

## Introduction

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

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

### 1.1 Acquitted by a Court

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

### 1.2 Associated Company

'Associated Company' means any entity in which the Trust owns, either directly or indirectly, between 10% and 50% inclusive of the shares carrying the right to vote.

### 1.3 Claim

'Claim' means:

- (a) an oral or written claim or demand against any Insured Person for compensation;
- (b) a criminal proceeding commenced against any Insured Person;
- (c) a civil, administrative, disciplinary or regulatory proceeding against any Insured Person in which a complaint, charge or other allegation is made against an Insured Person; or
- (d) a civil proceeding issued or filed against any Insured Person arising from a Wrongful Act, including any appeal therefrom.

### 1.4 Defence Costs

'Defence Costs' means that part of Loss consisting of reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred in the defence or investigation of Claims and any amount required to be paid as security for costs. 'Defence Costs' does not include charges for time spent by trustees or employees of the Trust or reimbursement of any form of remuneration for such people.

### 1.5 Employment Related Wrongful Act

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

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

### 1.6 Indemnity Period

'Indemnity Period' means:

- (a) the Policy Period;
- (b) the first 28 days immediately after the Policy Period; and
- (c) the discovery period, as described in extension 3.5 (Discovery period) if applicable.

### 1.7 Insured

'Insured' means the Insured Persons and, solely in respect of insuring agreement 2.2 (Trust reimbursement cover), the Trust.

### 1.8 Insured Person

'Insured Person' means:

- (a) any one or more persons who were, now are or will be a trustee, secretary, officer, or employee of the Trust; and
- (b) any person who by virtue of any applicable legislation or law is deemed to be a trustee of the Trust;

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

### **1.9 Interrelated Wrongful Acts**

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

### **1.10 Loss**

'Loss' means any amount which the Insured Persons become legally obligated to pay on account of any Claim made during the Indemnity Period for Wrongful Acts including, but not limited to, damages, judgments, settlements and Defence Costs. Loss does not include:

- (a) any amount for which the Insureds are absolved from payment;
- (b) taxes, fines or penalties imposed by law;
- (c) punitive or exemplary damages; or
- (d) any other amount which is uninsurable under the law.

### **1.11 Lumley**

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

### **1.12 Non-Profit Entity**

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

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

### **1.13 Outside Position**

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

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

### **1.14 Policy**

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

### **1.15 Pollutants**

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

### **1.16 Proposal**

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

### **1.17 Schedule**

'Schedule' means the Schedule that is attached and forms part of the Policy. The entities listed thereon are those to which extension 3.3 (Outside Position liability) applies.

### **1.18 Trust**

'Trust' means the Trust named in the Schedule.

### **1.19 Wrongful Act**

'Wrongful Act' means:

- (a) any error, misstatement, misleading statement, act, omission, negligence, or breach of duty actually or allegedly committed or attempted by any Insured Person in their capacity as an Insured Person; or
- (b) any Employment Related Wrongful Act.

## **Section 2: Insuring agreements**

### **2.1 Trustees individual cover**

Lumley will pay on behalf of any Insured Person any Loss for a Wrongful Act provided:

- (a) the Insured Person is not indemnified by the Trust; and
- (b) any Claim against the Insured Person is first made during the Policy Period; and
- (c) the Claim is notified in writing to Lumley during the Indemnity Period.

## 2.2 Trust reimbursement cover

Lumley will pay on behalf of the Trust any Loss for a Wrongful Act in respect of which the Trust is legally obligated to indemnify any Insured Person provided:

- (a) any Claim against the Insured Person is first made during the Policy Period; and
- (b) the Claim is notified in writing to Lumley during the Indemnity Period.

## Section 3: Extensions

### 3.1 Estates and legal representatives

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

### 3.2 Spousal liability

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

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

The cover provided by this extension 3.2 does not apply to the extent the Claim alleges any act or omission by the Insured Person's spouse.

### 3.3 Outside Position liability

Trustees' individual cover – non-profit entity or associated company:

- (a) Lumley will pay on behalf of any Insured Person while serving in an Outside Position of any Non-Profit Entity or Associated Company for Loss for a Wrongful Act provided:
  - (i) The Insured Person is not indemnified by the Trust; and
  - (ii) Any Claim against the Insured Person is first made during the Policy Period; and
  - (iii) The Claim is notified in writing to Lumley during the Indemnity Period.

Trustees' individual cover – entity listed in the Schedule:

- (b) Lumley will pay on behalf of any Insured Person serving in an Outside Position of any entity listed in the Schedule for Loss for a Wrongful Act provided:
  - (i) The Insured Person is not indemnified by the Trust; and
  - (ii) Any Claim against the Insured Person is first made during the Policy Period; and
  - (iii) The Claim is notified in writing to Lumley during the Indemnity Period.

Trust reimbursement cover:

- (c) Lumley will pay on behalf of the Trust for any Loss in respect of which the Trust is legally obliged to indemnify any Insured Person while serving in an Outside Position of any Non-Profit Entity, Associated Company or any entity listed in the Schedule provided:
  - (i) Any Claim against the Insured Person is first made during the Policy Period; and
  - (ii) The Claim is notified in writing to Lumley during the Indemnity Period.

Provided always that any cover provided in this extension 3.3 is subject to service in such an Outside Position being with the knowledge and consent of and at the written direction or request of, and as part of the duties regularly assigned to, the Insured Person by the Trust.

Any cover provided in this extension 3.3 will only be in excess of any indemnity and insurance available from or provided by the entity in which the Insured Person serves in the Outside Position or any other insurance which covers the Insured Person in the Outside Position. Payment by Lumley or any member company of the Lumley Group under another policy as a result of a Claim against an Insured Person in an Outside Position will reduce, by the amount of such payment, Lumley's limit of indemnity under this Policy in respect of such Claim.

### 3.4 Employment disputes liability cover for Insured Persons

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

### 3.5 Discovery period

If this Policy expires and Lumley or the Insureds do not renew this Policy, the Insureds have the right, upon payment of the additional premium described below, to an extension of the cover granted by this Policy for the period of time set forth in the Schedule, but only in respect of a Wrongful Act that took place prior to the expiry date.

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

Any Claim made during the discovery period will be treated as if it had been made during the Policy Period and is subject to the remaining limit of indemnity at the expiry date.

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

### **3.6 Advancement of Defence Costs**

Subject to general condition 5.5 (Allocation) Lumley will advance on behalf of the Insureds Defence Costs which the Insured Persons have incurred in connection with Claims in relation to civil liability made against them, prior to disposition of such Claims, provided that to the extent it is finally established by judgment, settlement or other final adjudication, that any such Defence Costs are not covered under this Policy, the Insured Persons, severally according to their interests agree to repay Lumley such Defence Costs.

### **3.7 Compensation for court attendance**

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

### **3.8 Continuous cover clause**

Subject to Lumley's right to avoid the Policy for material non-disclosure as described in extension 3.12 (Inadvertant non-disclosure) and, in the absence of a deliberate failure to notify a Claim in a previous Indemnity Period, where a Claim that would otherwise be covered under this Policy is excluded by exclusion 4.1 (Known Claims and circumstances) Lumley agrees to indemnify the Insured under the terms and conditions of this Policy subject to the following additional conditions:

- (a) Lumley was the Insured's Trustees liability insurer at the primary level under a policy (hereafter referred to as 'the former policy') at the time when the Insured first became aware of the circumstances that subsequently gave rise to the Claim;
- (b) Lumley continued without interruption as the Insured's Trustees liability insurer at the primary level from the time when the Insured first became aware of the circumstances up until such time as the Claim was made against the Insured and notified to Lumley;
- (c) the liability of Lumley is limited to the amount for which Lumley would have been liable at the time referred to in extension 3.8(a) in accordance with the terms and conditions of the former policy; and
- (d) the liability of Lumley will be reduced by the amount which fairly represents the extent by which Lumley could have mitigated its liability under the former policy had the circumstances been duly reported under the former policy.

### **3.9 Severability of exclusions and representations**

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

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

### **3.10 Official Investigations and Inquiries**

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

### **3.11 Successful defence of criminal prosecution**

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

**Provided that:**

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

### **3.12 Inadvertent non-disclosure**

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

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

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

- (a) provides an explanation which satisfies Lumley that the material non-disclosure arose through sheer inadvertence on his or her part; and

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

**Provided that:**

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

**3.13 Preservation of Indemnity**

If any Insured Person is unable to satisfy a right to indemnity against the Trust to which he or she is entitled whether at common law, under statute or otherwise, by reason only of the Trust having insufficient funds available so to indemnify the Insured Person, then it is hereby agreed that Lumley shall indemnify the Insured Person against Loss arising from any Claim. The excess applicable to insuring clause 2.1 (Trustees individual cover) shall apply. The burden of adducing satisfactory proof to obtain the benefit of this extension shall rest entirely with the Insured Person and shall include the production of documentary evidence of the Trust's assets and liabilities.

**Section 4: Exclusions**

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

**4.1 Known Claims and circumstances**

made against, or intimated to, the Insured prior to the commencement of the Policy Period or notified under any previous policy of insurance or arising out of or connected with any facts or circumstances which:

- (a) any Insured was aware of prior to commencement of the Policy Period; and
- (b) a reasonable person in the position of the Insured would have considered may give rise to a claim against the Insured.

This exclusion is subject to extension 3.8 (Continuous cover clause) of the Policy.

**4.2 Trust or Insured Person**

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

- (a) brought or maintained by any Insured Person for any actual or alleged Employment Related Wrongful Act; or
- (b) brought or maintained by any Insured Person for contribution or indemnity, if the Claim directly results from another Claim covered under this Policy.

**4.3 Outside Position**

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

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

**4.4 Pension/employee scheme**

based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any pension, profit sharing, employee benefit or welfare programme or any share option, share incentive scheme or trust established in whole or in part for the benefit of any of the trustees, officers or employees of the Trust.

**4.5 Bodily injury and property damage**

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

**4.6 Pollution**

based upon, arising out of or attributable to:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of pollutants into or on real or personal property, water or the atmosphere; or

(b) any direction or request that the Trust or the Insured Persons test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants, or any voluntary decision to do so; including without limitation any Claim by or on behalf of the Trust or its creditors based upon, arising out of, or attributable to the matters described in this exclusion.

#### **4.7 Retroactive date**

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

#### **4.8 USA/Canada**

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

#### **4.9 War**

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

#### **4.10 Nuclear**

based upon and or arising out of or in any way involving any loss, destruction, consequential loss or legal liability of whatsoever nature caused by or contributed to either directly or indirectly by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or by radioactive, toxic, volatile or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### **4.11 Deliberate fraud**

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

#### **4.12 Personal profit**

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

#### **4.13 Products or services**

brought by or on behalf of any client or customer of the Trust in connection with products or services provided by the Trust.

#### **4.14 Wrongful Act**

Except as may be otherwise specifically provided in this Policy, Wrongful Act does not include any conduct actually or allegedly committed or attempted by any Insured Person in their capacity as a director, officer, trustee or employee of any organisation other than the Trust, even if service in such capacity is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the Insured Person by, the Trust.

#### **4.15 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.

#### **4.16 Asbestos**

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

## **Section 5: General conditions and limitations**

### **5.1 Limit of Lumley's liability, excess**

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

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

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

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

No excess applies to Loss covered by insuring agreement 2.1 (Trustees individual cover), except as otherwise provided in General Condition 5.2 (Indemnification) of this Policy. If Loss arising from a single Claim is covered in part under insuring agreement 2.1 (Trustees individual cover) and in part under insuring agreement 2.2 (Trust reimbursement cover), the applicable excess set forth in the Schedule applies to that part of the Loss covered by insuring agreement 2.2. The largest applicable excess set forth in the Schedule will be the maximum excess applicable to all Loss on account of such Claim.

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

For purposes of this general condition 5.1, the limit of indemnity for the discovery period, if exercised, will be part of and not in addition to the limit of indemnity for the Policy Period. The purchase of the discovery period does not increase or reinstate the limit of indemnity. The limit of indemnity is the maximum liability of Lumley for all Loss on account of all Claims first made during such Policy Period and discovery period combined.

## **5.2 Indemnification**

If the Trust is permitted or required by common or statutory law to advance Defence Costs or indemnify the Insured Persons for Loss but fails or refuses to do, then notwithstanding any other provisions of this Policy to the contrary, any payment by Lumley of such Defence Costs or other Loss will be subject to the insuring agreement 2.2 (Trust reimbursement cover) excess.

## **5.3 Notice**

The Insured, as a condition precedent to its rights under this Policy, will give Lumley written notice of any Claim made against any Insured Persons as soon as practicable but in no event later than 28 days after expiration of the Policy Period or, if applicable, during the discovery period.

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

As a condition precedent to exercising its rights under this Policy the Insured shall:

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

All notices under any provision of this Policy will be in writing and given by courier, prepaid express courier, certified mail or fax properly addressed to the appropriate party. Notice to the Insureds may be given to the Trust at the address as shown in the Schedule. Notice to Lumley of any Claim or circumstances will be given to Lumley General Insurance (N.Z.) Limited, PO Box 2426, Level 14, Lumley House, 7 City Road, Auckland, New Zealand. Notice given as described above will be deemed to be received and effective upon actual receipt thereof by the addressee or two days following the date such notice is sent, whichever is earlier.

## **5.4 Defence and settlement**

Subject to this exclusion 5.4 it is the duty of the Insured and not the duty of Lumley to defend any Claim.

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

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

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

The Insured agrees to provide Lumley with all information, assistance and co-operation Lumley reasonably requests. Further, the Insured agrees that in the event of a Claim the Insured shall not do anything that may prejudice Lumley's position or its potential or actual rights of recovery. Lumley may make any investigation it deems necessary.

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

Lumley and the Insured Persons will not unreasonably withhold any consent referred to in this general condition 5.4.

## **5.5 Allocation**

If in any Claim the Insured Persons incur Loss jointly with others including the Trust with respect to any Claim, or incur an amount consisting of both Loss covered by this Policy and Loss not covered by this Policy because the Claim includes both covered and uncovered matters, then the Insured Persons and Lumley will allocate such amount between covered Loss and uncovered Loss based upon the relative legal exposures of the parties to covered and uncovered matters.

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

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

## **5.6 Other insurance**

If any Loss arising from any Claim made against any Insured Person is covered, in whole or in part, under any other valid and collectable policy (prior or current) then this Policy will only cover such Loss, subject to its provisions, to the extent that the amount of such Loss is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the limit of indemnity provided in this Policy.

## **5.7 Representations**

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

In respect of any actual or alleged breach of the general conditions of this Policy, any act, error, omission, breach, default or knowledge of one Insured Person (whether occurring or arising before or after the Policy was entered into) shall not be imputed to any other Insured Person and shall not in any way affect the rights of any other Insured Person under the Policy.

Notwithstanding what is stated above in this general condition 5.7, any act, error, omission, breach, default or knowledge of any trustee, executive officer or risk manager (or person holding an equivalent position) will be imputed to the Trust for the purposes of the operation of this Policy.

## **5.8 Territory and valuation**

All premiums, limits of indemnity, excesses, Loss, Defence Costs and other amounts under this Policy are expressed and payable in the currency of New Zealand. If judgment is rendered, settlement is denominated or another element of Loss under this Policy is stated in a currency other than New Zealand dollars, payment under this Policy will be made in New Zealand dollars at the prevailing exchange rate as of closing on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of Loss is due respectively.

## **5.9 Subrogation**

In the event of any payment under this Policy, Lumley will be subrogated to the extent of such payment to all the Trust's and the Insured Persons' rights of recovery, including without limitation the Insured Persons' rights to indemnification or advancement from the Trust. The Trust and the Insured Persons will execute all papers required and do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable Lumley to effectively bring suit in the name of the Insured. Lumley will not, however, exercise any right of subrogation against any Insured Person except if such Insured Person has engaged in any fraudulent act or omission or any wilful violation of any judge-made law, statute or regulation where a judgment or other final adjudication establishes that such Insured Person committed such an act, omission or wilful violation.

## **5.10 Increase in limit of indemnity**

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

## **5.11 Alteration and assignment**

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

## **5.12 Policy disputes**

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

## **5.13 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 or any successor legislation or similar provisions) upon receiving any indemnity payment under the Policy; Lumley will indemnify the Insured for the costs of the tax. The indemnity under this clause is payable by Lumley in addition to the limit of indemnity stated in the Schedule.

## **5.14 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.