

Introduction

This Policy is a contract of insurance between You and Us, Lumley General Insurance (N.Z.) Limited. Your Policy contains all the details of the cover that We provide subject always to Our receipt of the premium.

This Policy consists of and must be read together with the Schedule, the Proposal and any endorsements.

This Policy provides Errors and Omissions and Public and Technology Products liability protection for Your Business and Your Technology Products or Technology Services but only for the Period of Insurance shown in the Schedule.

Important: The Errors and Omissions section of this Policy is provided on a claims made basis. This means that a Claim must be first made while the Policy is in effect to be covered. The Policy does not cover errors or omissions prior to any retroactive date specified in the Schedule.

Section 1: Definitions

1.1 Aircraft

'Aircraft' means any object that is intended to fly or move through the air, atmosphere or space.

1.2 Business

'Business' means Your business as described in the Schedule.

1.3 Claim

'Claim' means:

- (a) a demand for compensation made against You by a third party; or
- (b) legal proceedings seeking compensation from You; or
- (c) any threats or intimation that legal proceedings will be issued seeking compensation from You.

1.4 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, 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.

1.5 Covered Infringement

'Covered Infringement' means any Patent Infringement caused by the manufacture, use, importation, distribution, advertising, offer for sale or sale of a Covered Product ; provided, however, that no Patent Infringement shall be Covered Infringement:

- (a) if a reasonably prudent patent attorney familiar with the type of business in which You are engaged would recommend that You conduct an Infringement Search and Infringement Safeguarding prior to the first manufacture, use, importation, distribution, advertising, offer for sale or sale of a Covered Product and You did not do so; or
- (b) if, after the first manufacture, use, importation, distribution, advertising, offer for sale or sale of a Covered Product, and before a Claim or Patent Injunction Claim is first made, You learnt of facts which would cause a reasonably prudent patent lawyer familiar with the type of business in which You are engaged to recommend that You conduct Infringement Safeguarding, and You did not promptly do so.

Regardless of when, during the Period of Insurance, a Claim or Patent Injunction Claim is made, any Covered Infringement which is the subject of a Claim or Patent Injunction Claim involving You and the same patent and Covered Product as any other Covered Infringement(s) shall be considered as a single Covered Infringement.

1.6 Covered Product

'Covered Product' means:

- (a) any product manufactured, used, imported, distributed, advertised, offered for sale or sold; or
- (b) any process used, imported, distributed, advertised, offered for sale or sold by You on or before the inception date of the Period of Insurance and which are described or otherwise documented in the application attached hereto and made a part hereof.

Additional products or processes first manufactured, used, imported, distributed, advertised, offered for sale or sold after the inception date

of this Policy will be Covered Products upon approval by Us and payments of additional premium, if any, required by Us relating to such new product or process. You shall provide notice of any such product or process You require to be included as a Covered Product under this policy, along with a description of any Infringement Search or Infringement Safeguarding which You undertook in connection with such new product or process, and shall afford Us an opportunity to evaluate such new product or process.

1.7 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.

1.8 Final Disposition

'Final Disposition' means the resolution, whether by settlement, judgement or otherwise, of a Claim or Patent Injunction Claim against You, which is not subject to further amendment, modification, reversal or vacation, all times for appeal having run and all options and opportunities to modify having been fully and irrevocably exhausted, expired or validly terminated.

1.9 Information

'Information' means any documents, digitised data, micro-code or information stored in written, machine-readable or any other form but shall not include any bearer bonds, coupons, stamps, bank or currency notes or other negotiable instruments.

1.10 Infringement Search

'Infringement Search' means the careful review by a patent attorney or patent agent to determine whether or not the manufacture, use, importation, distribution, advertising, offering for sale or sale of a Covered Product that You are about to first manufacture, use, import, distribute, advertise, offer for sale, or sell would result in Patent Infringement.

1.11 Infringement Safeguarding

'Infringement Safeguarding' means concluding in good faith, by means of a written opinion prepared by a patent attorney retained or employed by You, that Your intended manufacture, use, importation, distribution, advertisement, offer for sale or sale of the Covered Product:

- (a) will not result in Patent Infringement; or
 - (b) would result in Patent Infringement but for the fact that said patent attorney found to be invalid the patent(s) that would be infringed; or
 - (c) would result in Patent Infringement and You either:
 - (i) design around the Patent Infringement so as to avoid Patent Infringement; or
 - (ii) purchase sufficient rights to the infringed patent through license, cross-license or assignment, so as to avoid Patent Infringement,
- and concludes in good faith, by means of a written opinion prepared by the patent attorney retained or employed by You, Your action pursuant to this clause is sufficient such that the subsequent manufacture, use, importation, distribution, advertisement, offering for sale or sale by You of the Covered Product will not result in Patent Infringement.

Copies of all opinion letters and other documentation prepared by Your patent attorneys or agents verifying the performance of Infringement Searches and Infringement Safeguarding shall be maintained permanently on file by You and You shall provide such opinion letters or documentation to Us upon request.

1.12 Intellectual Property Rights

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

1.13 National Patent Office

'National Patent Office' means the official body or agency created by law for the purpose of issuing patents within a given sovereign territory.

1.14 Occurrence

'Occurrence' means an event including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.

1.15 Patent Claim

'Patent Claim' shall mean a demand for Patent Damages, whether or not made together with, as part of, or in addition to a Patent Injunction Claim; Patent Claim also means a declaratory relief action, provided the declaratory relief action is initiated by Us or You pursuant to clause 2.3.18(1)(c).

1.16 Patent Damages

'Patent Damages' means monetary sums paid to a claimant pursuant to either judgements or settlements negotiated with Our written consent, whichever is applicable, as and only as:

- (a) damages for Patent Infringement in the form of past lost profits and/or past reasonable royalties, which Patent Infringement shall have occurred on or after the retroactive date and before either (a) the end of the Period of Insurance or (b) before the date of the judgement, whichever is earlier;

(b) reasonable legal fees assessed by the court against You and incurred by the claimant after the retroactive date and prior to the end of the Period of Insurance;

provided that Patent Damages shall not include fines, penalties, punitive, exemplary, enhanced or multiplied damages, non-pecuniary relief and taxes, or any amount for which You are not financially liable or any amount as to which there is no legal recourse by the person who is awarded such relief against You, or any such matters which are uninsurable under the law pursuant to which this Policy shall be construed.

For Patent Infringement occurring partly within the Period of Insurance and partly after the end of the Period of Insurance, and/or prior to the retroactive date, only the portion of such sums attributable to lost profits and/or reasonable royalties for Patent Infringement occurring after the retroactive date and before the end of the Period of Insurance shall be considered Patent Damages.

1.17 Patent Defence Expenses

'Patent Defence Expenses' means:

- (a) reasonable expenses incurred by You in defence of a Claim or Patent Injunction Claim based on allegations of Covered Infringement to which this Policy applies, other than loss of earnings, expenses and costs incurred by You for salaries and expenses of Your officers, staff, in-house attorneys, directors, employees, and of outside attorneys or consultants who function in the capacity of any of the foregoing, and rent or Your other necessary operating cost;
- (b) expenses incurred by Us in any Claim or Patent Injunction Claim;
- (c) costs levied against You in any Claim or Patent Injunction Claim;
- (d) interest on the entire amount of any judgement against You which interest accrues after entry of the judgment and before We have paid or tendered or deposited in court that part of the judgment that does not exceed Our then remaining applicable limit of indemnity as noted in clause 2.3.18(3)(a); and
- (e) premiums on appeal bonds and bonds to release attachments, to the extent that the face amount of such bonds do not exceed Our then remaining applicable limit of indemnity as noted in clause 2.3.18(3)(a) and are required in any Claim defended by Us, provided, however, neither this provision nor any other in this Policy shall be construed as requiring Us to commence or prosecute any appeal or to apply for or furnish such bonds.

1.18 Patent Injunction Claim

'Patent Injunction Claim' means a demand that You limit or cease the manufacture, use, importation, distribution, advertising, offering for sale or sale of a Covered Product based on an allegation that such acts would result in Patent Infringement which if true would be Covered Infringement under this Policy.

1.19 Patent Infringement

'Patent Infringement' means the unauthorised manufacture, use, importation, distribution, advertising, offer for sale or sale by You of any Covered Product in violation of the enforceable and valid rights of another (including rights arising under or enforceable by virtue of an international treaty with one or more foreign governments) which rights arise from the grant by a National Patent Office of a patent which results in a Claim or Patent Injunction Claim against You.

1.20 Period of Insurance

'Period of Insurance' means the period of insurance set out in the Schedule.

1.21 Personal Injury

'Personal Injury' means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful eviction and wrongful detention;
- (c) invasion of rights of privacy; and
- (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.

1.22 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.

1.23 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.

1.24 Property Damage

'Property Damage' means:

- (a) physical injury to or destruction or loss of tangible property including the loss of use thereof at any time resulting therefrom; or
- (b) loss of use of tangible property, which has not been physically injured or destroyed, provided such loss of use is caused by an Occurrence.

1.25 Proposal

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

1.26 Schedule

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

1.27 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).

1.28 Technology Products or Technology Services

'Technology Products' or 'Technology Services' means technology related services or products supplied to others in the ordinary course of Your Business, such as consulting, data processing, programming, software development, distribution, maintenance or repair, or systems analysis or design programmed or provided by or for You; and electronic equipment or computer hardware or software developed, manufactured, distributed, marketed or sold by or for You.

1.29 Technology Supply Contract

'Technology Supply Contract' means a written contract that You enter into during the course of Your Business to supply Technology Products or Technology Services.

1.30 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.

1.31 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.

1.32 Watercraft

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

1.33 We, Us or Our

'We', 'Us' or 'Our' means Lumley General Insurance (N.Z.) Limited.

1.34 Wrongful Act

'Wrongful Act' means any act, error or omission (as appropriate) committed or omitted by You in providing Your Technology Products or Technology Services to others for the purpose of Your Business.

1.35 You or Your

'You' or 'Your' means:

- (a) the legal entity(s) shown in the Schedule as the Named Insured and any Subsidiary of the Named Insured;
- (b) any person who was, 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 person who was, is or becomes an employee of the Named Insured but only whilst acting within the scope of their employment;
- (d) any principal in respect of the liability of such principal arising out of the performance by the Named Insured or by a company designated in (a) of any contract or agreement for the performance of work by such principal to the extent required by such contract or agreement, but limited to the coverage provided by this Policy;
- (e) 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;
- (f) any office bearer or member of social or sporting clubs or welfare organisations formed with Your consent (other than any Named Insured designated in (e) in respect of claims arising from duties connected with activities of any such club or organisation.

Section 2: Errors and Omissions coverage

This Section of the Policy is 'Claims Made'.

2.1 Insuring clause

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 by reason of:

- (a) a Wrongful Act arising from Technology Services rendered by You or that should have been rendered by You;

- (b) the failure of Your Technology Products to perform the function or serve the purpose intended after installation or after testing by You and arising solely out of a Wrongful Act by You.

2.2 Defence costs

We agree to pay the Costs and Expenses incurred with Our written consent in defending, investigating, monitoring or settling any Claim covered by clause 2.1 of this Policy.

2.3 Errors and Omissions - extensions

The following extensions to the Policy are included automatically, and only apply to cover provided under section 2 (Errors and Omissions) provided always that each extension is subject to the terms of this Policy (unless otherwise stated).

2.3.1 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 5.18 (Known Claims and circumstances) subject to the absence of deliberate non-disclosure, and subject to the following additional conditions:

- (a) We were Your Technology errors and omissions 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 Technology errors and omissions 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 2.3.1(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.

2.3.2 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. We shall have the right to charge any additional premium.
- (b) We will indemnify any Subsidiary established during the Period of Insurance from the date established in respect of activities carried out after the date of creation, subject to the provisions of general condition 7.1 (Alteration to risk) which shall apply to the acquisition of any Subsidiary.

Provided always 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.

2.3.3 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) or any similar fair trading legislation enacted in New Zealand or the States or Territories of the Commonwealth of Australia.

2.3.4 Sub-contracted parties

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.

2.3.5 Loss of Information

We will indemnify You for Valid Claims in respect of Your legal liability arising from any Claim made against You arising as a consequence of Information having been lost, damaged, destroyed, mislaid, distorted or erased by You.

It is a condition precedent of Us indemnifying You under this clause that:

- (a) the Information was entrusted to or deposited with You in the ordinary course of Your Business; and
- (b) where the Information is lost or mislaid You shall have conducted a diligent search;
- (c) Where Information is damaged, destroyed, distorted or erased You shall have made all reasonable attempts to rectify or recreate the Information.

2.3.6 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 unless that party is specifically endorsed on the Schedule as being a Named Insured.

2.3.7 Dishonesty 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 of or on behalf of any person at any time employed by You Provided always that:

- (a) such indemnity shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of exclusion 5.12 (Dishonesty);

(b) in respect of Claims involving theft or misappropriation of funds for which You are legally liable to account to another, Our liability is conditional upon:

- (i) You maintaining a separate trust account for such funds that shall be subject to the receipt of an unqualified audit by a chartered accountant at least annually; and
- (ii) all cheques drawn by Your employees on such trust account being signed by two authorised persons; and
- (iii) all electronic banking carried out by Your employees on such trust account being first authorised by a secret password entered by a duly authorised person.

2.3.8 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 50% 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.

2.3.9 Severability

In respect of any Claim to which exclusion 5.12 (a) and (b) (Dishonesty) applies, 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.

2.3.10 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.

2.3.11 Media liability

We will indemnify You for Valid Claims for legal liability arising from any Claim made against You in respect of any Wrongful Act alleging:

- (a) infringement of Intellectual Property Rights;
- (b) defamation;
- (c) 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 program materials;
- (d) passing off;
- (e) 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;
- (f) misuse of information which is either confidential or subject to statutory restrictions on use;
- (g) transmission of any computer virus;
- (h) any act that belittles the product or work (whether completed or not) of others; or
- (i) unauthorised taking for use of any advertising idea, material, slogan, style or title of others.

2.3.12 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 act or omission excluded in 5.21 (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 5.21 (Obscene matter) or who knew of it and failed to take steps to prevent the same.

2.3.13 Costs of representation at disciplinary proceedings

We will Indemnify You for Valid Claims in respect of all reasonable Costs and Expenses incurred in the investigation and defence of a complaint made (which may form the basis of a Claim against the Insured which is covered by this Policy) against You with a statutory registration board or similar regulatory authority, or insofar as any statutory or professional body claims jurisdiction to enquire into or adjudicate any such matter. **Provided always that:**

- (a) any Costs and Expenses incurred must be with Our prior written consent, such consent not to be unreasonably withheld; and
- (b) We shall be entitled to appoint a solicitor or counsel to represent You.

2.3.14 Licensee intellectual property rights

Notwithstanding exclusion 5.6 (Contractual/assumed liability), We will indemnify You for Valid Claims in respect of Your legal liability

arising from Claims made against You by a licensee under any warranty or indemnity given by You in respect of Your ownership or ability to licence any intellectual property rights.

2.3.15 Product withdrawal costs

We will indemnify You for up to 80% of the costs reasonably incurred in the withdrawal or recalling from use in New Zealand of Your Technology Products which have the same defect as a product that has already given rise to a Claim in respect of which You would be entitled to indemnity under this Policy.

A limit of indemnity of \$100,000 (inclusive of legal costs and expenses) any one Period of Insurance shall apply in respect of all such withdrawals or recalls during the Policy Period.

An excess of \$10,000 inclusive of costs shall apply to each withdrawal or recall of Your Technology Products.

2.3.16 Automatic reinstatement

On payment under this Policy in respect of a Claim the limit of indemnity will be reinstated automatically, without additional premium, to the extent of the amount paid in respect of that Claim. Provided always that:

- (a) the total amount payable by Us for any one Claim shall not exceed the limit of indemnity; and
- (b) in respect of all Claims the total amount reinstated shall not exceed an amount equal to the limit of indemnity; and
- (c) if You have any additional valid and collectable cover in excess of this Policy then any reinstatement of the limit of indemnity shall only be made in excess of such additional cover.

2.3.17 Cover for consultants and sub-contractors

We will indemnify any consultant, contractor, sub-contractor or agent for Valid Claims in respect of their liability arising out of their actions on Your behalf as if they were an employee. PROVIDED ALWAYS THAT We will only indemnify the consultant, contractor, sub-contractor or agent that derives 75% or more of their gross income from You.

2.3.18 Patent Infringement cover

(1) Insuring agreement

Notwithstanding exclusion 5.22 (Patent), We will indemnify You subject to the insuring clause and all other terms and conditions of the Policy, for:

(a) Coverage for Patent Damages

Patent Damages which You shall become legally obligated to pay and shall have paid resulting from any Patent Claim first made against You and reported in writing to Us during the Period of Insurance. Provided such Patent Claim is for Covered Infringement caused by the manufacture, use, importation, distribution, advertising, offer for sale or sale of a Covered Product, committed by You and occurring on or after the retroactive date and before the end of the Period of Insurance, but in no event shall We reimburse You for Patent Damages for Patent Infringement that occurs before the retroactive date or after the end of the Period of Insurance.

(b) Coverage for Patent Defence Expenses

Sums which You shall have incurred and paid as Patent Defence Expenses:

- (i) with respect to a Patent Claim seeking Patent Damages reimbursable under clause 2.3.18(1)(a) above; or
- (ii) with respect to a Patent Injunction Claim first made against You and reported in writing to Us during the Period of Insurance for alleged Patent Infringement first commencing before the end of the Period of Insurance.

We shall have no obligation to reimburse You for Patent Defence Expenses prior to the Final Disposition of any Patent Claim or Patent Injunction Claim. We shall have no obligation to reimburse You for Patent Defence Expenses after the then remaining applicable limit of indemnity for this extension (clause 2.3.18(3)(a)) has been exhausted.

(c) Declaratory relief action expenses

In the event of a reasonable apprehension of an imminent suit against You alleging Patent Infringement caused by a Covered Product which if true would be Covered Infringement for which coverage is afforded under this policy, You or We, each only with the consent of the other, which consent shall not be unreasonably withheld, shall have the right but not the duty to initiate on behalf and in Your name a declaratory relief action respecting some or all of the rights alleged to have been or be infringed by You, provided, however, that no such action shall be commenced without a prior written opinion of patent counsel advising that the expected suit would be based, in whole or in substantial part, on a patent that is invalid, unenforceable, or not infringed by You and, provided further that You and We agree that the commencement of such an action is reasonable and prudent strategic option in the pre-emptive defence of an imminent and reasonably expected suit against You.

Notwithstanding the foregoing, if You shall initiate such declaratory relief action without Our consent, then any Patent Infringement Claim or Patent Injunction Claim that the patent holder files in response to such declaratory relief action shall be deemed not to be a Covered Infringement.

(2) Exclusions

Provided always that We will not be liable to indemnify You in respect of any liability arising out of any Patent Infringement Claim or Patent Injunction Claim:

- (a) arising out of wilful or intentional Patent Infringement; provided that in this context Patent Infringement is wilful or intentional within the meaning of the applicable patent laws;
- (b) arising out of the manufacture, use, importation, distribution, advertising, offer for sale or sale of any Covered Product

manufactured, used, imported, distributed, advertised, offered for sale or sold by any Subsidiary occurring at any time when You did not own more than 50% of the issued and outstanding voting stock of such corporation either directly or indirectly through one or more of its Subsidiaries;

- (c) initiated by or on Your behalf as plaintiff against a third party, except as provided in clause 2.3.18(1)(c) above;
- (d) brought by or on behalf of any government entity; however, this exclusion does not apply to any Claim or Patent Injunction Claim by any such entity which seeks to enforce its rights in a patent held by that entity;
- (e) arising out of liability assumed by You under any oral or written contract or agreement, or arising out of another's use, importation, distribution, advertising, sale or offer for sale of a Covered Product;
- (f) arising out of either the amount or timeliness of payment of royalties, licensing fees or other contractual arrangements;
- (g) arising out of any manufacture, use, importation, distribution, advertising, offer for sale or sale of a Covered Product, which You, prior to the Inception date of this Policy reasonably should have known would result in Patent Infringement;
- (h) arising out of the same or related patent, Covered Product or Covered Infringement alleged or at issue in any Claim or Patent Injunction Claim which has been reported by You or in any circumstances of which notice has been given by You, under any Policy of which this Policy is a renewal or such this Policy may succeed in time;
- (i) arising out of any pending or prior litigation as at the inception date of this Policy, or from the same or substantially related facts as alleged in such prior litigation.

(3) Limit and excess

- (a) The total limit of indemnity available in respect of all Patent Claims covered under this extension is \$250,000 (inclusive of Patent Defence Expenses) any one Period of Insurance.
- (b) The minimum excess applicable to Patent Claims covered under this extension shall be \$10,000 (or the excess as shown in the Schedule, whichever is the greater) inclusive of Patent Defence Expenses.

(4) Conditions

- (a) It shall be a condition precedent to any Patent Infringement being deemed a Covered Infringement under this Policy that You shall not, at any time during the Period of Insurance, diminish the quality of its company Infringement Search practices and shall at all times maintain, as though it were not insured, the same Infringement Search standards as were in effect prior to the inception of this Policy.
- (b) This Policy applies to any Covered Infringement committed in New Zealand and only if the Claim or Patent Injunction Claim is made and the action brought in and judgement entered and enforced exclusively by a court or appropriate administrative tribunal in New Zealand.

Section 3: Public Liability coverage

This Section of the Policy is 'Occurrence Based'.

3.1 Insuring clause

We will indemnify You up to the limit of indemnity specified in the schedule for all amounts as provided by the Policy for which You shall become legally liable to pay as compensation in respect of Personal Injury or Property Damage that:

- (a) happens during the Period of Insurance; and
- (b) is caused by an Occurrence in connection with Your Business giving rise to a Claim.

3.2 Defence costs

We agree to pay the Costs and Expenses incurred with Our written consent in defending, investigating, monitoring or settling any Claim covered by clause 3.1 of this Policy.

3.3 Public liability - extensions

The following extensions to the Policy are included automatically, and only apply to cover provided under section 3 (Public Liability) provided always that each extension is subject to the terms of this Policy (unless otherwise stated).

3.3.1 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. We shall have the right to charge any additional premium.
- (b) We will indemnify any Subsidiary established during the Period of Insurance from the date established in respect of activities carried out after the date of creation, subject to the provisions of general condition 7.1 (Alteration to risk) which shall apply to the acquisition of any Subsidiary.

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

3.3.2 Sub-contracted parties

We will indemnify You for all sums which You shall become legally liable to pay as a consequence of a Claim for Personal Injury and/or Property Damage 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.

3.3.3 Joint venture liability

We will indemnify You for all sums which You shall become legally liable to pay as a consequence of a Claim for Personal Injury and/or Property Damage arising 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 unless that party is specifically endorsed on the policy schedule as being a Named Insured.

3.3.4 Landlord's liability

We will indemnify You for all sums which You shall become legally liable to pay as a consequence of a Claim for Personal Injury and/or Property Damage in connection with the legal ownership, but not physical occupation, of any premises owned by You.

3.3.5 Tenant's liability

We will indemnify You for all sums which You shall become legally liable to pay as a consequence of a Claim for Property Damage to premises (including landlord's fixtures and fittings) leased, hired or rented, but not owned, by You.

3.3.6 Lessor's liability

Where You are under an obligation to insure the interest of any principal party (lessor) to any lease agreement entered into by You, then, to the extent required by that lease agreement, the Lessor is deemed to be included as a Named Insured and the Lessor's business as property owner or manager (or both) is deemed to be included in the Business to which this insurance applies.

3.3.7 Care custody and control

We will indemnify You for all sums which You shall become legally liable to pay as a consequence of a Claim for Property Damage to property in Your physical or legal control that is:

- (a) premises that are leased, tenanted, hired or rented to You;
- (b) Employees' property;
- (c) vehicles (not belonging to or used by or on Your behalf) in Your physical or legal control of where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by You, provided that You as part of Your Business do not own or operate a car park for reward; or
- (d) property in the physical or legal control of the Insured. However, Lumley shall not be liable for Property Damage to that part of any property upon which the Insured is or has been working where such Property Damage arises from such work of the Insured.

Provided always that:

- (a) We shall not be liable for Property Damage to that part of any property upon which You are or have been working where such Property Damage arises from such work.
- (b) Our total liability under this extension shall be \$250,000 in the aggregate.

Section 4: Limit of indemnity and excess

4.1 Limit of indemnity – section 2 Errors and Omissions

Our total liability including Costs and Expenses under section 2 (Errors and Omissions) of this Policy shall not exceed the limit of indemnity for any one Claim and in the aggregate. If optional extension 2.4.1 (Automatic reinstatement) is shown as 'Included' in the Schedule Our total liability, including Costs and Expenses, shall not exceed an amount equal to twice the limit of indemnity.

If You have any additional cover in excess of this Policy, then any reinstatement of the limit of indemnity pursuant to clause 2.4.1 (Automatic reinstatement) will only be made upon exhaustion of such additional cover.

4.2 Limit of indemnity – section 3 Public Liability

- (a) Our total liability including Costs and Expenses under section 3 (Public Liability) of this Policy in respect of any one Occurrence shall not exceed the limit of indemnity.
- (b) Our aggregate liability including Costs and Expenses under section 3 of this Policy in respect of all Claims arising out of Your Technology Products shall not exceed the limit of indemnity.

We shall not be obligated to pay any claim or judgment or to defend any suit after the limit of indemnity has been exhausted by payment of judgments, settlements or Costs and Expenses.

4.3 Total limit of liability

Our aggregate liability under this Policy shall not exceed the limit of indemnity, except as is expressly provided herein. Any limit of sub-limits that apply to any section of the Policy or any extension to the Policy are included in, and are not in addition to, the limit of indemnity.

4.4 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 pay the expenses incurred in investigating, defending and settling that Claim.

The excess applies 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.

In respect of section 2 (Errors and Omissions), 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.

In respect of section 3 (Public Liability), the excess specified in the Schedule shall be borne by You for each and every Claim or series of Claims arising from one Occurrence.

Section 5: Exclusions

We will not be liable to indemnify You in respect of any liability arising out of any Claim or Occurrence:

5.1 Aircraft and Watercraft

arising out of Your ownership, maintenance, operation, loading, unloading or use of:

- (a) any Aircraft;
- (b) any Watercraft exceeding 8 metres in length.

5.2 Aircraft parts

arising out of Your Technology Products and Technology Services that are used with Your knowledge in Aircraft or any aerial device.

5.3 Asbestos

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

5.4 Assault and battery

caused by or arising directly or indirectly out of or in connection with assault and battery committed by You or at Your direction.

5.5 Chat rooms, bulletin boards etc.

arising out of or connected with any chat rooms, electronic bulletin boards or electronic open forum debates.

5.6 Contractual/assumed liability

arising directly or indirectly out of or in connection with any liability assumed by You under any contract or agreement except to the extent that such liability would have been implied by law. 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 liability assumed by the Insured under any lease of real or personal property.

5.7 Cost guarantees

arising directly or indirectly out of or in connection with any cost guarantee or probable cost estimates being exceeded or cost overrun.

5.8 Damage to Your Technology Products

arising directly or indirectly out of or in connection with Property Damage to Your Technology Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

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

5.10 Delay

arising out of or connected with the late delivery of Your Technology Products or Technology Services whether those Technology Products or Technology Services be Yours or others.

5.11 Directors and Officers liability

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

5.12 Dishonesty

arising out of or connected with:

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

(c) any application for indemnity which is false or fraudulent.

5.13 Faulty mass-produced Technology Products

for the cost of rectifying or replacing faulty mass-produced Technology Products where those Technology Products are not manufactured to the specific requirements of Your customers.

5.14 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.

5.15 Financial condition

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

5.16 Fines and penalties

punitive, aggravated or exemplary damages, fines, penalties, performance warranties or liquidated damages. However, Lumley will indemnify the Insured for all sums that the Insured shall become legally liable to pay by way of punitive or exemplary damages in respect of Personal Injury (for which coverage is determined to exist under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacing legislation) where such Personal Injury happened in New Zealand during the Period of Insurance and was caused by an Occurrence in connection with the Insured's Business.

Provided that:

- (a) any liability for punitive and exemplary damages in respect of such Personal Injury arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse by the Insured is excluded;
- (b) any punitive or exemplary damages awarded by any court outside of New Zealand are excluded;
- (c) a limit of indemnity of \$1,000,000 inclusive of costs, any one period of insurance shall apply, unless a different amount is shown in the Schedule;
- (d) a Claims excess of \$1,000 inclusive of costs shall apply, unless a different amount is shown in the Schedule.

5.17 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.

5.18 Known Claims and circumstances

- (a) made against or intimated to You prior to the commencement of the Period of Insurance; or
- (b) notified under any previous Policy; or
- (c) arising out of or connected with any facts or circumstances which:
 - (i) 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.

5.19 Maximum contract value

arising from any Claim arising directly or indirectly out of the provision of Technology Products and Technology Services under a Technology Supply Contract, where the value of such Technology Supply Contract exceeds NZ\$100,000 and You have not previously provided a copy of the said contract to Us for Our records.

5.20 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;
- (d) arising out of any Personal Injury to any employee of Yours arising out of or in the course of employment of such person in Your Business;
- (e) arising out of any obligation for which You may be held liable under the Accident Rehabilitation and Compensation Insurance Act 1992, or the Accident Insurance Act 1998 or any similar amending or replacement legislation;
- (f) for any liability in respect of which You are 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 You have effected such a policy.

5.21 Obscene matter

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

5.22 Patent

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

5.23 Pollution

directly or indirectly arising out of or caused by:

- (a) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
- (b) any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
- (c) testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants;
- (d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by or arising out of any Product that has been discarded, dumped, abandoned or thrown away by others.

5.24 Product defects

for costs or expenses associated with the withdrawal, inspection, repair, replacement or loss of use of Your Technology Products, or of any property of which such Technology Products form a part, arising out of any known or suspected defect or deficiency therein.

5.25 Property in Your physical care custody or control

for Property Damage to property owned by or leased or rented to You.

5.26 Recall of Technology Products

for damages, costs or expenses claimed for the withdrawal, inspection, repair, replacement or loss of use of Your products including Technology Products, or of any property of which such product or Technology Products form a part, if such product or Technology Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

5.27 Retroactive date

out of or connected with Your activities carried out prior to the retroactive date specified in the Schedule.

5.28 Territory/jurisdiction (USA and Canada)

arising from You or Your Business or Your Technology Products or Technology Services in the United States of America or Canada or their territories or protectorates. This includes without limitation:

- (a) any Wrongful Act or Occurrence 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; and
- (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.

5.29 Terrorism

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

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

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

5.30 Vehicles

for Personal Injury or Property Damage arising out of the ownership, maintenance, possession, operation, use or legal control by You of any vehicle:

- (a) that is required by law to be registered under the Transport Act or any similar law of any country where the vehicle requires registration for road use; or
- (b) in respect of which compulsory insurance is required by virtue of any legislation governing the use of any motor vehicle or trailer.

This exclusion shall not apply to Personal Injury or Property Damage arising from:

- (i) the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare;
- (ii) the loading or unloading of any Vehicle.

5.31 War, confiscation, radioactivity, nuclear perils

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

- (a) any war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not) rebellion, invasion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, 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.

5.32 Watercraft/Aircraft

in respect of any Technology Products or Technology Services relating to Watercraft or Aircraft including missiles or spacecraft and any ground support or control equipment used in association with them, and Your Technology Products or Technology Services furnished by You and which to Your knowledge are installed in Watercraft or Aircraft or used in connection with Aircraft or Watercraft or for space parts for Aircraft or tooling used for manufacturing them, including ground handling tools and equipment, training aids, instruction manuals, blueprints, engineering or other data engineering or other advice and Technology Services and labour relating to such Aircraft or Watercraft.

Section 6: Claims conditions

6.1 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; or
- (c) any Occurrence in respect of which a Claim may result under this Policy;

Provided that, You may elect not to notify Us of any Claim where the potential liability for that Claim is less than 50% of the excess and it is not necessary to instruct legal counsel. However, We reserve the right to reduce Our liability in respect of the Claim by the amount that fairly represents the extent to which Our interests are prejudiced as a result of the lack of prior notification.

6.2 Notification of circumstances

If, during the Period of Insurance, You become aware of any Notifiable Circumstance 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 circumstance during the Period of Insurance, then any Claim subsequently arising from such circumstance is deemed to have been made during the Period of Insurance in which the circumstance was first reported to Us.

'Notifiable Circumstance' means a Wrongful Act that meets the Notification Threshold specified in the Schedule.

The Notification Threshold will be one of the following:

- (a) Project Control Group Process Threshold:

Where your Technology Supply Contract provides for a Project Control Group and Escalation Procedures, the Notification Threshold is when an issue under the Technology Supply Contract is escalated out of the Project Control Group to the senior executives of You and Your Client.

'Project Control Group' means: a committee made up of an equal number of representatives from You and Your Client. Both parties have an equal say in this Project Control Group. All questions relating to the project are processed through this group. The Project Control Group must make a unanimous decision as to the resolution of the issues, otherwise the issue is escalated to respective senior executives.

- (b) Escalation Process Threshold:

This is where You elect to provide some project management and escalation procedure in Your Technology Supply Contract that does not constitute a Project Control Group. We shall determine a point during the project management process that is adopted by You as the Notification Threshold and that is specified in the Policy Schedule.

- (c) Full and Continuing Disclosure Threshold:

Where Your Technology Supply Contract does not provide for any project management or escalation procedure as set out above, then the Notification Threshold shall be any circumstances that may, (in the opinion of a reasonable practitioner of your Business) give rise to a Claim.

If the Schedule does not provide for the use of either the Project Control Group Process or the Escalation Process then you shall give Full and Continuing Disclosure Threshold.

6.3 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.

6.4 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 Your 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.

6.5 Your right to contest Claims

If You do not agree with Our decision 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 6.4 (Legal counsel).

6.6 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.

Legal counsel retained by Us to act on behalf of You 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.

6.7 Reasonable precautions

You shall take all reasonable precautions to:

- (a) prevent Personal Injury or Property Damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy;
- (b) prevent the manufacture, sale or supply of defective Technology Products;
- (c) comply and ensure that Your employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property;
- (d) endeavour to preserve any Technology Products or property which may assist in the defence or investigation of a claim and so far as may be reasonably practical no alteration or repair shall be made without Our consent or until We have had an opportunity of inspection;
- (e) at Your own expense, trace or recall or modify any of Your Technology Products containing any defect or deficiency of which You have knowledge or have reason to suspect.

6.8 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.

6.9 Subrogation

We are entitled to all of Your rights of recovery (before a Claim has been paid and whether or not You have been fully compensated for Your 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 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.

6.10 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 7: General conditions

7.1 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.

7.2 Inspection of property

We shall be permitted but not obligated to inspect Your property and operations at any time. Neither Our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for Your benefit or others, to determine or warrant that such property or operations are safe.

7.3 Cross liability

Where the named Insured consists of more than one party each of the parties shall be considered as a separate legal entity and the word 'You' shall apply to each party as if a separate Policy had been issued to each party but nothing contained in this condition shall result in an increase of Our limit of indemnity in respect of any Occurrence or Period of Insurance.

7.4 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.

7.5 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.

7.6 Policy disputes

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

7.7 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.

7.8 Notice

All notices, including notification of Claims, shall be sent to Us in writing at the following address: Lumley General Insurance (N.Z.) Limited, PO Box 2426, Auckland. Fax: 0-9 308 1114

7.9 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.

7.10 Your Warranty

It is agreed between You and Us that the written Proposal provided by You forms the basis of the Policy and You warrant the truth of all statements made therein.

7.11 Headings

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