity” means the amount stated in the Schedule.

1.8 Lumley

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

1.9 Personal Injury

“Personal Injury” means accidental death or accidental bodily injury including sickness, disease, disability, shock, fright, mental anguish or mental injury.

1.10 Policy

“Policy” means the following:

- (a) the Insured’s application for insurance and any oral or written supporting statements or documents supplied; and
- (b) this policy wording (including any amending endorsements); and
- (c) the Schedule.

1.11 Punitive or Exemplary Damages

“Punitive or Exemplary Damages” means monies ordered to be paid as punitive or exemplary damages pursuant to a judgment of a New Zealand court in respect of a common law action brought by an Employee against the Insured in relation to Personal Injury.

1.12 Retroactive Date

“Retroactive Date” means the date shown in the Schedule.

1.13 Schedule

“Schedule” means the most recent policy schedule issued by Lumley.

Section 2 – Coverage

In consideration of payment of the premium and subject to the terms of this Policy, Lumley agrees as follows:

2.1 Insured Liability

Lumley will indemnify the Insured for any Claim that the Insured becomes legally liable to pay as Damages (including Punitive or Exemplary Damages) as a result of an Employee sustaining a Personal Injury in New Zealand and that arose in connection with the Insured’s Business.

Provided that:

- (a) the Claim against the Insured was first made during the period of insurance; and
- (b) the Claim was notified to Lumley as soon as practicable by the Insured during the period of insurance but no later than 30 days of its expiry; and
- (c) the Personal Injury arose out of an event, circumstance or accident that occurred before the expiry of the period of insurance.

2.2 Limit of Indemnity

The limit of Lumley’s liability for all Claims during the period of insurance shall not exceed the Limit of Indemnity. The Limit of Indemnity is inclusive of GST unless specifically provided for under Condition 5.10 (Goods and Services Tax).

2.3 Defence Costs

In addition to the applicable Limit of Indemnity, Lumley shall pay the Defence Costs for any Claim covered by this Policy.

Provided that:

- (a) Lumley’s maximum liability in the aggregate in respect of all Defence Costs during the period of insurance shall not exceed the amount of the Limit of Indemnity.
- (b) upon payment by Lumley of the Limit of Indemnity in respect of any Claim, judgement or settlement, Lumley’s liability in respect of any further Defence Costs in connection with that Claim shall cease.
- (c) if a payment exceeding the Limit of Indemnity has to be made to dispose of a Claim, Lumley’s liability to pay Defence Costs in connection with that Claim shall be limited to such proportion of the Defence Costs as the Limit of Indemnity bears to the amount paid to dispose of the Claim.

2.4 Separate Limits

For the avoidance of doubt, the limits under Clause 2.2 (Limit of Indemnity) and Clause 2.3 (Defence Costs) are separate. This means the Limit of Indemnity to meet Claims under Clause 2.2 (Limit of Indemnity) cannot be used to meet Defence Costs, and the Limit of Indemnity under Clause 2.3 (Defence Costs) cannot be used to meet any Claim.

2.5 Excess

The Insured must pay the excess specified in the Schedule in respect of each and every Claim including Defence Costs.

Section 3 – Extensions

The following Extensions apply automatically and are subject to the terms of this Policy unless stated otherwise. The amounts payable under these Extensions are included within the Limit of Indemnity; they are not in addition to it.

3.1 Continuous Cover Clause

Lumley will indemnify the Insured for any Claim that would be covered under this Policy but for the operation of Exclusion 4.8(c) (Known Claims and Circumstances), subject to the following:

- (a) Lumley was the Insured’s employers liability insurer at the primary level under a policy (“the former policy”) at the time when the Insured first became aware of the circumstances that subsequently gave rise to the Claim; and
- (b) Lumley continued without interruption as the Insured’s employers liability insurer at the primary level from the time when the Insured first became aware of the circumstances up until such time as the Claim was made against the Insured and notified to Lumley; and

- (c) the liability of Lumley is limited to the amount for which Lumley would have been liable at the time referred to in 3.1(a) in accordance with the terms and conditions of the former policy; and
- (d) the liability of Lumley will be reduced by the amount that fairly represents the extent to which liability for the Claim could have been reduced had the circumstances been duly reported under the former policy.

3.2 Extended Reporting Period

If Lumley cancels or refuses to offer renewal terms for this Policy, the Insured has the right, upon payment of 90% of the annual premium, to an extension of the cover granted by this Policy for a further period of 12 months following the effective date of such non-renewal or termination, but only in respect of a Personal Injury otherwise covered under this Policy that took 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 Insured 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 extended reported period will be treated as if it had been made during the period of insurance and is subject to the remaining Limit of Indemnity at the effective date of non-renewal or termination.

The entire premium for the extended reported period is deemed fully earned and non-refundable upon payment.

3.3 Mergers and Consolidations

If the company named as Insured in the Schedule:

- (a) is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company;
- (b) sells all or substantially all of its assets to another company;

this Policy will be extended to insure the new company, provided that:

- (a) the operations and activities of the merged, amalgamated or consolidated company are the same as those undertaken by the Insured described in the Schedule; and
- (b) the Insured gives Lumley notice that it wishes to extend cover to the new company within 30 days of the merger, amalgamation consolidation or sale; and
- (c) Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

There is no cover for any Claim in connection with any Personal Injury that occurred prior to the date of the merger, amalgamation or consolidation.

3.4 New Subsidiary Companies

This Policy is extended to insure a subsidiary company created or acquired by the Insured during the period of insurance provided that:

- (a) the operations and activities of the new subsidiary company are the same as those undertaken by the Insured described in the Schedule; and
- (b) the Insured gives Lumley notice that it wishes to extend cover to the new subsidiary within 30 days of the acquisition or creation of the new subsidiary company; and
- (c) Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

There is no cover for any Claim in connection with any Personal Injury that occurred prior to the date of the acquisition of the subsidiary company.

3.5 Previous Subsidiary Companies

The definition of Insured will include any entity that ceased to be a subsidiary company of the Insured before or during the period of insurance. However, Lumley will not indemnify any such previous subsidiary for any Claim arising out of a Personal Injury occurring before the Retroactive Date or after it ceased to be a subsidiary of the Insured.

Section 4 – Exclusions

4.1 ACC

There is no cover for liability for compensation that is available under the Accident Compensation Act 2001 or would have been available under that Act, except for the Insured's status as an exempt employer under that Act.

4.2 Asbestos

There is no cover for liability in connection with asbestos.

4.3 Dishonesty or Fraud

There is no cover for any dishonest, fraudulent, criminal or malicious act or omission of any Insured, or any directors, officers or Employees of the Insured.

4.4 Employment Disputes

There is no cover for liability in connection with:

- (a) an employment relationship problem or for an Employee or former Employee seeking compensation under the Employment Relations Act 2000;
- (b) unpaid wages or other benefits due to any Employee.

4.5 Existing Litigation

There is no cover for liability in connection with any litigation in existence at the commencement of the period of insurance.

4.6 Fines and Contractual Obligations

There is no cover for liability for:

- (a) any fine or penalty imposed on the Insured (whether under contract or statute);
- (b) any contractual obligation in the nature of a performance warranty or claim for liquidated damages.

4.7 Health and Safety at Work Act

There is no cover for liability in connection with an Employee sustaining a Personal Injury which arose out of the failure by the Insured to comply with any improvement, prohibition or suspension notice issued to the Insured or its Employees under the Health and Safety at Work Act 2015.

4.8 Known Claims and Circumstances

There is no cover for liability in connection with any Claims:

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

4.9 Legal Jurisdiction

There is no cover for liability in connection with any Claims:

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

4.10 Nuclear

There is no cover for liability in connection with:

- (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- (b) the use, handling or transportation of radioactive materials;
- (c) the use, handling, transportation of any weapon of war or explosive device employing nuclear fission or fusion.

4.11 Retroactive Date

There is no cover for liability in connection with any event, circumstance or accident that occurred prior to the Retroactive Date.

4.12 Sanctions

There is no cover for liability to the extent it would expose Lumley to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

4.13 Terrorism

There is no cover for liability in connection with any Act of Terrorism, regardless of any contributing cause or event, including in connection with controlling, preventing, suppressing, retaliating against, or responding to an Act of Terrorism.

“Act of Terrorism” means any act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public, or a section of the public, of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:

- (a) involves violence against one or more persons;
- (b) involves damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public;
- (e) is designed to interfere with or disrupt an electronic system.

4.14 War

There is no cover for liability in connection with war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority.

Section 5 – Conditions

5.1 Allocation of Costs

If Defence Costs are incurred both in respect of a Claim insured under this Policy and a matter which is not insured under this Policy, then Lumley shall be liable to pay only a fair proportion of such Defence Costs as they relate to the Claim.

In the event that the Insured and Lumley are unable to agree a fair proportion, then a lawyer, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

5.2 Assignment

Unless Lumley's written consent is obtained and endorsed on this Policy, no assignment of interest under this Policy shall bind Lumley.

5.3 Cancellation

The Insured may cancel this Policy at any time by notifying Lumley in writing.

Lumley may cancel this policy at any time by giving notice in writing or by electronic means to the Insured (or the Insured's broker or agent). The policy will be cancelled from 4pm on the 30th day after the date of the notice.

Adjustment of Premium:

- (a) 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;
- (b) After cancellation by Lumley, the Insured is entitled to a pro-rata refund of any unused premium.

5.4 Change of terms

Lumley may change the terms of this Policy (including the excess) by giving notice in writing or by electronic means to the Insured (or the Insured's broker or agent). Unless otherwise specified in this Policy the change in terms will take effect from 4pm on the 30th day after the date of the notice.

5.5 Compliance with the Policy

The Insured (and any other person or entity covered) must comply with the conditions of this Policy at all times. If the Insured, or any other person or entity covered under this Policy, or anyone acting on the Insured's behalf, breaches any of the terms and/or conditions of this Policy, Lumley may:

- (a) decline the Claim either in whole or in part; and/or
- (b) declare either this Policy or all insurance the Insured has with Lumley to be of no effect and to no longer exist.

5.6 Conduct of Claims

The Insured must not, without Lumley's prior written consent, admit liability for or make any decision that affects the conduct of a Claim including the defence, compromise or handling of the Claim in any manner whatsoever on behalf of the Insured, or incur any costs or expenses in connection with a Claim.

Lumley shall be entitled to nominate a solicitor to act as the Insured's lawyer and subject to clause 5.8 (Defence of Legal Proceedings) shall have total discretion as to the conduct of a Claim, in the name of the Insured. The solicitor shall at all times be at liberty to disclose to Lumley any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and Lumley in respect of such information.

If Lumley believes that the Claim will not exceed the excess, Lumley may instruct the Insured to assume responsibility for the conduct of the Claim at the Insured's expense. Should the Claim subsequently exceed the excess, Lumley agrees to reimburse the reasonable costs and expenses incurred by the Insured that exceed the excess. The Insured must advise Lumley as soon as the total costs of the Claim exceed the excess or it becomes apparent that they are likely to do so.

5.7 Cross Liability

Where the Insured consists of more than one legal entity the word "Insured" shall apply to each as if a separate policy had been issued to each. Nothing contained in this Condition increases the Limit of Indemnity in respect of any Claim or period of insurance.

5.8 Defence of Legal Proceedings

- (a) If the lawyer appointed to defend the Insured advises that the Claim should not be defended, then Lumley is not required to defend the Claim against the Insured unless a second lawyer that Lumley and the Insured agree to instruct, advises that the Claim should be defended.
- (b) If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. In formulating their advice, the lawyer must be instructed to consider the:
 - (i) economics of the matter; and
 - (ii) damages and costs likely to be recovered; and
 - (iii) likely costs of defence; and
 - (iv) prospects of successfully defending the claim.
- (c) The cost of the second lawyer's opinion is to be taken as part of the Defence Costs covered under this policy.
- (d) If the second lawyer advises that the claim should be settled and if the terms of settlement that Lumley recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters they are required to consider), then:
 - (i) The Insured cannot object to the settlement; and
 - (ii) The Insured must immediately pay the excess shown in the Schedule.

5.9 Disputes About This Policy

The law of New Zealand applies to disputes about this Policy and the New Zealand Courts have exclusive jurisdiction.

5.10 Goods and Services Tax

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

5.11 Insured's Warranty

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

5.12 Legislation Changes

Any reference to any Act of Parliament or subordinate rules referred to in this Policy includes any amendments made or substitutions to that law.

5.13 Material Change of Facts or Circumstances

The Insured shall give Lumley notice in writing as soon as practicable of any change that materially varies any of the facts or circumstances that existed at the commencement of this Policy. Lumley shall be entitled to vary the Policy terms, conditions and exclusions and charge an additional premium.

5.14 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.

This Policy does not indemnify any Claim if it is indemnified to any extent under any other insurance policy. Lumley will not contribute towards any claim under any other insurance policy.

5.15 Reasonable Precautions

The Insured shall take reasonable care at all times to avoid circumstances that could result in a Claim and shall take all reasonable steps to minimise any Claim and avoid any further loss or liability arising. Lumley shall not be liable if the Insured is reckless or grossly irresponsible.

5.16 Reporting of Claims

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

- (a) any Claim made against them;
- (b) the receipt of notice, or information as to any intention by any party to make a Claim against them;
- (c) any circumstance that a reasonable person in the position of the Insured would have considered may give rise to a Claim.

Provided that in order to qualify as a Claim capable of being covered by this Policy the Insured's notice in writing must:

- (i) relate to a Claim that occurred during the period of insurance; and
- (ii) be given during the period of insurance or within 30 days after its expiry.

Employment Disputes Liability

Policy

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

Introduction

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

1.1 Claim

'Claim' means any written or verbal communication (including notice of any proceedings, investigations or raised personal grievance) to the Insured which alleges a Wrongful Act.

1.2 Costs and Expenses

'Costs and Expenses' 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. Costs and Expenses do not include charges for time spent by directors or employees of the Insured or reimbursement of any form of remuneration for such people.

1.3 Employee

'Employee' means any person who is or was (or who alleges that but for the Wrongful Act would have been) an employee (as defined in the Employment Relations Act 2000) of the Insured. Employee does not mean: any person who is or was a director, principal or partner of the Insured or any person providing services for labour only under contract for services to the Insured.

1.4 Insured

'Insured' means:

- (a) the person, persons, partnership, company, corporation or other entity specified as the Insured in the Schedule including their predecessors in business and subsidiaries; and
- (b) any person who is or becomes, during the Period of Insurance, a principal, partner, director or employee of the Insured; and
- (c) any former principal, partner, director or employee of the Insured; and
- (d) the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of that Insured but only if such persons observe and are subject to the terms and conditions of this Policy.

1.5 Interrelated Wrongful Acts

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

1.6 Limit of Liability

'Limit of Liability' means the amount in the Schedule.

1.7 Loss

'Loss' means any amount which the Insured becomes legally obligated to pay an Employee on account of any Claim made during the Period of Insurance period. Such Claim must be made against an Insured 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 is absolved from payment;
- (b) taxes, fines or penalties imposed by law;
- (c) the multiple portion of any multiplied damage award or punitive or exemplary damages;
- (d) any other amount which is uninsurable under the law of New Zealand;
- (e) any private mediator's or arbitrator's costs that may arise out of a contractual alternative dispute resolution provision.

1.8 Lumley

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

1.9 Period of Insurance

'Period of Insurance' means the period shown in the Schedule, unless terminated earlier.

1.10 Wrongful Act means:

'Wrongful Act' means actual or alleged conduct of the following kind against an Employee by the Insured, or by another Employee in the course of that other Employee's employment with the Insured:

- (a) unjustifiable disadvantage, unlawful discrimination, wrongful unjustifiable demotion, or unjustifiable failure or refusal to promote;
- (b) actual or constructive termination of an employment agreement, in breach of the law;
- (c) misrepresentation or defamation;
- (d) the infliction of emotional distress;
- (e) harassment (sexual or racial or otherwise);
- (f) failure or refusal to hire a potential employee;
- (g) invasion or breach of the right of privacy as provided in the Privacy Act 1993.

Section 2: Insuring clause

In consideration of payment of the premium and subject to the terms, definitions, conditions, exclusions and Limits of Liability contained herein, Lumley will pay on behalf of the Insured all Loss arising from any Claim first made against the Insured during the Period of Insurance and notified to Lumley during the Period of Insurance by reason of any Wrongful Act committed subsequent to the Retroactive Date as shown in the Schedule.

Section 3: Exclusions

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

3.1 Bodily injury

arising from death or physical injury to the body, or any illness attributable to direct physical injury to the body;

3.2 Defamation

arising from the publication of material known by the Insured to be false or misleading or defamatory. This exclusion will not apply to any Insured who did not know (or could not reasonably be expected to have known) that the material was false or misleading or defamatory;

3.3 Deliberate act

arising out of the Insured deliberately committing a Wrongful Act;

3.4 Employee entitlements

for payment to any Employee of any amount which the Insured was obligated (whether under any statute or any express or implied term of any employment agreement or otherwise) to pay prior to the Wrongful Act being committed;

3.5 Employee remuneration

for the payment of any remuneration or benefit to any Employee who has been reinstated into their former position after a Wrongful Act;

3.6 Fines and penalties

for the payment of fines or penalties (whether criminal, civil or pecuniary) imposed by law or for punitive or aggravated or exemplary or multiple damages or matters uninsurable under the laws of New Zealand;

3.7 Industrial action

arising from Wrongful Acts committed during any lockout, strike, picket, stand-down or suspension, or other industrial dispute;

3.8 Known Claims and circumstances

- (a) made against or intimated to the Insured prior to the commencement of the Period of Insurance;
- (b) notified under any previous Policy; or
- (c) arising out of or connected with any facts or circumstances which:
 - (i) the Insured was aware of prior to commencement of the Period of Insurance; and
 - (ii) a reasonable person in the position of the Insured would have considered may give rise to a claim against the Insured.
- (d) arising from any litigation or inquiry that was either in progress or pending prior to the Period of Insurance;

3.9 Modifications to workplace

for the cost of physical modifications to the Insured's workplace, or the cost of changes to workplace procedures;

3.10 Non-compliance

for non compliance with any judgment, award, determination or demand against the Insured issued or published by the Employment Relations Authority, Employment Court, Court of Appeal, Human Rights Commission, Complaints Review Tribunal, Privacy Commission, or Labour Inspector employed by the Department of Labour or any other statutory body;

3.11 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;

3.12 Property damage

arising from or in consequence of loss of or damage to tangible or intangible property;

3.13 Redundancy compensation

for failure by the Insured to pay adequate redundancy compensation or benefit to any Employee dismissed by reason of redundancy that the Employee was entitled to receive;

3.14 Retroactive date

arising out of or connected with the Insured's activities carried out prior to the retroactive date, if any, specified 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;

3.15 Statutory liability

arising under any statute relating to workers compensation, accident compensation or occupational health and safety;

3.16 Territorial limits

brought about by a Wrongful Act committed wholly outside New Zealand or to which the laws of New Zealand do not apply;

3.17 War

Personal injury or property damage 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, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority;

3.18 Terrorism

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

For the purpose of this exclusion, terrorism means an act, including but not limited to the use or threat of force or violence, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is committed for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

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

Section 4: Claims conditions

4.1 Reporting of Claims

Irrespective of the quantum, the Insured shall give to Lumley notice in writing as soon as practicable of:

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

4.2 Notification of circumstances

If, during the Period of Insurance, the Insured becomes aware of any circumstances that may give rise to a Claim and gives written notice to Lumley of such circumstances during the Period of Insurance, then any Claim subsequently arising from such circumstances is deemed to have been made during the Period of Insurance in which the circumstances were first reported to Lumley.

4.3 Defence and settlement of Claims

The Insured shall not admit liability for or settle any Claim or incur any Costs or Expenses in connection therewith without the prior written consent of Lumley, such consent not to be unreasonably withheld.

Lumley is entitled at any time to conduct, in the name of the Insured, the investigation, defence or settlement of any Claim.

4.4 Legal counsel

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

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

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

4.5 Insured's right to contest Claims

Provided always that if the Insured does not agree with a decision by Lumley to settle a Claim, the Insured can elect to contest the Claim at its own expense but the liability of Lumley will not exceed the amount for which the Claim could have been settled in the opinion of counsel appointed under Claims condition 4.4 (Legal counsel). Lumley shall pay all Costs and Expenses incurred up to the date the Insured notifies Lumley in writing of its election under this clause, and shall pay the Insured (subject to the excess) the amount for which the Claim could have been so settled. The Insured expressly agrees that Lumley's liability in respect of such Claim shall then be at an end.

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

4.6 Claims co-operation

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

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

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

4.7 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.

4.8 Subrogation

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

4.9 Payment of sum insured

Lumley may at any time pay the Limit of Indemnity applying to any one Claim or series of Claims (after deduction of sums already paid) or any lesser amount for which such Claims can be settled and shall then be under no further liability in connection with such Claims except for its proportion of Costs and Expenses incurred prior to the date of payment.

Section 5: General conditions

5.1 Limit of liability

The total liability of Lumley under this Policy shall not exceed the Limit of Indemnity for any one Claim, including Costs and Expenses. Lumley's aggregate liability in respect of all Claims, including all Costs and Expenses, shall not exceed the Limit of Indemnity.

5.2 Excess

In respect of each and every Claim the amount of the excess specified in the Schedule must be paid by the Insured. The excess applies to the Costs and Expenses.

The excess does not apply to any Costs and Expenses incurred by Lumley to determine indemnity under the Policy.

All Claims brought by the same Employee arising out of Interrelated Wrongful Acts shall be deemed to be one Claim, and only one excess shall be payable.

Claims brought by more than one Employee arising out of Interrelated Wrongful Acts shall be deemed to be separate Claims, and a separate excess is payable in respect of each Employee's Claim.

5.3 Alteration to risk

The Insured must give notice in writing to Lumley as soon as practicable of any material change to the risk. A material change to the risk includes without limitation activities that are materially different from those declared in the Proposal.

5.4 Reasonable precautions

The Insured shall take all reasonable precautions to comply with and ensure that the Insured's principals, partners, directors or employees comply with all statutory obligations. It is expressly agreed that the Insured will not undertake any disciplinary investigation

nor terminate any Employee's employment for any reason without first seeking legal advice from a qualified employment law practitioner or recognised professional body.

5.5 Fraudulent Claims

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

5.6 Cancellation

(a) Method of cancellation:

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

(b) Adjustment of premium:

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

5.7 GST

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

5.8 Policy disputes

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

5.9 Insured's warranty

It is agreed between the Insured and Lumley that the written Proposal provided by the Insured forms the basis of this Policy and shall be considered as incorporated in and constituting part of this Policy. The Insured warrants the truth of all statements made therein.

5.10 Notice

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

5.11 Interpretation of words

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

5.12 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 Claim, which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Claim shall be reduced to such sum as would have been payable by Lumley in the absence of such prejudice.

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
Tel 09 308 1100 www.lumley.co.nz

Introduction

In consideration of payment of the premium and in reliance on the statements made in the Proposal, 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 Cover

Lumley will pay on behalf of the Insured Persons, where the Company is not legally permitted or required to indemnify an Insured Person, all Loss arising from a Claim:

- (a) first made against the Insured Person and notified to Lumley during the Period of Insurance, and
- (b) for a Wrongful Act that happened after the Retroactive Date.

1.2 Company Reimbursement Cover

Lumley will pay on behalf of the Company, where the Company is legally permitted or required to indemnify an Insured Person, all Loss arising from a Claim:

- (a) first made against the Insured Person and notified to us during the Period of Insurance, and
- (b) for a Wrongful Act that happened after the Retroactive Date.

1.3 Defence Costs Cover

In addition to the Limit of Indemnity, Lumley will pay on behalf of the Insured Persons (or the Company as legally permitted or required to indemnify the Insured Person) all reasonable and necessary Defence Costs incurred with Lumley's prior written consent for the investigation, defence, settlement or appeal of any Claim covered by this Policy.

Lumley's maximum liability for Defence Costs for all Insured Persons for all Claims covered by this Policy during the Period of Insurance will be the lesser of \$1,000,000, or the Limit of Indemnity.

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 Act of Terrorism

'Act of Terrorism' means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- (a) involves violence against one or more persons,
- (b) involves damage to property,
- (c) endangers life other than that of the person committing the action,
- (d) creates a risk to health or safety of the public or a section of the public,
- (e) is designed to interfere with or to disrupt an electronic system.

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 an Insured Person which alleges a Wrongful Act.

2.3 Company

'Company' means the entity named in the schedule as the 'Insured' 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 Company's 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.

'Crisis' 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 Defence Costs

'Defence Costs' means any legal costs, expenses and disbursements, witnesses' costs, assessors or experts fees.

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

2.6 Employee

'Employee' means:

- (a) any 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.

2.7 Financial Institution or Financial Services

'Financial Institution or Financial Services' means a registered bank, merchant or investment bank, finance company, building society, credit union, insurance or reinsurance company, hedge fund, fund manager, property trust, investment trust or unit trust, stockbroker, or futures, commodities or foreign exchange trading.

2.8 Financial Loss

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

2.9 Insured(s)

'Insured(s)' means the Insured Persons and the Company.

2.10 Insured Person

'Insured Person' means any person who is or at the time of the Wrongful Act was a director of the Company including:

- (a) any person who by virtue of any law is deemed to be a director of the Company; or
- (b) an Employee of the Company while acting in a managerial or supervisory capacity for that Company; or
- (c) 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 will not include any externally appointed officers, including but not limited to, auditors, receivers, statutory managers, trustees, liquidators or mortgagees in possession.

2.11 Investigation

'Investigation' means:

- (a) an official investigation, hearing, examination or inquiry in relation to the affairs of the Company,
- (b) a request for information to an Insured Person by any regulator, government body or authority, governmental or administrative agency or self-regulatory body.

2.12 Limit of Indemnity

'Limit of Indemnity' means the amount specified as the Limit of Indemnity in the schedule.

2.13 Loss

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

- (a) damages awarded or judgments entered against the Insured Person; and
- (b) legal costs and expenses awarded against the Insured Person in connection with a covered award, judgment or settlement.

Loss includes settlements negotiated with Lumley's prior written consent.

Loss does not include:

- (a) taxes, except as covered under Condition 5.13 (Goods and Service Taxes); or
- (b) any amount which is uninsurable under the laws of the country under which indemnity is to be provided.

2.14 Lumley

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

2.15 Outside Entity

'Outside Entity' means any entity for which an Insured Person has cover under extension 3.16 (Outside positions).

2.16 Period of Insurance

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

2.17 Policy

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

2.18 Proposal

'Proposal' means the information provided to us by the Insured, or on the Insured's behalf, when the Insured purchased this insurance or requested a quotation for this insurance from Lumley.

2.19 Retroactive Date

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

2.20 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;
 - (ii) controls more than half of the shareholder voting power;
 - (iii) holds more than 50% of the issued share capital;
- (b) any entity over which the Company exercises effective management control.

2.21 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 or group of more than 50% of the voting rights of the named Company.

2.22 Wrongful Act

'Wrongful Act' means 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 as a director of any Outside Entity.

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). Some automatic extensions have a specified sub-limit and these will apply unless specifically stated otherwise in the schedule. Unless specifically stated otherwise, all sub-limits are included in, and are not in addition to, the Limit of Indemnity or the amount payable for Defence Costs, whichever is applicable.

3.1 Advancement of Defence Costs

Notwithstanding Exclusion 4.6 (Fraud or Personal Profit) Lumley will advance on behalf of an Insured Person, Defence Costs as they are incurred in connection with any Claim made against them, and prior to the disposition of such Claim. Provided that if it is finally established by judgment, written admission or other final adjudication that such Defence Costs are not covered under this Policy, the Insured Person(s), severally according to their respective interests, agree to repay Lumley such Defence Costs.

3.2 Compensation for Court Attendance

Lumley will pay to an Insured Person \$500 for each day an Insured Person is required to attend a court as a witness in connection with a Claim. The maximum amount payable under this extension during the Period of Insurance for all Insured Persons is \$20,000.

3.3 Continuous Cover

Lumley will indemnify an Insured Person for Loss arising from a Claim that would be covered by this Policy but for Exclusion 4.8 (Known Claims and Circumstances) provided that:

- (a) Lumley was the Insured's directors and officers insurer under a policy ('the former policy') at the time the Insured should have notified Lumley of the Claim or circumstance that might give rise to a Claim, and
- (b) Lumley has continued without interruption as the Insured's primary directors and officers liability insurer between the date when the notification should have been given up until such time as the Claim was made against the Insured and notified to Lumley; and

- (c) Lumley's liability is limited to the amount for which it would have been liable at the time in (a) in accordance with the terms and conditions of the former 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 Claim or circumstance been reported under the former policy.

3.4 Crisis Costs

Lumley will indemnify the Company for reasonable fees, costs, charges and expenses of a public relations firm or consultant, crisis management consultant or law firm engaged by the Company in order to minimise the effect of a Crisis and to prevent or limit any adverse or negative publicity in respect of a Crisis. Provided that the Crisis 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.

Lumley will only pay such costs:

- (a) if the Crisis first occurs and is notified to Lumley during the Period of Insurance; and
- (b) for the first 45-day period immediately following the day on which the Crisis first occurs.

The maximum amount payable under this extension during the Period of Insurance is the lesser of \$250,000 or the amount payable for Defence Costs.

3.5 Emergency Defence Costs

If Lumley's written consent cannot reasonably be obtained before an Insured Person incurs Defence Costs, Lumley will waive the requirement for prior written consent provided that Lumley's consent is obtained within 14 days following the first of such costs being incurred.

The maximum amount payable under this extension without Lumley's prior written consent is 10% of the amount payable for Defence Costs.

3.6 Employment Liability

Notwithstanding exclusions 4.2 'Bodily injury or Property damage' and 4.7 'Insured versus Insured', Lumley will indemnify an Insured Person for Loss arising from a Claim for an employment grievance.

Cover under this extension also applies to an employment grievance arising from an outside position covered by Automatic extension 3.16 'Outside positions'.

3.7 Estates, Legal Representatives and Spousal Liability

Lumley will indemnify an Insured Person's lawful spouse, estate, heirs, legal representatives or assigns for their liability that arises from a Wrongful Act committed by an Insured Person on the same terms and conditions as Lumley covers an Insured Person.

3.8 Extended Reporting Period

If Lumley does not offer renewal of this policy, then the Insured may extend cover under this Policy for a further period of 12 months. However, this extended period will only cover a Wrongful Act that happened before the expiry of the Period of Insurance but not a Wrongful Act that happens during the extended period.

If the Insured elects to extend this Policy as described above, notice of such election must be given to Lumley within 30 days of Lumley's refusal to renew this Policy and the Insured must pay Lumley an additional premium (being 50% of the last annual premium).

This extension is not available if Lumley cancels this Policy or declares this Policy unenforceable because the Insured did not:

- (a) pay the premium; or
- (b) disclose information material to the risk; or
- (c) comply with terms of this Policy.

This extension does not provide a new Limit of Indemnity for the extended period.

3.9 Extended Reporting 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, then an extended period of 84 months will be provided for any Insured Person who retired or resigned from the Company prior to the expiry of the Period of Insurance.

During this extended period, notice may be given to Lumley of any Claim arising from a Wrongful Act committed by the Insured Person prior to the date of expiry of the Period of Insurance.

This extension is not available if, at the expiry date of the Period of Insurance:

- (a) a Transaction has occurred,
- (b) the Company is in liquidation, receivership, insolvency, bankruptcy or administration,
- (c) the Company has exercised its option to extend cover under Automatic extension 3.8 'Extended Reporting Period'.

3.10 Extradition Costs

Lumley will pay Defence Costs to challenge, resist and defend any action against an Insured Person under the Extradition Act 1999 where such action is in connection with any Wrongful Act that may lead to a Claim, which if made, would be covered by this Policy.

Provided that:

- (a) notice of the extradition is first notified to the Insured Person, and to Lumley, during the Period of Insurance; and
- (b) the conduct which is the subject of the extradition occurred after the Retroactive Date, if any.

The maximum amount payable under this extension during the Period of Insurance for all Insured Persons is the lesser of \$1,000,000 or the amount payable for Defence Costs.

3.11 Family and Personal Expenses

Lumley will pay on behalf of an Insured Person the costs of housing, utilities, personal insurances and schooling expenses in the event of:

- (a) an interim or interlocutory order confiscating, controlling, suspending or freezing rights or ownership of real property or personal assets; or
- (b) a charge over real property or personal assets;

of an Insured Person as a result of a Claim or an Investigation covered by this Policy during the Period of Insurance.

Such costs will only be payable:

- (a) directly to the service provider; and
- (b) commencing 30 days after the exhaustion of any personal allowance granted by a court for such costs, for a maximum period of up to 12 months.

Lumley will pay up to \$200,000 per Insured Person, subject to a maximum amount payable under this extension during the Period of Insurance for all Insured Persons of the lesser of \$1,000,000 or the amount payable for Defence Costs.

3.12 Health and Safety Defence Costs

Notwithstanding Exclusion 4.2 (Bodily Injury or Property Damage), Lumley will pay Defence Costs in respect of any Claim or Investigation alleging a breach by an Insured Person under the Health and Safety at Work Act 2015 or equivalent legislation governing health and safety in the workplace in any other jurisdiction covered by this Policy.

3.13 Insured versus Insured

Notwithstanding exclusion 4.7 (Insured versus Insured) Lumley will indemnify an Insured Person for:

- (a) Defence Costs in connection with a Claim brought by any other Insured Person or the Company;
- (b) any Claim brought by or on behalf of the Company or Outside Entity:
 - (i) pursued as a shareholder derivative action 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 the Outside Entity or any Outside Entity director;
 - (ii) brought by an insolvency administrator, receiver, trustee or liquidator of any Company or Outside Entity.
- (c) a Claim:
 - (ii) brought by any other Insured Person for contribution or indemnity, if the Claim directly results from another Claim otherwise covered under this Policy;
 - (iii) brought by any past director, officer or employee of the Company or any Outside Entity.

3.14 Investigations and Inquiries

Lumley will pay Defence Costs arising out of an Investigation where such Investigation may lead to a Claim which if made, would be covered by this Policy.

Provided that:

- (a) notice of the Investigation is first given to the Insured Person, and to Lumley, during the Period of Insurance; and
- (b) the conduct which is the subject of the Investigation occurred after the Retroactive Date.

This extension does not cover:

- (a) any Investigation under the Health and Safety at Work Act 2015 or equivalent legislation governing health and safety in the workplace in any other jurisdiction,
- (b) an Investigation brought in a court:
 - (i) outside the jurisdiction specified in the schedule; or
 - (ii) within the jurisdiction of, or pursuant to the laws of the United States of America, its territories or possessions.

The Insured Person must refund Defence Costs advanced by Lumley where it is established by the Investigation that the conduct which is the subject of the Investigation was:

- (a) dishonest, fraudulent or criminal; or
- (b) a reckless or knowing breach of any law.

3.15 New Subsidiary

If the Company creates or acquires a new entity during the Period of Insurance, Lumley will include such entity as a Subsidiary provided that:

- (a) the total gross assets of the entity do not exceed 25% of the total gross consolidated assets of the Company; and
- (b) the entity is not located in the United States of America, its territories or possessions; and
- (c) the entity's business activities are not materially different to the activities conducted by the Company at the commencement of the Period of Insurance.

The cover provided under this extension will only apply to a Wrongful Act occurring after the date of creation or acquisition of the new entity.

3.16 Outside Positions

Lumley will pay on behalf of an Insured Person Loss arising from a Claim in connection with an Insured Person's appointment, undertaken with the

knowledge and consent of, or at the request of, the Company, as a director, officer, trustee or manager (or other equivalent position) of any:

- (a) corporation, association, trust, fund, institution, society, enterprise or foundation established for charitable, community, industry or social purposes; or
- (b) entity in which the Company, at the time of the Wrongful Act, owns (either directly or indirectly) between 20% and 50% of the issued or unissued shares.

Any cover provided under this extension:

- (a) will only apply in excess of any other insurance in force in respect of such appointment;
- (b) will not apply to any Claim made against any Insured Person by any entity noted in (a) or (b) above or its directors; or
- (c) will not apply to a Claim brought by or on behalf of any past or present shareholder of any entity noted in (a) or (b) above who had or has direct or indirect control or ownership of more than 15% of the shares or rights of that entity.

Cover under this extension will not apply to any appointment to:

- (a) a publicly listed company;
- (b) a company in the United States of America its territories or possessions;
- (c) an entity that is a Financial Institution or Financial Services company.

3.17 Pecuniary Penalties

Notwithstanding Exclusion 4.4 (Fines and Penalties), Lumley will pay any civil fine or penalty which an Insured Person is legally obliged to pay by virtue of any applicable law in New Zealand (or Australia where the jurisdiction specified in the schedule includes Australia) arising out of a Claim covered by this Policy provided that Lumley is not legally prohibited from indemnifying the Insured Person for such fine or penalty.

The maximum amount payable under this extension during the Period of Insurance for all Insured Persons is the lesser of \$1,000,000 or the Limit of Indemnity.

3.18 Public Relations Expenses

Lumley will 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 an Insured Person's reputation as a result of a Claim covered by this Policy.

Cover under this extension is limited to publicising findings made in a final judicial disposition of that Claim in the Insured Persons favour.

The maximum amount payable under this extension during the Period of Insurance for all Insured Persons is the lesser of \$250,000 or the amount payable for Defence Costs.

3.19 Reinstatement of the Limit of Indemnity Upon a Recovery

Any amounts which Lumley recovers (net of Lumley's costs and expenses associated with such recovery) following payment of a Claim covered by this Policy, shall reduce the erosion of the Limit of Indemnity to the same extent.

3.20 Run-off Cover for Past Subsidiaries

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

3.21 Superannuation Trustees

Notwithstanding exclusion 4.6 (Insured versus Insured) Lumley will pay for Loss arising from any Claim made against an Insured Person in their individual or collective capacities as trustees of the Company's own superannuation or pension funds. Such cover will 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 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 or Property Damage

for bodily or mental injury, emotional distress, illness, disease or death of any person 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 Existing litigation

in connection with any pending or prior litigation or any civil, criminal, administrative or regulatory proceeding or investigation or inquiry in existence at the commencement of the Period of Insurance.

4.5 Fines and Penalties

for any:

- (a) fine or penalty imposed, whether under contract or statute;
- (b) punitive, aggravated, liquidated or exemplary damages.

4.6 Fraud or Personal Profit

directly or indirectly arising from or in connection with:

- (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 or criminal act; or
- (c) any reckless or knowing breach of any law; 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 will only apply if there is a written admission, settlement, judgment or other final adjudication which establishes that such conduct did in fact occur.

4.7 Insured versus Insured

which is brought by or on behalf of an Insured Person or the Company.

4.8 Jurisdiction

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

- (a) first brought in a court outside the jurisdiction specified in the schedule; or
- (b) brought in a court within the jurisdiction specified in the schedule to enforce a judgment handed down in a court outside the jurisdiction specified in the schedule 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 jurisdiction specified in the schedule.

4.9 Known Claims or 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 Person 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.

4.10 Major Shareholder Exclusion

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

4.11 Nuclear

arising from or in connection with any atomic energy risks, being operations employing the process of nuclear fission or fusion or handling of radioactive material, which operations include but are not limited to:

- (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- (b) the use, handling or transportation of radioactive materials;
- (c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

4.12 Pollution

directly or indirectly arising from or in connection with pollution or contamination:

- (a) in the United States of America, its territories or possessions; or
- (b) outside of the territorial limit or jurisdiction specified in the schedule.

4.13 Professional Services

arising from or in connection with any duties owed in relation to the giving of professional services or advice.

4.14 Prospectus or Capital Raising Exclusion

directly or indirectly arising from or in connection with:

- (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.

4.15 Sanctions

or provide any cover to the extent such cover would expose Lumley to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

4.16 Territorial limit

directly or indirectly arising from or in connection with any Wrongful Act which occurred outside the territorial limit specified in the schedule.

4.17 Terrorism

for death, injury, illness, loss or damage directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss including in connection with controlling, preventing, suppressing, retaliating against, or responding to an act of terrorism. 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.

4.18 War

for loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Section 5: Conditions

5.1 Allocation

If a Claim incurs Loss which is partly covered by this Policy or is made against other parties, one or more of whom is covered and others who are not covered under this Policy, then Lumley will attempt to ensure fair and proper allocation of the Defence Costs for covered and uninsured portions or parties.

If the Insured and Lumley are unable to reach agreement on allocation of Defence Costs then that allocation will be decided by a lawyer that Lumley and the Insured agree to instruct, whose determination will be binding. If Lumley and the Insured cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. The cost of the lawyers determination is to be taken as part of the Defence Costs covered by this policy.

5.2 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.

5.3 Authorisation Clause

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

- (a) negotiating and binding the terms of cover;
- (b) the giving and receiving of any notice of Claim or cancellation or other notice required under this Policy;
- (c) the payment of premiums and the receiving of any return premiums;
- (d) the agreement to and acceptance of endorsements.

5.4 Breach of Condition

The Insured Persons must comply with the terms of this Policy. If an Insured Person breaches any of the terms of this Policy, Lumley may decline the Claim either in whole or in part for that Insured Person.

5.5 Cancellation

- (a) The Insured may cancel this Policy at any time by giving Lumley, or their broker, notice in writing or by electronic means.
- (b) Lumley may cancel this Policy at any time by giving the Insured, or their broker, notice in writing or by electronic means at the Insured's, or their broker's, last known address. Cancellation to take effect from 4pm on the 30th day after the date of the notice.

Upon cancellation by Lumley or the Company, the Company is entitled to a pro rata refund of the last annual premium.

5.6 Change in Circumstances

The Insured must immediately advise Lumley if there is a material:

- (a) increase in the risk insured, or
- (b) alteration of the risk insured.

Once the Insured has told us of the change, Lumley may then alter the premium and/or the terms of this Policy or cancel this Policy.

If the Insured fails to notify Lumley about an increase or alteration to the risk insured, Lumley may:

- (a) declare this Policy unenforceable, and/or
- (b) decline any subsequent Claim either in whole or in part.

These actions will be taken from the date the Insured knew, or ought to have known, of the increase or alteration to the risk insured.

5.7 Claims Co-operation

The Insured must take all reasonable steps to avoid or diminish any liability in respect of any Claim and will, 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 will 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.

5.8 Currency

All amounts shown in this Policy are expressed and payable in New Zealand dollars unless otherwise specified in the schedule. If any judgment is rendered or settlement made 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 or settlement is made.

5.9 Defence costs

Lumley's consent to allow the Insured to incur Defence Costs covered by this Policy will not be unreasonably delayed or withheld.

5.10 Defence and Settlement

The Insured must 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 will not be liable for any settlement, Defence Costs, admission, offer, payment or assumed obligation to which it has not consented.

Lumley will 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 will have full discretion in managing any proceedings or in negotiating the resolution of any Claim.

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

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

5.11 Dishonest or fraudulent statements

If an Insured Person makes any dishonest or fraudulent statement in connection with a Claim or application for indemnity under this Policy, Lumley may:

- (a) decline the Claim either in whole or in part, and/or
- (b) declare either this Policy or all insurance the Insured Person has with Lumley to be of no effect and to no longer exist from the date of the dishonest or fraudulent act.

5.12 Excess

Lumley's liability in respect of each Claim only applies to that part of Loss or Defence Costs which exceeds the excess specified in the schedule, but in respect of any one Claim, only one excess is payable. Such excess will 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 Cover).

5.13 Goods and Services Taxes

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 upon receiving any indemnity payment under this Policy, Lumley will 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.

5.14 Inadvertent Non-Disclosure

Lumley will waive its rights to decline a Claim or avoid this Policy under Condition 5.6 'Change in Circumstances', if 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.

Provided that;

- (a) 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
- (b) the premium and terms of this Policy will 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
- (c) Lumley's liability to indemnify the Insured Person will 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.

5.15 Insured Persons Right to Contest a Claim

If the Insured Person, against whom the Claim is made, refuses to consent to any settlement for which a Claim could have been settled in the opinion of the lawyer appointed under Condition 5.16 'Legal Counsel', and elects to contest or continue legal proceedings, Lumley's liability will not exceed the amount for which the Claim could have been settled, less any excess, plus Defence Costs incurred up to the date of such refusal.

5.16 Legal Counsel

Neither Lumley nor any Insured Person will require each other to contest any legal proceedings in respect to any Claim against the Insured Person, unless a lawyer mutually agreed by Lumley and the Insured Person to defend the Insured Person advises such proceedings should be defended.

In formulating such recommendation, the lawyer will consider 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 the lawyer's opinion will, for the purposes of this Policy, be regarded as part of the Defence Costs.

In the event that the lawyer 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 lawyer's opinion, are reasonable, then the Insured Person will not object to any such settlement and will cooperate with Lumley to effect such settlement in accordance with this Policy.

5.17 Legislation changes

Any reference to any Act of Parliament or subordinate rules referred to in this Policy includes any amendments made or substitutions to that law.

5.18 Limit of Liability

Lumley's maximum liability for Loss on account of all Claims covered by this Policy during the Period of Insurance is the Limit of Indemnity.

5.19 Notice

The Insured will give Lumley written notice of any Claim, or circumstance that may give rise to a Claim, as soon as practicable.

If during the Period of Insurance the Insured becomes aware of circumstances which may give rise to a Claim taking place during the Period of Insurance and gives written notice of such circumstances to Lumley, then any Claims subsequently arising from such circumstances are considered to have been made during the Period of Insurance in which the circumstances were first reported to Lumley.

5.20 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 will not be available until the limit of indemnity under any other policy has been exhausted. However, this will not apply if the other insurance or indemnity is a specific excess layer cover over this Policy.

5.21 Policy Disputes

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

5.22 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 will cover the Insured Person under Insuring Clause 2.1. Directors and Officers Cover.

5.23 Severability

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

5.24 Subrogation

In the event of Lumley making any payment under this Policy, Lumley will be subrogated to all the Insured's rights of recovery. The Insured will fully cooperate with any recovery process.

Lumley will not exercise any right of subrogation against any Insured Person unless it is established by written admission, settlement, judgment or other final adjudication that an Insured Person has committed a dishonest, fraudulent, criminal act or any reckless or knowing breach of any law.

5.25 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.

5.26 Waiver of Legal Privilege

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

Fidelity Liability

Policy

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

Introduction

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

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

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

Section 1: Definitions

1.1 Discovered or Discovery

'Discovered' or 'Discovery' means when a director, partner, departmental director, senior manager or equivalent of the Insured becomes aware of matters which would cause a reasonable person to assume that a Loss of the sort covered by this Policy has been or will be incurred, even though the exact amount or details of a Loss may not then be known. Such Discovery shall then constitute knowledge possessed or Discovery made by every Insured.

1.2 Discovery Period

'Discovery Period' means the period of time specified in Condition 5.8 (Discovery Period).

1.3 Employee

'Employee' means any person (other than a director) while in the regular service of the Insured (including the first sixty (60) days following termination of service) whom the Insured compensates by salary, wages and/or commissions and whom the Insured has the right to govern and direct in the performance of their duties. The term Employee shall also include:

- (i) part-time or temporary Employees;
- (ii) any person provided to the Insured by an employment agency (or similar contractor) to perform the duties of an Employee;
- (iii) any Employee whom the Insured is unable to identify by name but whose act or acts have caused a Loss covered under this Policy, provided that the evidence submitted by the Insured proves beyond reasonable doubt that the Loss was due to the act of such an Employee.

The term Employee does not mean any broker, partner, investment adviser or investment manager, factor, commission merchant, consignee, contractor or other similar agent or representative.

1.4 Insured

'Insured' means the entity named in the Schedule and includes any:

- (a) Subsidiary existing on or before the inception of the Policy Period;
- (b) Subsidiary that the Insured acquires or creates after the inception date of this Policy provided that the acquired Subsidiary:
 - (i) has gross annual revenue that does not exceed twenty percent (20%) of the Insured's gross annual revenue as declared to Lumley at the inception date of this Policy; and
 - (ii) has not sustained Losses of a type covered by this Policy within the last three (3) years.
- (c) Subsidiary that the Insured acquires or creates after the inception date of this Policy and that does not comply with sections 1.4(a) and 1.4(b) above, provided that the Insured;
 - (i) gives Lumley written notice within sixty (60) days of the effective date of acquisition or creation; and
 - (ii) gives Lumley such other additional information as it may reasonably require, and
 - (iii) pays any reasonable additional premium required by Lumley.

With respect to this Definition cover afforded to the companies described shall only apply for Loss caused while such company is or was a Subsidiary of the Insured.

1.5 Investigative Specialist

'Investigative Specialist' means an independent Investigative Specialist approved by Lumley for use by the Insured to establish proof of Loss under this Policy.

1.6 Loss

'Loss' means the direct financial loss (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other Employee benefits paid by the Insured, which are not deemed direct financial loss), sustained by the Insured in connection with

any single act or series of related, continuous or repeated acts (which shall be treated as a single act) of Theft, fraud, dishonesty or criminal damage committed by any Employee (acting alone or in collusion with any other Employee or others).

1.7 Lumley

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

1.8 Management Control

'Management Control' means that the Insured has the right to control the day-to-day management of the relevant entity and to set security and internal control procedures, whether financial or operational.

1.9 Money

'Money' means currency, coins, bank notes and bullion, cheques, traveller's cheques, registered cheques, postal orders and money orders held for sale to the public.

1.10 Policy Period

'Policy Period' means the period of time from the inception date to the expiry date specified in the Schedule.

1.11 Premises

'Premises' means any building or property owned or occupied by the Insured as a place to conduct their business.

1.12 Securities

'Securities' means all negotiable and non-negotiable instruments or contracts, including any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security, in respect of money or property, but does not include Money.

1.13 Subsidiary

'Subsidiary' means any entity which at the inception of the Policy Period, the Insured holds more than 50% of the voting rights of that entity or has the ability to control decisions made by the board of directors (whether directly or indirectly). It shall also include any joint venture or entity over which the Insured exercises effective Management Control;

1.14 Territorial Limits

'Territorial Limits' means the territory specified in the Schedule.

1.15 Terrorism

'Terrorism' means any act of force, violence or intimidation, or the threat thereof, calculated and intended to influence, disrupt, disturb or overthrow any individual, corporation, association or lawfully constituted authority in the actual or purported furtherance of any political, social, religious, cultural or environmental objective or philosophy.

1.16 Theft

'Theft' means the unlawful taking, including by violence or threat of violence, of Money, Securities or other property to the intended permanent deprivation of the Insured.

1.17 Transaction

'Transaction' means any one of the following events:

- (a) the Insured consolidates with, merges with, or sells all or substantially all of its assets to any other person, entity or group of persons, and/or entities acting in concert; or
- (b) the Insured becomes a subsidiary of another entity by virtue of any applicable law.

Section 2: Insuring clause

Lumley shall indemnify the Insured for their direct financial Loss sustained at any time consequent upon a single act or series of related acts of Theft, fraud, dishonesty or criminal damage committed by any Employee (acting alone or in collusion with others), that is:

- (i) committed with the clear intent to cause the Insured a Loss, and
- (ii) Discovered by the Insured during the Policy Period, and
- (iii) committed within the Territorial Limits, and
- (iv) not excluded under this Policy.

Section 3: Exclusions

Lumley shall not be liable to make any payment for:

3.1 Consequential Loss

Indirect or consequential Loss of any nature, including any loss of income (including but not limited to interest and dividends) not realised by the Insured or any other person or organisation because of a Loss covered under this Policy.

3.2 Costs, Fees and Expenses

Costs, fees or other expenses incurred in establishing the existence or amount of Loss covered under this Policy, or in prosecuting or defending any legal proceeding.

3.3 Credit Risks

Loss resulting from the complete or partial non-payment of or default under any:

- (i) credit agreement, extension of credit or hire purchase agreement;
- (ii) loan or transaction in the nature of a loan;
- (iii) lease or rental agreement;
- (iv) invoice, account, agreement or other evidence of debt, or
- (v) payments made or withdrawals from any customer's accounts involving items which are not finally paid for any reason.

3.4 Fines, Penalties or Damages

Fines, penalties or damages of any type for which the Insured is legally liable, except direct restitution arising out of a Loss covered under this Policy.

3.5 Loss Sustained After Knowledge

Loss caused by any Employee or by any other person after Discovery that that Employee or other person had committed or was suspected of having committed, an act of Theft, fraud, dishonesty, or criminal damage.

3.6 Non-violent Crime by any Third Party

Loss of and/or damage to any property on the Premises by any person other than an Employee.

3.7 Premises Damage

Damage or destruction to any Premises, however caused.

3.8 Prior Discovery of Losses

Loss the Insured Discovered:

- (i) prior to the inception date of the Policy Period, or
- (ii) subsequent to the expiry of the Policy Period.

3.9 Profit, Loss or Inventory Computation

Loss, the proof of which is dependent solely upon a:

- (i) profit and loss computation or comparison; or
- (ii) comparison of inventory records with an actual physical count.

However, where an Employee is involved in, or suspected of, causing Loss and has been identified, inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of Loss.

3.10 Proprietary Information, Trade Secrets and Intellectual Property

Loss of, or arising from the accessing and dissemination of, any confidential information (including but not limited to trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods), except in the sense that access to any such confidential information may enable or assist the commission of an act that results in Loss covered by this Policy.

3.11 Radioactivity and Nuclear

Loss, expense, liability or consequential loss of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

3.12 Voluntary Exchange or Purchase

Loss arising out of the voluntary giving or surrendering of Money, Securities or other property in any exchange or purchase unless such Loss is caused by an Employee.

3.13 War and Terrorism

Loss that arises directly or indirectly out of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot, the act of any lawfully constituted authority or Terrorism.

3.14 Failure of Checks and Precaution

Loss arising out of the failure of any check or precaution described in the proposal or otherwise in writing, including but not limited to the following: failure of the Insured to rely on the advice of external auditors; breakdown in internal records which a reasonable auditor would have identified; failure of the Insured to maintain controlled or password access to any of its locations or computer terminals, or; failure by the Insured to conduct regular physical checks of stock, raw materials and finished goods against inventory records.

3.15 Dual Custody and Control

Loss arising from or in any way related to:

- (a) the operation of the Insured's bank accounts, by way of cheque, reconciliation, funds transfer or other means; or
- (b) investments in, or custody of securities and other valuables; or
- (c) any refunds of money or any return of goods;

which do not require authorisation of at least two authorised officers or Employees.

Section 4: Extensions

Subject otherwise to all of the terms and conditions of this Policy, cover is extended as follows:

4.1 Disposal of Subsidiary Company

This Policy covers any Subsidiary Company sold or wound up during the Policy Period, which were previously insured under this Policy, for any Loss covered by this Policy and Discovered subsequent to the date of sale or winding up, which arises from any act or acts committed prior to the date of sale or winding up but prior to the expiry of the Discovery Period.

Section 5: Conditions

5.1 Limit of Lumley's Liability

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

5.2 Limit of Liability Under this Policy and Prior Insurance

Loss which is covered partly by this Policy and partly by any other Policy (including policies of which this is a renewal) issued by the Insurer or by any other member company of the Wesfarmers Group of Companies to the Insured, for which the Discovery Period has not expired, shall be limited to the larger of the claim entitlement under the previous Policy or the entitlement under this Policy.

5.3 Non Accumulation of Liability

Regardless of the number of years this Policy is in force and irrespective that it is or may be renewed and regardless of the number of premiums paid, the Limit of Indemnity as specified in the Schedule shall not accumulate from year to year or from period to period.

5.4 Excess

For each and every Loss, coverage under this Policy will be excess of the greater of:

- (i) the excess specified in the Schedule; or
- (ii) the amount of any other valid and collectible insurance or indemnity, contractual or otherwise, available to the Insured.

If a Loss is covered partly under this Policy and partly under a prior policy written by another Insurer, the excess under this Policy applicable to the Loss will be reduced by the excess actually applied to the Loss under such other Policy.

5.5 Change in Control of Insured

If during the Policy Period a Transaction takes place, then the cover provided under this Policy is amended to apply only to Losses occurring prior to the effective date of the Transaction. The Insured shall give Lumley written notice of the Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

5.6 Knowledge or Discovery of Loss

Upon knowledge or Discovery of Loss the Insured shall:

- (i) give written notice to Lumley as soon as practicable after such knowledge or Discovery; and
- (ii) provide all requested information and documents and co-operate with Lumley in all matters pertaining to the Loss.

5.7 Loss Mitigation

As soon as evidence of Loss involving an identified Employee is Discovered the Insured must immediately take all necessary steps to prevent any additional Loss arising from the same identified Employee. Any further Losses caused by the same Employee after the date of Discovery will not be covered by this Policy.

5.8 Discovery Period

If the Insured or Lumley chooses not to renew this Policy, or the Policy is cancelled, then the Insured shall have the right to a Discovery Period of thirty (30) days following the effective date of non-renewal or cancellation.

5.9 Use of Investigative Specialists

- (i) An Investigative Specialist will be nominated by the Insured and approved by Lumley in respect of any Loss notified under this Policy. The Investigative Specialist shall not be any entity or person with a clear conflict of interest.
- (ii) The Investigative Specialist shall:
 - (a) investigate the facts behind the Loss; and
 - (b) determine the quantum of the Loss; and
 - (c) advise when and how the Insured's controls were or may have been breached; and
 - (d) summarise recommendations that may prevent future similar Losses; and
 - (e) issue their report, in a format approved by Lumley, in duplicate to the Insured and Lumley.
- (iii) Lumley will pay the expense of the Investigative Specialist unless the Loss is not covered and in that event the expense will be shared equally between Lumley and the Insured.

The excess amount is not applicable to the expense of the Investigative Specialist and such expense paid by Lumley will be in addition to the Limit of Indemnity specified in the Schedule.

- (iv) Lumley may amend the listing of Investigative Specialists.
- (v) The report issued by the Investigative Specialist will be binding and definitive in respect of the facts and quantum of the Loss only.

5.10 Arbitration

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

5.11 Loss settlement

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

5.12 Basis of valuation

In no event shall Lumley be liable for more than:

- (i) the indemnity value of Securities at the close of business on the day the Loss was Discovered, or for more than the actual cost of replacing the Securities, whichever is less, plus the cost to post any required lost instruments bond (such cost shall be paid by Lumley on behalf of the Insured);
- (ii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the Insured in order to reproduce books of accounts and records;
- (iii) the cost of labour for the actual transcription or copying of electronic data furnished by the Insured, in order to reproduce such electronic data;
- (iv) the cost of books of account and hard copies of business records. Lumley's liability for such records is limited to ten percent (10%) of the amount of the covered Loss, which amount is part of and not in addition to the Limit of Indemnity specified in the Schedule;
- (v) the reasonable cost of rewriting or amending the software programs or systems where such rewriting or amending is necessary to correct the programs or amend the security codes following a covered Loss under this Policy. Lumley's liability for such rewriting or amending is limited to ten percent (10%) of the amount of the covered Loss, which amount is part of and not in addition to the Limit of Indemnity specified in the Schedule;
- (vi) the indemnity value of other property at the time of Loss or the actual cost of repairing or replacing the property with property or material of like quality or value, whichever is less. The indemnity value of other property if held by the Insured as a pledge, or as collateral for an advance or a loan, shall be considered not to exceed the value of the property as determined and recorded by the Insured when make the advance or loan, or in the absence of a record, the unpaid portion or the advance it made or loan plus accrued interest at legal rates.
- (vii) the value of a foreign currency (a currency other than the New Zealand Dollar) which is involved in a Loss the Insured sustained. The value will be determined by applying the rate of exchange as published in the National Business Review on the date, or date nearest to the date, of when the Loss was Discovered.

5.13 Recoveries

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

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

5.14 Subrogation

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

5.15 Changes and Assignment

No changes, modifications or assignments of interest of this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorised representative of Lumley. Additionally, notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or stop Lumley from asserting any right under the terms of this Policy.

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 Policy Disputes

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

5.18 Single Policy

This Policy is a single contract of insurance and if more than one Insured is covered, this Policy shall nevertheless be and remain a single contract of insurance for the benefit of the Insured as joint Insureds and accordingly, without limitation:

- (i) the Insured shall act for itself and for all Insureds for all purposes under this Policy, including but not limited to the giving and receiving of notice, the give of notice of Loss, the payment of premiums that may become due and the receipt and acceptance of any endorsements issued to form a part of this Policy;
- (ii) payment of any Loss under this Policy to the Insured shall fully release Lumley from any further liability in respect of such Loss;
- (iii) if the Insured is more than one entity and any such entity ceases for any reason to be covered under this Policy, then the remaining entities shall be considered to be the Insured for all purposes under this Policy;
- (iv) knowledge possessed or Discovery made by any Insured, or by any partner, director or officer thereof, shall for all purposes constitute knowledge possessed or Discovery made by every Insured, unless it can be proved otherwise;
- (v) Lumley's liability for Loss sustained by more than one Insured shall not exceed the amount for which Lumley would be liable had all such Loss been sustained by only one of the Insured.

5.19 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 payment under this Policy, Lumley will pay the Insured for the costs of that tax. The indemnity under this clause is payable by Lumley in addition to the Limit of Indemnity.

5.20 Agreement and Representations

By acceptance of this Policy, the Insured agrees that the Policy embodies all agreements and representations existing between the Insured and Lumley or any of its agents relating to this insurance.

5.21 Fraudulent Claims

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

5.22 Notice

All notices, including notification of Loss, shall be sent to Lumley, a business division of IAG New Zealand Limited, Lumley Centre, 88 Shortland Street, Auckland 1140, New Zealand.

5.23 Interpretation of Words

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

5.24 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.

Internet Liability

Policy

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

Introduction

This Policy is a contract of insurance between You and Lumley, a business division of IAG New Zealand Limited. Your Policy contains all the details of the cover that We provide subject always to Our receipt of the premium.

It is agreed that this Policy consists of and must be read together with the Schedule, the Proposal and any Endorsements. It is further agreed that the Proposal contains particulars and statements which are the basis of this contract.

This Policy provides liability protection for Your Business but only for the Period of Insurance shown in the Schedule.

Important: This is a claims made policy. A Claim must be first made while the Policy is in effect to be covered.

The Policy does not cover Wrongful Acts prior to any Retroactive Date specified in the Schedule.

Section 1: Definitions

1.1 Business

‘Business’ means Your business as described in the Schedule.

1.2 Claim

‘Claim’ means:

- (a) a demand for compensation made against You by a third party; or
- (b) legal proceedings seeking compensation instituted and served upon You; or
- (c) any threats or intimidation that legal proceedings seeking compensation will be issued against You.

1.3 Costs and Expenses

‘Costs and Expenses’ means:

- (a) any legal costs, disbursements, witnesses’ costs, assessors’ costs or experts’ costs incurred by Us in investigating, defending or settling any Claim made against You in respect of which You are entitled to be indemnified by Us in terms of the indemnity granted by this Policy.
- (b) all reasonable expenses (other than loss of earnings or profits) that are incurred with Our prior written consent, such consent not to be unreasonably withheld, in assisting Us or Our solicitors in the investigation, defence or settlement of any Claim.
- (c) any interest accruing after the date of entry of judgment against You and until the date We pay tender or deposit in court the judgment sum or such part of that judgment sum as is required to satisfy Our liability to You in terms of the Limit of Indemnity.

1.4 Endorsement

‘Endorsement’ means an individual endorsement document that We give You that attaches to and forms part of Your Policy.

1.5 Excess

‘Excess’ means the amount specified as the Excess in the Schedule.

1.6 Family Member

‘Family Member’ means:

- (a) any spouse or de facto partner;
- (b) any parent, or parent of the spouse or de facto partner;
- (c) any sibling or child;

of Yours.

1.7 Intellectual Property Rights

‘Intellectual Property Rights’ means copyright, trademark rights, or plagiarism, registered designs, geographical indications, plant variety rights or layout design rights.

1.8 Internet

‘Internet’ means electronic mail, intranet, extranet, internet, worldwide web or any manifestation of the worldwide public network of computers.

1.9 Limit of Indemnity

'Limit of Indemnity' means the amount specified as the Limit of Indemnity in the Schedule.

1.10 Named Insured

'Named Insured' means the legal entity specified in the Schedule.

1.11 Period of Insurance

'Period of Insurance' means the period of insurance specified in the Schedule.

1.12 Personal Injury

'Personal Injury' means:

- (a) bodily injury, death, sickness, disease, shock, fright, mental anguish or mental injury;
- (b) false arrest, false detention, wrongful imprisonment or malicious prosecution;
- (c) wrongful entry or wrongful eviction.

1.13 Policy

'Policy' means:

- (a) this document;
- (b) the Schedule;
- (c) the Proposal; and
- (d) any Endorsements

that together are to be considered as one document.

1.14 Property Damage

'Property Damage' means physical injury to or destruction or loss of tangible property.

1.15 Proposal

'Proposal' means the proposal form You have completed, and any other underwriting information You have provided to Us, for this Policy.

1.16 Retroactive Date

'Retroactive Date' means the date specified in the Schedule as the Retroactive Date.

1.17 Schedule

'Schedule' means the Schedule document that We give You that attaches to and forms part of Your Policy.

1.18 Subsidiary

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

1.19 Valid Claim

'Valid Claim' means any Claim that is:

- (a) first made against You during the Period of Insurance; and
- (b) notified in writing to Us by You during the Period of Insurance or within 28 days after its expiry, or during the discovery period, if exercised; and
- (c) arising out of any Wrongful Act which occurred subsequent to the Retroactive Date in connection with Your Business.

Claims that do not accord with all of (a), (b) and (c) of this definition shall not be covered under this Policy.

1.20 We, Us or Our

'We', 'Us' or 'Our' means Lumley, a business division of IAG New Zealand Limited.

1.21 Wrongful Act

'Wrongful Act' means any act, error or omission committed by You in advertising, web-casting, electronic publishing, transmission, replication, re-transmission utterance, dissemination, distribution, serialisation, creation, production, origination, exhibition or displaying of material over the Internet.

1.22 You or Your

'You' or 'Your' means:

- (a) the legal entity shown in the Schedule as the Named Insured and any Subsidiary of the Named Insured;
- (b) any person who is or becomes during the Period of Insurance a principal, partner or director of the Named Insured but only in respect of work performed for and on behalf of the Named Insured;
- (c) any past or present employee of the Named Insured.

Section 2: Insuring agreement

We will indemnify You for Valid Claims in accordance with, and subject to, all terms and conditions of this Policy for legal liability arising from any Claim in respect of any Wrongful Act while using the Internet for:

- 2.1 infringement of Intellectual Property Rights;
- 2.2 defamation;
- 2.3 unauthorised use of names (including domain names), trade names, trade addresses, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or programme materials;
- 2.4 passing off;
- 2.5 breach of confidence or infringement of any right to privacy, including any alleged breach of the terms of the Privacy Act 1993 or similar legislation;
- 2.6 misuse of information which is either confidential or subject to statutory restrictions on use;
- 2.7 transmission of any computer virus;
- 2.8 any act that belittles the product or work (whether completed or not) of others; or
- 2.9 unauthorised taking for use of any advertising idea, material, slogan, style or title of others.

Section 3: Automatic 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 Defence costs

We agree to pay the Costs and Expenses incurred with Our written consent in defending, investigating, monitoring or settling any Claim under this Policy.

3.2 Estates and legal representatives

If You are deceased, incompetent, infirm, disabled, insolvent or bankrupt We will indemnify Your estates, heirs, legal representatives or attorneys for Claims arising from Your Wrongful Acts to the extent that in the absence of such death, infirmity, disability, incompetence, insolvency or bankruptcy, such Claims would have been covered under this Policy.

3.3 Continuous cover

We will indemnify You for Valid Claims in respect of Your legal liability arising from any Claim where a Claim that would otherwise be covered under this Policy is excluded by exclusion 4.11 (Known Claims and circumstances) subject to the absence of fraudulent non-disclosure, and subject to the following additional conditions:

- (a) We were Your Internet Liability insurer at the primary level ('the former policy') at the time when You first became aware of the circumstances which subsequently gave rise to the Claim;
- (b) We continued without interruption as Your Internet Liability insurer at the primary level .from the time when You first became aware of the circumstances up until such time as the Claim was made against You and notified to Us;
- (c) Our liability is limited to the amount for which We would have been liable at the time referred to in 3.3 (a) in accordance with the terms and conditions of the former policy; and
- (d) Our liability will be reduced by the amount that fairly represents the extent to which liability for the Claim could have been reduced had the circumstances been duly reported under the former policy.

3.4 Acquisitions and creation of new subsidiaries

- (a) We will indemnify any Subsidiary acquired during the Period of Insurance, Provided that You shall advise Us within 90 days of the acquisition, and We shall have the right to charge any additional premium.
- (b) We will indemnify any Subsidiary created during the Period of Insurance from the date of creation in respect of activities carried out after the date of creation, subject to the provisions of general condition 6.3 (Alteration to risk).

Provided that we will not indemnify You for any Claim arising from a Wrongful Act committed before any entity became a Subsidiary, or after any entity ceased to be a Subsidiary.

3.5 Consultants and sub-contractors

We will indemnify You for Valid Claims in respect of Your legal liability arising from any Claim made against You arising out of the actions of any consultant, contractor, sub-contractor or agent but the cover provided under this extension is specifically agreed not to extend indemnity to any consultant, contractor, sub-contractor or agent.

3.6 Joint venture liability

We will indemnify You for Valid Claims in respect of Your legal liability arising from any Claim in respect of any liability attaching to You as a result of Your involvement in any joint venture or partnership arrangement. However, the indemnity provided by this extension shall not extend to the other joint venturers or partners.

3.7 Acts of employees

We will indemnify You for Valid Claims in respect of Your legal liability arising from any Claim brought about or contributed to by any

dishonest, fraudulent, criminal, malicious act or omission, or as otherwise excluded in 4.8 (Obscene matter) of or on behalf of any person at any time employed by You Provided always that: such indemnity shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of exclusions 4.2 (Dishonesty/deliberate conduct) or 4.8 (Obscene matter) or who knew of it and failed to take steps to prevent the same.

3.8 Discovery period

If We or You do not renew this Policy or if We or the Named Insured terminates this Policy, You 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 You to Us 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 Period of Insurance 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.

3.9 Severability

Notwithstanding exclusion 4.2 (a) & (b) (Dishonesty/deliberate conduct), where any one of You fails to comply with Your duty of disclosure, makes a misrepresentation or is in breach of a Policy term or condition, We will not deny indemnity to any other one of You on these grounds if that other one of You was unaware of the matter not disclosed or the fact of the misrepresentation or did not breach or condone the breach of the Policy term or condition. **Provided always that** this extension shall not apply in the case of an application for indemnity made by You knowing that such application is false or fraudulent.

3.10 Run-off cover

We will indemnify, until expiry of the Period of Insurance, any Insured entity which is sold, ceased trading, merged or wound up during the Period of Insurance in respect of those activities of the Insured prior to the sale, cessation of trade, merger or winding up.

3.11 Consumer Guarantees Act 1993

We will indemnify You for Valid Claims in respect of Your legal liability arising from any Claim made against You under the terms of the Consumer Guarantees Act 1993.

3.12 Fair Trading Act 1986

We will indemnify You for Valid Claims in respect of Your legal liability arising from any Claim made against You under the terms of the Fair Trading Act 1986 (Sections 9 to 14).

3.13 Territory/jurisdiction (USA and Canada)

We will cover you, subject to the Insuring Agreement and all other terms and conditions of the Policy, for:

- (a) any Wrongful Act committed or omitted within the territorial limits of the United States of America or Canada or their territories or protectorates;
- (b) any action brought in a court of law in the United States of America or Canada or their territories or protectorates;
- (c) enforcement in any jurisdiction of any judgment, order or award in respect of any action brought in a court of law in the United States of America or Canada or their territories or protectorates.

Section 4: Exclusions

We shall not be liable to indemnify You in respect of any Liability arising out of any Claim:

4.1 Contractual/assumed liability

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

4.2 Dishonesty/deliberate conduct

arising out of or connected with:

- (a) any actual or alleged dishonest, fraudulent, criminal (a) or malicious Wrongful Act by You or Your consultants, contractors, sub-contractors or agents; or
- (b) any wilful breach of duty including any breach of statute, contract or duty, or Wrongful Act committed or alleged to have been committed deliberately or with a reckless disregard for the consequences by You or Your consultants, contractors, sub-contractors or agents; or
- (c) any application for indemnity which is false or fraudulent.

However, this exclusion only applies to any Insured who actually or allegedly committed or condoned the Wrongful Act or breach of duty, or knew of it and failed to take steps to prevent the same.

4.3 Obligations to employees

- (a) arising out of or alleging breach of any obligation owed by You as an employer;
- (b) arising out of or alleging sexual harassment or sexual or racial discrimination; or

(c) arising out of or alleging discrimination on the basis of any of the prohibited grounds of discrimination under the Human Rights Act 1993.

4.4 Directors and officers liability

arising solely from Your duties in acting as a director or officer of any company.

4.5 Fees

for a refund, by way of damages or otherwise, of professional fees or in respect of any Claim that You are not entitled to professional fees.

4.6 Insured v Insured

brought or maintained by or on behalf of any person, firm, company or entity:

- (a) who is entitled to benefit under this Policy, or any Subsidiary of Yours; or
- (b) who, at the time of the act, error or omission giving rise to the Claim, is a Family Member; or
- (c) operated or controlled by You; or
- (d) operated or controlled by any employee, partner, nominee or trustee of Yours; or
- (e) in which You have a direct or indirect financial interest (a shareholding of less than 5% in a publicly listed company shall not constitute a financial interest); or
- (f) advised or induced by You to invest in or lend money to any person, firm, company or entity referred to in any of (a) – (e) above or to You.

For the purposes of this exclusion, the term 'You' shall include Family Member.

4.7 Financial condition

arising as a result of Your insolvency, bankruptcy, receivership, statutory management or liquidation.

4.8 Obscene matter

arising out of or relating to obscene matter of any kind.

4.9 Personal Injury

for Personal Injury.

4.10 Property Damage

for Property Damage.

4.11 Known Claims and circumstances

- (a) made against, or intimated to You prior to the commencement of the Period of Insurance;
- (b) notified under any previous Policy; or
- (c) arising out of or connected with any facts or circumstances which:
 - (i) You were aware of prior to commencement of the Period of Insurance, and
 - (ii) a reasonable person in Your position would have considered might give rise to a Claim against You.

4.12 Fines and penalties

for punitive, aggravated, liquidated, multiple or exemplary damages, or fines or penalties imposed by law.

4.13 Retroactive Date

arising out of or connected with any Wrongful Act which occurred prior to the Retroactive Date.

4.14 Professional services exclusion

brought by or on behalf of any client or customer of Yours in connection with professional services provided by You.

4.15 War, confiscation, radioactivity, nuclear perils

for loss, damage, injury, illness or liability directly or indirectly arising from or connected with:

- (a) any war, hostilities, whether war is declared or not, rebellion, invasion, insurrection or the use of military or usurped power;
- (b) any order of any government or public or local authority involving the confiscation, nationalisation, requisition, damage or destruction of any property unless such damage or destruction was undertaken to reduce the spread of fire;
- (c) radioactivity or any radioactive substances; or
- (d) nuclear fission or nuclear fusion.

4.16 Date recognition

which consists of or arises directly or indirectly out of or in connection with the failure or inability of any:

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

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

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

4.17 Patent

arising out of or connected with any alleged breach of patent.

Section 5: Claims conditions

5.1 Reporting of Claims

You shall give Us notice in writing as soon as practicable of

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

5.2 Notification of circumstances

If, during the Period of Insurance, You become aware of any circumstances that may (in the opinion of a reasonable practitioner of Your Business) give rise to a Claim and give written notice to Us of such circumstances during the Period of Insurance, then any Claim subsequently arising from such circumstances is deemed to have been made during the Period of Insurance in which the circumstances were first reported to Us.

5.3 Defence and settlement of Claims

You shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without Our written consent, such consent not to be unreasonably withheld.

We are entitled at any time to conduct, in Your name, the investigation, defence or settlement of any Claim. If We believe that the Claim will not exceed the Excess We may instruct You to conduct the investigation, defence and settlement at Your expense.

Should the Claim subsequently exceed the Excess We agree to reimburse the reasonable expenses incurred by You in investigating, defending and settling the Claim.

5.4 Legal counsel

We shall not require You to contest any legal proceedings in respect of any Claim against You, nor shall You require Us to contest, on Our behalf, any legal proceedings in respect of any such Claim unless a legal counsel (to be mutually agreed upon by You and Us) shall advise that such proceedings should be contested.

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

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

5.5 Your right to contest Claims

If You do not agree with a decision by Us to settle a claim, then You can elect to contest the Claim at Your own expense but Our liability will not exceed the amount for which the Claim could have been settled in the opinion of counsel appointed under clause 5.4 (Legal counsel).

5.6 Claims co-operation

You agree to use Your best endeavours to avoid or diminish a Claim and will provide at Your own cost all information and assistance to Us as is required to determine liability under the Policy and investigate, defend and settle a Claim.

Upon receipt of notice from You of any request for indemnity under this Policy, We may take whatever action We consider appropriate to protect Your position in respect of the Claim against You. Such action by Us shall not be regarded in any way as prejudicing Our position under the Policy and shall not be an admission of Your entitlement to indemnity under the Policy.

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

5.7 Other insurance

Upon giving notice of any Claim, You agree to provide to Us written details of any other insurance that may cover or partially cover that Claim. In the event that You hold 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.

5.8 Subrogation

We are entitled to all of Your rights of recovery (before a Claim has been paid and whether or not You has been fully compensated for their actual loss) and You will do everything necessary to secure and preserve such rights. This will include but not be limited to the execution of documents necessary to allow Us to take any legal action in Your name. However, We shall not exercise any subrogated rights of recovery against any employee of Yours unless the Claim has been brought about or contributed to by the dishonest,

fraudulent, criminal or malicious or deliberate act or omission of the employee. In the event that a recovery is made, the amount recovered shall be applied first to the costs of effecting the recovery, then the balance shall be paid to Us and You pro rata in proportion to the insured and the uninsured losses (excluding the Excess) of Us and You respectively. Any balance shall be paid to You in respect of Your Excess.

5.9 Payment of the Limit of Indemnity

We may at any time pay the Limit of Indemnity applying to any one Claim or series of Claims (after deduction of sums already paid) or any lesser amount for which such Claims can be settled and shall then be under no further liability in connection with such Claims.

Section 6: General conditions

6.1 Limit of liability – Claims

Our total liability including Costs and Expenses under this Policy shall not exceed the Limit of Indemnity for any one Claim. Our aggregate liability including Costs and Expenses in respect of all Claims shall not exceed the Limit of Indemnity.

6.2 Excess

You must pay the amount of the Excess in respect of each and every Claim. Where a Claim does not exceed the Excess, You must also pay the expenses incurred in investigating, defending and settling that Claim.

The Excess does apply to any Costs and Expenses incurred with Our written consent in the defence or settlement of any Claim. The Excess does not apply to Costs and Expenses incurred by Us to determine indemnity under the Policy.

Where more than one Claim arises out of the same act or omission or causally connected or interrelated acts or omissions, all of those Claims will together constitute one Claim for the purposes of determining the Excess.

6.3 Alteration to risk

You must give Us notice in writing as soon as practicable of any material change to the risk. A material change to the risk includes without limitation:

- (a) activities that are materially different from those declared in the Proposal or that are outside the normal activities of Your Business;
- (b) a material change to Your Business; or
- (c) the cancellation, suspension or termination of Your statutory registration.

6.4 Cancellation

(a) Method of cancellation:

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

(b) Adjustment of premium:

After cancellation the premium will be adjusted on a pro-rata basis with any unexpired portion returned to You.

6.5 GST

Where You are 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, We will indemnify You for the costs of that tax. The indemnity under this clause is payable by Us in addition to the Limit of Indemnity.

6.6 Policy disputes

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

6.7 The Proposal

The Proposal completed by You or on Your behalf for the purpose of obtaining this cover and any Proposal information supplied by You or on Your behalf is deemed to be the basis of this Policy and incorporated herein, and You warrant the truth of all statements made therein.

6.8 Notice

All notices, including notification of Claims, shall be sent to Us in writing at the following address: Lumley, a business division of IAG New Zealand Limited, Lumley Centre, 88 Shortland Street, Auckland 1140, New Zealand.

6.9 Interpretation of words

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

6.10 Headings

Headings are included for reference purposes only and do not form part of Your Policy for interpretation purposes.

Legal Prosecution Defence

Policy

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

Introduction

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

Legal Action

'Legal Action' means any legal proceedings, including appeals, in any court, authority or tribunal in New Zealand.

Legal Expenses

'Legal Expenses' means the amount that the Insured had to spend and that was reasonable for the Insured to spend on Legal Action in relation to Solicitors' fees, expenses and disbursements;

Policy

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

Solicitor

'Solicitor' means any solicitor, firm of solicitors, barrister or Queen's Counsel appointed to act for the Insured in relation to any Legal Action.

Lumley

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

Insured

'Insured' means individual directors, executives, managers or employees of the entity named in the Policy Schedule whilst undertaking duties for such entity.

Section 2: Insuring clause

2.1 Lumley will reimburse the Insured for Legal Expenses incurred in defending any Legal Action alleging an offence under any statute arising in the course of the Insured's employment. Provided always that:

- (a) The alleged conduct must have taken place in New Zealand; and
- (b) The Insured must have been first threatened with the Legal Action during the Period of Insurance; and
- (c) The Insured must also have notified Lumley of the Legal Action during the Period of Insurance or within 28 days of its expiry.

Section 3: Exclusions

Lumley shall not be liable for claims in respect of:

3.1 Legal Action arising from anything which had already happened or is alleged to have already happened and/or was still happening or is alleged to have still been happening prior to the Retroactive Date specified in the Policy Schedule.

3.2 Legal Action where:

- (a) The Insured has been charged with any similar offence in the seven years before the Insured obtained cover under this Policy; and
- (b) The Insured is intending to plead guilty or the Insured intends to plead not guilty, but this plea is not reasonable, and not based on the evidence and the law; and
- (c) The Insured has cover under any other policy, or is otherwise entitled to indemnity from any other source.

3.3 Legal Action that arises out of or is in connection with the driving of a motor vehicle or offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments, unless:

- (a) The Insured is liable to be disqualified from driving; or

(b) If the Insured is under 24 years old at the date of the alleged offence, and the Insured is at risk of being imprisoned for more than 3 months.

3.4 Legal Action that arises out of or is in connection with the driving of a motor vehicle or offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments, where the Insured has been charged with any of the following types of offences: alcohol, drug-related, log book, overloading, road user charges, or speeding including dangerous or excessive speed.

3.5 Legal Action arising from any:

- (a) Alleged breach of professional duty, or duty as a director, trustee, or power of attorney;
- (b) Agreement under which the Insured has agreed to accept liability that the Insured would not otherwise have had;
- (c) Dispute concerning a will, bequest, contract to leave assets in a will, probate, Testamentary Promises claim, Family Protection claim, inheritance or gift.
- (d) Employment dispute.

3.6 Legal Action:

- (a) Between the Insured and the Insured's spouse, ex-spouse, de facto partner or ex-de facto partner:
- (b) By way of criminal prosecution in which a spouse, ex-spouse, de facto partner or ex-de facto partner, or any relative of them or of the Insured, is a complainant/victim.
- (c) In relation to dissolution, maintenance, custody, access or property disputes.
- (d) In which more than one person within the definition of the Insured:
 - (i) is involved; and
 - (ii) they have conflicting positions and interests.
- e) By or on behalf of any state agency involving any state-funded grant, income, revenue collection, income support, aid, subsidy, surcharge or assistance, including liable parent contributions.

3.7 Legal Action that the Insured has intentionally encouraged.

3.8 Legal Expenses for which the Insured did not first get Lumley's written consent.

3.9 Fines, penalties, damages of any type or any other form of compensation payment, and interest.

3.10 Legal action in relation to any offence alleged to have been committed:

- (a) whilst in breach of any order made under the Domestic Violence Act 1995 or its amendments; or
- (b) under Fisheries legislation.

3.11 Legal Action arising from war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or

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

For the purpose of this exclusion, Terrorism means an act, including but not limited to the use or threat of force or violence, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is committed for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

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

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

3.14 Legal action for any actual or alleged liability whatsoever caused by or contributed to or arising from:

- (a) moisture or water or the penetration of external moisture or water; or
- (b) the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms; or
- (c) the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose.

3.15 Any litigation in existence at the commencement of the Period of Insurance.

3.16 Legal Action brought against the Insured in any other jurisdiction other than New Zealand.

Section 4: Claims conditions

4.1 Notice of Claims and Circumstances

The Insured must give Lumley immediate notice in writing of any:

- (a) circumstances which might give rise to a claim under this Policy, as soon as the Insured becomes aware of them;
- (b) notice of any indication that someone intends or may intend to make a claim against the Insured which might result in Legal Action;
- (c) claim against the Insured which might result in Legal Action;

(d) document served on the Insured in relation to Legal Action;

irrespective of whether or not the Insured believes that:

- (i) a claim is justified; or
- (ii) Legal Action is likely.

4.2 Claims co-operation

The Insured must take all reasonable care and precautions to avoid any circumstances which might give rise to a claim under this Policy.

In relation to any Legal Action, the Insured must:

- (a) give Lumley all information and documents which Lumley asks for;
- (b) keep Lumley fully and continually informed of all significant developments;
- (c) advise Lumley immediately of any offers of compromise, proposals, or recommendations to make any offers of compromise or proposals.

If Lumley instructs the Insured in writing to so do, the Insured must direct the Insured's Solicitor to have any account or fee referred to any appropriate officer, authority or body to be taxed, assessed or audited.

4.3 Legal Counsel

The Insured must not appoint a Solicitor to defend any Legal Action without first getting Lumley's written consent. Lumley can:

- (a) withhold or withdraw consent to any Solicitor that the Insured proposes to appoint or has appointed.
- (b) require the Insured to appoint a Solicitor from Lumley's preferred panel.

If cover has been confirmed in writing then Lumley may advance the Insured's Legal Expenses as and when they are incurred.

4.4 Conduct of the Claim

Lumley can immediately stop reimbursing the Insured's Legal Expenses if:

- (a) the Insured unreasonably refuses to follow the Insured's Solicitor's advice about how the Legal Action should be conducted, including advice about making or accepting an offer, compromise or payment, or discontinuing the Legal Action or any step in it; or
- (b) the Insured does not give Lumley or the Insured's Solicitor full co-operation and assistance; or
- (c) a barrister of at least 15 years' experience advises Lumley that the Insured's defence to the Legal Action has no reasonable prospect of being actually or economically successful (including, if the likely Legal Expenses are out of reasonable proportion to the likely outcome), and the Insured declines to accept Lumley's written instructions on how to resolve or terminate the Legal Action.

4.5 Appeals

Lumley will not be liable for Legal Expenses in relation to any appeal unless Lumley:

- (a) receives written notice of the Insured's intention to appeal at least 5 working days before any time limit for bringing the appeal expires; and
- (b) has given the Insured prior written consent to the appeal.

4.6 Recovery

The Insured must:

- (a) let Lumley have any amounts that the Insured recovers on account of Legal Expenses; and
- (b) co-operate with and assist Lumley in any steps that Lumley wants to take at Lumley's own cost to recover these amounts.

4.7 Multiple Offences

If the Insured is charged with one or more offences arising out of the same general circumstances and is convicted of at least one such offence, and Lumley has reimbursed/paid any Legal Expenses relating to the offences, Lumley has the right to claim all the Legal Expenses from the Insured.

4.8 Waiver of Privilege

If Lumley instructs any solicitor to investigate or defend any claim against the Insured, the Insured authorises the solicitor to provide to Lumley any documents, information or advice in respect of the claim, including in relation to indemnity, and the Insured waives any privilege to the extent necessary to give full effect to Lumley's entitlement in this respect.

Section 5: General conditions

5.1 Limit of Liability

Lumley will pay the Insured up to the Limit of Indemnity for all Legal Action(s) commenced against the Insured during the Period of Insurance.

5.2 Excess

In respect of each and every Claim against the Insured the amount of the excess specified in the Schedule must be paid by the Insured. Where a Claim does not exceed the excess the Insured must also pay the costs and expenses incurred in investigating, defending and settling the Claim.

5.3 Bankruptcy of the Insured

Unless the Insured notifies Lumley and Lumley agrees in writing to continue the Insured's cover under this Policy, the Insured immediately stops being insured under this Policy if the Insured:

- (a) commits any act of bankruptcy; or
- (b) is made bankrupt; or
- (c) makes any arrangement with creditors, including a composition or assignment.

5.4 Agent of the Insured

The Insured appoints the person who signed the Proposal for this Policy as the Insured's agent for the purpose of receiving any Policy Schedule, paying the premium, and receiving or giving notices under this Section, including any notice of cancellation or endorsement. Lumley may deal with him/her as if Lumley was dealing with the Insured personally, unless the Insured gives Lumley written notice, including full contact details, appointing someone else in his/her place.

5.5 Fraudulent Claims

If the Insured puts forward a claim that is in any way intentionally exaggerated or fraudulent, or if the Insured uses any fraudulent means or devices to obtain a benefit under this Policy, the Policy shall be void ab initio.

5.6 Other Insurance

If at the date on which the Legal Action commenced, the Insured had Legal Expenses cover under this Policy, or the Insured is otherwise entitled to indemnity from any other source, (even if an excess applies) Lumley does not have to reimburse the Insured's Legal Expenses, even if the other policy has a condition to the same or similar effect, but Lumley will provide cover to the Insured until the availability of such other insurance or indemnity is determined provided the Insured co-operates with Lumley in reviewing other insurance or indemnity entitlements.

5.7 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.

5.8 GST

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

5.9 Policy Disputes

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

5.10 Insured's Warranty

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

5.11 Interpretation of Words

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

5.12 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 Legal Action, which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Legal Action shall be reduced to such sum as would have been payable by Lumley in the absence of such prejudice.