

# PRODUCT DISCLOSURE STATEMENT

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ACN: 630 256 478 AFSL 544232



**PENINSULA**  
mutual



## **For More Information Contact Us.**

### **Membership/Protection**

Customer Solutions Team: 0488 851 679

[customer.solutions@brighthr.com.au](mailto:customer.solutions@brighthr.com.au)

### **Claims**

Peninsula Advice Line: 0481 609 489

[advice@brighthr.com.au](mailto:advice@brighthr.com.au)

### **Complaints**

Customer Solutions Team: 0488 851 679

[customer.solutions@brighthr.com.au](mailto:customer.solutions@brighthr.com.au)

### **Privacy**

Mutual Compliance Manager: 1300 651 415

[peninsula.mutual@peninsula-au.com](mailto:peninsula.mutual@peninsula-au.com)

### **Mutual**

Peninsula Mutual Limited

Telephone: 1300 651 415

Email: [peninsula.mutual@peninsula-au.com](mailto:peninsula.mutual@peninsula-au.com)

Post: L6, 180 Thomas Street, Haymarket, NSW 2000

ACN: 630 256 478

AFS License No.: 544232



# PARTS

## PART 1.

Product Disclosure Statement

## PART 2.

Protection Terms & Conditions



## 1. What is a Product Disclosure Statement?

This Product Disclosure Statement (PDS) is an important legal document that contains details about Bright Defence, the Protection that is only available to clients of BrightHR Pty Ltd who are also Members of Peninsula Mutual Limited (Mutual).

The PDS is designed to help You understand what You need to know about Peninsula Mutual and Bright Defence so that You can make an informed choice about whether or not You wish to join the Mutual and apply for the Protection that is only available to the Mutual's Members.

This PDS is issued by Peninsula Mutual Limited AFS Licence No. 544232 and distributed on its behalf by BrightHR Pty Ltd (BrightHR) Authorised Representative 001318172.

In this PDS words starting with a capital letter have the meaning given to them in Part 2 unless a statement is made to the contrary.

**Part 1** of this document is the PDS and contains information about the Protection offered by the Mutual and how to become a Member. It sets out Your rights and entitlements as a Member and explains the benefits and risks that are relevant to the Protection provided.

**Part 2** of this document contains the Terms and Conditions for the Protection offered by the Mutual, subject to Our discretionary powers to accept or reject a claim in the interests of the Members and in accordance with the Constitution.

When You join the Mutual and become a Member You will be offered the opportunity to apply for Bright Defence. At that time, You will be given details of the amount charged for the Protection (referred to as Your Contribution). A Protection Schedule will be issued to You when You purchase Protection and this forms part of the terms and conditions of the Protection.

Before making a decision about joining as a Member and purchasing

Bright Defence from the Mutual, please read this PDS carefully and keep it in a safe place for future reference. You should also read the Mutual's Constitution and the Target Market Determination for Bright Defence, which is available at [www.peninsulamutual.com.au](http://www.peninsulamutual.com.au).

We may update this PDS from time to time. When necessary the Mutual will issue a supplementary or replacement PDS.

## 2. About Peninsula Mutual

The Mutual is a company limited by guarantee, formed to operate a discretionary risk mutual to provide financial risk protection to its Members, including BrightHR's clients who have opted to join as Members of the Mutual. Upon admission to the Mutual as a Member, You agree to be bound by the rights and entitlements contained in the Mutual's Constitution and By-Laws.

The Mutual is owned by its members, who as clients of BrightHR have access to employment relations services offered by BrightHR. The Mutual offers its members the opportunity to access discretionary benefits called Bright Defence by paying a Contribution to the Mutual for membership and the selected Protection. Each Member has an entitlement to one vote at any general meeting of Members of the Mutual, regardless of the amount paid for membership and protection. Bright Defence is regulated as a miscellaneous financial risk product by the Australian Securities & Investments Commission (ASIC).

## Who manages Peninsula Mutual?

Management of the Mutual, including claims handling, will be carried out by the Mutual.

The Board of the Mutual has authorised BrightHR as its authorised representative to provide financial product advice on and arrange for the issue of Bright Defence. BrightHR has entered into a commission-based agreement to provide administrative support to the Mutual. More information about

the services that BrightHR provides is contained in its FSG.

## 3. About Bright Defence

Bright Defence is the financial product issued by the Mutual to enable clients of BrightHR to access discretionary protection for key risks associated with managing employment relations risks.

The Mutual seeks to offer more affordable solutions and broader benefits to its Members as an alternative to traditional insurance. Members have the right to have a claim for Protection considered by the Board. Bright Defence is available exclusively to members of the Mutual who are clients of BrightHR.

## 4. Scope of Protection

Bright Defence provides You with the right to lodge a claim for Protection for Loss resulting from an Employment Claim.

Protection is available where the Claim is made against You and notified to the Mutual during the Protection Period (subject to the detailed terms and conditions in Part 2).

When a claim for Protection is granted, the benefits provided include legal costs and expenses incurred in defending an Employment Claim where the Mutual gives consent to those costs.

It is a condition of the Protection that You are required to seek and follow advice from the BrightHR Advice Team when You become aware of circumstances which may give rise to a claim (see also exclusions listed in Clauses 4 and 6 of Part 2).

## 5. How Protection Works

### Why does the Board have discretion to approve claims?

Peninsula Mutual refers to the benefits it offers as 'Protection' to highlight the fact that it is offering an alternative to insurance. The Protection offered by the Mutual is 'discretionary protection'. Discretionary protection is a legitimate way in which business-related financial risk and the consequence of certain events that impact on the business can be managed.

To qualify as a discretionary protection, the Board must have absolute discretion to accept or reject a Member's claim. Otherwise there is a risk the product would be considered an insurance product, and the Mutual would be required to be authorised under the Insurance Act 1973 (Cth) (Insurance Act) to conduct an insurance business.

By offering Protection that is discretionary, the Mutual is able to offer its Members a financial product for management of business and other risks without establishing an insurance company. Discretionary Protection is a financial product which is regulated by ASIC. The Mutual is an AFS licensee supervised by ASIC. The Australian Prudential Regulatory Authority (APRA) regulates insurance companies, but not discretionary mutuals such as the Mutual, so the Mutual is not subject to the prudential standards set by APRA or the provisions of the Insurance Act and the Protection is not subject to the Insurance Contracts Act 1984 (Cth).

Insurance is different to discretionary protection because an insurer must indemnify a policyholder if the claim comes within the policy terms and conditions. Discretionary protection involves the Board deciding whether to exercise its discretion to pay a claim based on its understanding of the Member's claim and its potential impact on the financial position of the Mutual. Members are assured that the Board's discretion will be exercised fairly and consistently, and with all due consideration to the merits and circumstances of each claim and the Protection Terms and Conditions.

The Board sets guidelines to assist it when it exercises this discretion in the interests of the Members and they will consider whether a claim falls within the Protection Terms and Conditions contained in Part 2 when deciding whether to pay a claim. The Protection Terms and Conditions in Part 2 of the PDS explain the scope of protection including what is and what is not protected.

Notwithstanding that the Protection offered is not insurance, the Board seeks to maintain adequate claims provision and surplus assets. There is no guarantee from the Federal Government's Financial Claims Scheme in the event of insolvency of the Mutual.

### Significant risks

Protection is a financial product and You should be aware of the following:

- **Protection is not an insurance product**

The Mutual provides discretionary protection which is a 'miscellaneous financial risk product'. This means that there is no automatic right of indemnity under the Protection Terms and Conditions. Instead, there is an automatic right to have a claim considered. The Member may ask the Board to exercise its discretion to provide

Protection for the Loss they suffered. The payment of all claims is at the absolute discretion of the Board.

The Mutual is not an insurance company and is not required to maintain the same financial solvency levels that an insurance company does, nor is it regulated under the Insurance Act or financially supervised by APRA.

- **Whether there is adequate funding of the Mutual**

To ensure there is adequate funding available for the Protection of Members, the Mutual regularly takes professional advice as to the adequacy of the Contributions to meet likely claims liabilities for all Members.

- **It is a condition of Membership to be a client of BrightHR**

The Mutual is a mutual for the exclusive benefit of clients of Peninsula Australia Pty Ltd, Peninsula Group NZ Limited (collectively, Peninsula) and BrightHR. Membership and Protection will automatically cease if a Member ceases to be a client of Peninsula or BrightHR. The Board reserves the right to expel Members or deny them access to the Protection in circumstances which are in the best interests of the Members as a whole. This includes where the Member is no longer eligible, or has failed to pay a Contribution.

- **The law may change**

Because the Protection is applied to certain legal risks there is always a possibility that the law may change. The Board will take steps to monitor any such regulatory changes and where possible adjust the Protections to reflect such changes.

- **Payment of Contributions**

Your membership of the Mutual and Your Contributions must be up to date if, and when, You lodge a claim for Protection. In the event You owe any outstanding Contributions, the Board may reject a claim for Protection or withhold payment of any Loss relating to a claim for Protection previously granted until such payment of outstanding Contributions is made by You.

- **Terms, Conditions & Exclusions**

It is important that You read Part 2 of the PDS as this sets out the Terms, Conditions and Exclusions that apply to the Protection You have selected. Upon admission to the Mutual as a Member, You agree to be bound by the rights and entitlements contained in the Mutual's Constitution and By-Laws.

### Significant Benefits

Legal risks, like all risks can cause unexpected disruption to business as well as unexpected and unbudgeted legal costs. The benefits of Bright Defence include:

- Broad protection for Loss relating to a Claim brought against You in the Fair Work Commission or arising out of an Employment Claim, provided advice from the BrightHR Advice Team has been continuously sought and followed.
- Generous limits of protection.
- No Claims Excess for the first 12 months of Protection, thereafter depending on the Member's risk profile, a Member may be required to contribute towards the cost of a successful claim. See Part 1, Clause 8.



- Cancellation of Bright Defence is permissible at any time by providing 30 days' written notice.
- Ability for the Board to exercise discretion to meet meritorious claims that fall outside the protection.

## 6. Claims

You are required to seek and follow advice from BrightHR when You become aware of circumstances which may give rise to a claim in order to gain the benefit of Protection (see also the exclusions listed in Part 2).

### How to claim

Claim notifications may be lodged by telephone or electronically using the contact details set out in this PDS. We can provide advice and assistance and You can refer to Our website for more details of how We can assist You.

### When You make a claim

As a Member of the Mutual, You will have an automatic right to have Your claim for Protection considered by the Board of the Mutual.

The Board's discretion to refuse or reduce a claim is absolute. The Board has the power to pay claims that do not fall within the terms and conditions in Part 2 and equally has the power to reject a claim. If the Board exercises its discretion not to pay a claim, or to pay only part of a claim, You will be promptly advised.

The exercise of the discretion is solely that of the Mutual which also at its discretion may elect to take over the management or defence of any claim or recovery action.

## 7. Membership and Protection

### How to join and access Protection

BrightHR will invite its clients to become Members of the Mutual. As a member of the Mutual, You have an automatic right to apply for Bright Defence for a period that aligns with Your BrightHR contract. This means You may select membership for a period of 1 year, 3 years or 5 years. Once You make the selection of Your membership, Your application is accepted and You have paid Your Contribution, Your Bright Defence benefits will be available to You for the period You nominated.

If You decide to proceed, You will be offered membership and Bright Defence and if You accept and pay Your Contribution You will be provided with a Protection Schedule including details of Your membership of the Mutual.

The Board has discretion to accept Your completed application form for Bright Defence and to set the amount of the Contribution payable by You. The application form will require You to disclose any prior facts and circumstances which may reasonably give rise to a claim. You must provide complete, honest and accurate answers to any questions asked on the form.

### Changes to Membership details

If Your Membership details change including Your contact details, You need to advise Us. The Mutual will not be liable for any loss You suffer because You have failed to update Your details.

### Changes to Your circumstances

You need to notify Us as soon as reasonably practicable of changes in Your circumstances that may affect the risk protected, or may require changes to Your level of

Protection. Specifically, You need to advise Us if any of the answers provided in the application form are no longer correct, if Your business activities or industry have changed or if Your employee headcount has increased.

Where circumstances change such that You are unable to continue receiving Protection, Your Protection may be cancelled and, where appropriate, a refund of contributions may be provided. In circumstances where an additional business entity is added to Your Protection, if necessary, the Mutual will issue You with a new PDS and/or Protection Schedule or it may endorse Your existing Protection Schedule with the new details (if appropriate). The Mutual will also determine if any additional Contributions must be paid by You.

### Membership Renewal

Your Bright Defence benefits are available to You for the duration of Your BrightHR services contract (i.e. 1 year, 3 years or 5 years). Prior to the expiry of Your Protection Period and expiry of Your contract with BrightHR, You will receive an email reminder advising that Your BrightHR services contract, Mutual membership and Bright Defence protection is due for renewal. If You do not wish to renew Your Mutual membership and Bright Defence protection, You must provide 30 days' written notice of Your decision not to renew. Your membership of the Mutual will renew automatically at the end of the 30 day notification period unless You have notified Us before then that You wish to end Your membership. If We don't receive notification from You, the Protection will be automatically renewed. It is the Member's responsibility to read the renewal, the PDS and Protection Schedule and to consider their needs for the new Protection Period.

### Cancelling Your Membership and Protection

You may cancel Your Membership and Protection at any time by giving the Mutual 30 days' written notice. If You decide to cancel Your Membership or Protection(s) during the Protection Period, and You have already paid the Contribution for the current period a refund of Contribution will apply in accordance with the process described in Part 2.

## 8. Contributions & other Payments

### How Contributions are calculated

Eligibility for Protection is linked to the core employment relations services You receive from BrightHR. If Your application for Protection is successful, You will be required to pay Your Contribution. Your Contribution will appear on the tax invoice received from BrightHR. Your Contribution is due and payable in accordance with the payment terms on Your tax invoice. If You pay after the due date, the Board may, at its discretion reject Your payment and elect not to grant Protection for the current period. The Board may also reject a claim for Protection or withhold payment of any Loss relating to a claim for Protection previously granted until such payment of outstanding Contributions is made by You.

Where Your Protection Period exceeds 12 months, Your Contribution may be varied or the Mutual may, in its absolute discretion, apply a Claims Excess after the first anniversary of joining the Mutual. You will be notified of any increase in Contribution or of any Claims Excess amount that may become applicable prior to renewal. Your Contribution and Claims Excess, if applicable, will appear on Your Protection Schedule.

The Mutual will consider a range of factors when calculating Your Contribution or any Claims Excess that may become payable during the Protection Period. These factors may include:

- a. The detailed information provided by you in your application form;
- b. Your number of employees;
- c. Your claims history. Your contribution may be higher or a claims excess may be applied at the time of your protection anniversary if you have a poor claims history prior during the protection period;
- d. The size and nature of your organisation. Larger organisations, including turnover, may be subject to a higher contribution;
- e. Your general risk profile. Greater risks involved in Your business may result in a higher Contribution or a Claims Excess being applied after the first anniversary of admission to the Mutual;
- f. The limits of the Protection; and
- g. Any other factor regarded as relevant by the mutual at the time of assessing your application.

Depending on the nature of these factors, these may reduce or increase Your Contribution or a Claims Excess being applied at the time of Your Protection anniversary of admission to the Mutual.

### **Costs, fees and government charges**

Your Contributions will be subject to GST. Your Contributions do not attract emergency services levies or stamp duty.

## **9. Estimating Future Contributions**

### **Estimating future liabilities or future payments to Members**

On the advice of its professional consultants, the Mutual will calculate the Contributions of Members to ensure that it will have adequate financial resources to discharge future liabilities and make future payments to Members with Protection, based on a mathematical model and independent actuarial advice.

### **The Board will consider the following:**

- a. Income to be received by the Mutual from:
  - Contributions;
  - Interest on investments; and
  - Recoveries from third parties.
- b. The outgoings to be paid by the Mutual for:
  - Operating costs
  - The number and value of claims lodged each year;
  - The number and value of claims lodged for specific risks;
  - The cost of its own insurance;
  - The delay in lodging claims;
  - The cost of an average claim; and
  - Payment of claims within the mutual's self retention limit.

The mathematical model is based on the Mutual being a fully funded mutual.

Each year, the Mutual will model its future claims liabilities to Members. Contributions will be calculated on the assumption that, in any one financial year, the Mutual will not receive or pay all the claims that the Members may have the right to claim for in that financial year.

Each Contribution will include an amount that will be put aside for this purpose to meet the claims that have been delayed.

The Mutual will manage these future liabilities and payments through its risk management and transfer program and through its claim reserving policy.

### **Applying deficits & surpluses**

Because the Mutual is an entity run on not-for-profit principles, any surplus will be applied for the benefit of the Members.

In the event of a surplus in any one Protection year, the Board may exercise its discretion in applying that surplus for the benefit of Members, as permitted under the Constitution. Surplus can be applied to reduce future pricing or can be placed into the Mutual's reserves, or both. The Board's discretion is subject to the requirements imposed on Directors to ensure that the Mutual will have adequate financial resources to discharge future claims payments to Members with Protection.

## **10. Disputes**

The Board sets guidelines to ensure it exercises its absolute discretion fairly and consistently and in the interests of all Members when considering the merits of Your claim. The Board also considers the terms of this PDS, the Constitution and the By-Laws.

If You are unhappy with a claim decision, You may contact [peninsula.mutual@peninsula-au.com](mailto:peninsula.mutual@peninsula-au.com) and request that the matter be referred to the Mutual's Complaints Manager. The matter will be handled in accordance with the Mutual's Internal Dispute Resolution process.

You are welcome to make a written submission to the Mutual describing the reasons why Your claim for Protection should be reconsidered. You must do this within 60 days of the date that You were notified that the claim would not be paid. The Board will consider Your submission when deciding the final outcome. Send Your submission and request for reconsideration to the Mutual's Complaints Manager.

If You have a complaint about any of the services provided by the Mutual, its managers or their authorised representatives; or any other person engaged by them, please contact the Mutual's Complaints Manager at [peninsula.mutual@peninsula-au.com](mailto:peninsula.mutual@peninsula-au.com).

If, following the Internal Dispute Resolution process, You are still not satisfied or Your complaint remains unresolved after 30 days, You can make a complaint to the Australian Financial Complaints Authority (AFCA). AFCA is an independent body and provides its service free of charge. The Mutual is a member of AFCA. AFCA's decision is not binding on You but it is binding on the Mutual as a licensee.

You can contact AFCA on 1300 780 808 or obtain additional information and contact details at [www.afca.org.au](http://www.afca.org.au)

## 11. Privacy

Our Privacy Policy is in accordance with the Privacy Act 1988 (Cth), as amended, and is based on the thirteen Australian Privacy Principles outlined in schedule 1 of the Privacy Act 1988 (Privacy Act) (Cth). Our Privacy Policy also complies with State legislation in relation to the collection and use of health information, where such legislation is applicable in addition to the Privacy Act. If You provide personal information to the Mutual or one of the organisations assisting it, about another person, which has not been obtained in connection with an employment relationship, You must have that person's authorisation to provide their information. You must also inform that person of the Mutual's identity, how it will use and disclose the information and that person's rights to access that information.

For the avoidance of doubt, You do not require a person's authorisation to provide information to the Mutual where the information provided is personal information provided to You arising from an employment relationship which is used and disclosed to the Mutual for relevant business purposes (included to obtain advice and protection).

The Mutual collects personal information to the extent that it is relevant to performing its functions and/or providing You with the services associated with Bright Defence. This will include the investigation of claims for protection, court proceedings and engaging professional advisors. If You do not provide this information, the Mutual may not be able to provide its services to You. The information collected will be provided to organisations that will assist in deciding whether to protect You, or to assess a claim. We will ensure that these organisations have appropriate privacy procedures. These organisations include:

BrightHR, Peninsula Australia, Irwell Law and their employees;

Professional service providers engaged by the Mutual including lawyers, assessors, actuaries, accountants, investment managers and other advisers; and

Professional insurance advisors (including brokers and insurers).

This list is not exhaustive and the above uses and disclosures are not mutually exclusive.

We will take reasonable steps to make sure that the personal information We collect, use or disclose is accurate, complete and up to date.

Our internal complaints procedure is designed so that We may formally attend to any complaint where it is believed that personal information may have been incorrectly used or disclosed.

If You would like to obtain further information about Our privacy policy or complaints procedure, You can contact the Mutual on 1300 651 415 or by e-mail: [peninsula.mutual@peninsula-au.com](mailto:peninsula.mutual@peninsula-au.com).





## 1. Defined terms

| Word or Term                    | Meaning   |
|---------------------------------|---|
| <b>AFSL</b>                     | an Australian Financial Services Licence issued by ASIC.  |
| <b>Appointed Representative</b> | the representatives, solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Protection when We accept Your Claim.  |
| <b>ASIC</b>                     | Australian Securities and Investments Commission.   |
| <b>Back-pay</b>                 | wages or salary arising from an order of reinstatement which You are legally liable to pay an Employee relating to the period from the date of termination of the Employee's employment to the date when the Employee's employment is ordered to be re-instated or re-commence.   |
| <b>Board</b>                    | the board of directors of the Mutual.   |
| <b>BrightHR</b>                 | BrightHR Pty Ltd ACN 649 265 690.   |
| <b>BrightHR Advice Team</b>     | the employment relations advice team of BrightHR, providing telephone advice to clients of BrightHR.  |
| <b>Business</b>                 | the business conducted by You as described in the Protection Schedule.  |
| <b>By-Laws</b>                  | any by-laws adopted by the Board from time to time.   |
| <b>Claim</b>                    | the receipt by You of any application or originating statement of claim, which is made by an Employee against You and is an Employment Claim.   |
| <b>Claims Excess</b>            | the monetary contribution towards the Loss that may be payable by You on Your Claim. The Claims Excess amount will be stated on Your Protection Schedule.   |
| <b>Constitution</b>             | the constitution of the Mutual, governing membership and protection offered by the Mutual.  |
| <b>Contribution</b>             | the total amount of fees plus any taxes, duties and charges that a Member is required to pay to access the Protection.  |
| <b>Defence Costs</b>            | <p>all reasonable legal costs, charges, fees, expenses and advances which are incurred with Our written consent in connection with appealing, defending, investigating or settling an Employment Claim or Your reasonable costs and expenses,</p> <p>but shall not include wages, salaries, overtime, commissions, expenses or other benefits or other remuneration of any Employee or any office overheads, travel expenses, or administrative costs unrelated to the Employment Claim or Claim.</p> <p>Provided that where proceedings are commenced in respect of the above, and those proceedings are also in respect of other matters, then We will not accept liability for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters, unless We exercise Our discretion to do so.</p> |
| <b>Employee</b>                 | any past, present or future natural person employee (including part-time, casual, seasonal, temporary, voluntary and work experience), but only while the natural person is acting in such capacity. Employee does not include any of Your partners, principals or directors of any agent, receiver or external auditor.  |
| <b>Employment Claim</b>         | <p>any Claim brought or maintained against You by or on behalf of an Employee for any actual or alleged:</p> <ol style="list-style-type: none"> <li>wrongful, constructive or unfair dismissal, discharge or termination of employment; or</li> <li>breach of general protections provisions under Australian law.</li> </ol>   |
| <b>External Administrator</b>   | <ol style="list-style-type: none"> <li>a receiver, or receiver and manager, of any of Your property;</li> <li>an administrator appointed to You;</li> <li>an administrator of a deed of company arrangement executed by You;</li> <li>a provisional liquidator or liquidator appointed to You;</li> <li>a trustee or other person administering a compromise or arrangement made between You and someone else; or</li> <li>any other external administrator to You.</li> </ol>  |

| Word or Term                 | Meaning   |
|------------------------------|---|
| <b>Entitlements</b>          | an actual or alleged breach of Your express obligations to make any payment (including the provision of non-cash benefits) where such obligation arises under statute, regulation, award, judgment, contract of employment (including any arrangement or agreement collateral to any contract of employment), or any industrial, workplace or enterprise agreement or otherwise.  |
| <b>FSG</b>                   | Financial Services Guide.   |
| <b>Incident</b>              | the issue that starts an unbroken chain of events that results in a Claim.  |
| <b>Irwell Law</b>            | Irwell Law Pty Ltd ACN 614 311 885.   |
| <b>Limit of Protection</b>   | the maximum amount of Protection for each benefit as stated in the Protection Schedule.   |
| <b>Loss</b>                  | <p>the total amount which You become legally liable to pay in respect of an Employment Claim and includes:</p> <ul style="list-style-type: none"> <li>• damages, judgments or settlements;</li> <li>• legal costs and expenses awarded against You;</li> <li>• Defence Costs; and/or</li> <li>• Back-pay.</li> </ul> <p>For the avoidance of doubt, Loss does not include any outstanding wages or entitlements that may form part of the settlement.</p> |
| <b>Member</b>                | a current member of the Mutual as named in the Protection Schedule.   |
| <b>Merger or Acquisition</b> | <p>a. You or Your Business consolidating with, merging with, or You selling all or substantially all of Your or Your Business' assets to, any other person or entity or group of persons and/or entities acting in concert; or</p> <p>b. You or Your Business becoming a subsidiary of another entity by virtue of Australian law.</p>  |
| <b>Mutual</b>                | Peninsula Mutual Limited ACN 630 256 478 AFSL No. 544232.   |
| <b>Officer</b>               | any past, present or future director, managerial or executive officer (as defined by the Corporations Act 2001 (Cth)) or company secretary appointed by You.  |
| <b>PDS</b>                   | this Product Disclosure Statement, including any other documents that form part of this document.   |
| <b>Peninsula</b>             | Peninsula Australia Pty Ltd ACN 145 676 026.  |
| <b>Protection</b>            | the discretionary protection provided by the Mutual described in Part 2 of this document and the Protection Schedule.   |
| <b>Protection Period</b>     | the period between the start date and the expiry date for the Protection stated in the Protection Schedule.   |
| <b>Protection Schedule</b>   | the document issued by the Mutual setting out the protection period and Limits of Protection including any renewal or endorsement schedules.  |
| <b>Retroactive Date</b>      | Retroactive Date the date shown in the Protection Schedule. However, unless otherwise agreed by Us, such date in respect of any entity acquired or created by You shall be the date of acquisition or creation of that entity by You or the date shown in the Protection Schedule, whichever is the later date.   |
| <b>Subsidiary</b>            | <p>any entity in respect of which the Member:</p> <p>a. controls the composition of the Board of Directors</p> <p>b. in a position to cast, or control the casting of more than 50% of the issued voting shares; or</p> <p>c. holds more than 50% of the issued share capital, and shall include any entity which is deemed to be the subsidiary of the Member by virtue of legislation or law.</p>   |
| <b>We / Us / Our</b>         | the Mutual.   |
| <b>You, Your</b>             | <p>a. the Member named in the Protection Schedule;</p> <p>b. all Subsidiaries (now or hereafter constituted) of the Member whose place of incorporation is within Australia.</p>  |



## 2. Scope of protection

The Protection is subject to the Board exercising its discretion to pay a claim in accordance with the Constitution and any By-Laws and the terms, conditions, limits and exclusions of the Protection as set out in this Part 2.

You can find information about the Protection benefits You hold in Your Protection Schedule.

## 3. What is protected

Important Note: You are required to seek and follow advice from the BrightHR Advice Team when You become aware of circumstances which may give rise to a Claim in order to have the benefit of Protection (see exclusions at Clause 4).

### a. Employment Claims

Subject to the terms and conditions herein, if We exercise Our discretion to grant You Protection for a Claim, We will pay, on Your behalf, Loss:

- i. brought against You in the Fair Work Commission; or
- ii. arising out of an Employment Claim;

where such Claim is first made against You during the Protection Period, and which You notify to Us during the Protection Period, provided that:

- iii. the Claim is made by an Employee that is (or was during their employment) registered and listed as an employee within in Your BrightHR platform; and
- iv. You have taken all reasonable steps to prevent the Claim from arising; and
- v. this Protection will not cover any Claim made against You by any partner, principal or director, unless brought in the capacity of an Employee; and
- vi. the total aggregate Limit of Protection will only apply to that part of each Loss (including Defence Costs) in respect of each Employment Claim.

## Limit of Protection

Our total liability for Claims accepted under this Protection in respect of all Losses arising out of all Claims during the Protection Period will not exceed the Limits of Protection stated in the Protection Schedule.

## 4. What is not Protected

We will not provide Protection for any Employment Claim made against You arising out of:

- a. Advice not sought  
any fact or circumstance if You have not:
  - i. sought and followed advice from the BrightHR Advice Team or its nominee when You become aware of facts or circumstances which may lead to an Incident or may reasonably be expected to give rise to an Employment Claim; and
  - ii. continued to seek and follow advice from BrightHR Advice Team or its nominee until the conclusion of the Employment Claim.

### b. Breach of employer obligations

an actual or alleged breach of Your express obligations to pay Entitlements. This exclusion will not apply to Back-pay arising from such Employment Claim.

### c. Bodily injury or property damage

directly or indirectly out of, any Employment Claim for actual or alleged bodily or psychological injury, sickness, disease or death of any Employee or damage to or destruction of any tangible property, including the loss of use thereof. This exclusion will not apply to emotional distress or mental anguish brought as part of any Employment Claim.

### d. Building modifications

the costs of physical modifications to Your workplace, or the costs of changes to workplace procedures.

### e. Fines and penalties

any Employment Claim which constitutes a punitive, aggravated or exemplary damage or fine or penalty imposed by law, including but not limited to, any civil penalty or penalties.

Any monetary penalty where payment of the penalty is prohibited by law.

### f. Future earnings

any future earnings, wages, commissions, damages or economic loss You are ordered to pay pursuant to a judgment, determination or final adjudication of a court or tribunal. This exclusion will not apply to Defence Costs.

### g. Industrial Action

any Employment Claim arising from any lockout, strike, picket, stand-down or suspension, or other industrial dispute.

### h. No Protection Schedule at time of Claim

if You do not hold a current Protection Schedule at the time when the Employment Claim for the Loss is first made against You.

### i. Non-pecuniary relief

any Employment Claim which constitutes the costs of compliance with any order of a court or tribunal for the grant of or agreement to provide injunctive or non-



pecuniary relief, however, this exclusion will not apply to Defence Costs arising from such Employment Claim.

- j. Prior or pending Claims
  - i. any Employment Claim made against You prior to the Protection Period;
  - ii. any actual or alleged Incident committed prior to the Retroactive Date of the Protection (if such a date is specified);
  - iii. Claims made after the expiry of the Protection Period even though the event giving rise to the Claim may have occurred during the Protection Period;
  - iv. Claims made, threatened or intimidated against You prior to the commencement of the Protection Period;
  - v. facts or circumstances of which You first became aware prior to the Protection Period, and which may reasonably have been expected to give rise to a Claim under this Protection; or
  - vi. Claims arising out of circumstances noted on the application form for the current Protection Period or on any previous application form, or which should have been declared at that time.
- k. Territorial limitations

for which an Employment Claim which arises or is instituted, threatened or commenced in a jurisdiction which is outside Australia.

**l. Property Damage**

directly or indirectly out of, based upon, attributable to, or in consequence of loss of or damage to property.

**m. Legislative Loss**

Any Employment Claim arising under any statute relating to accident or workers compensation.

## 5. Making a claim

Except where stated otherwise, this clause applies to all benefits provided by the Protection and referred to in this document.

### Notification of Claims

- a. You must as soon as reasonably practicable notify Us:
  - i. of any Claim made against You during the Protection Period; and
  - ii. of any circumstances which You become aware of during the Protection Period which may give rise to a claim under this Protection, irrespective of whether the Loss is likely to be within the Limits of the Protection or not.
- b. If a Claim is made against You during the Protection Period and You notify Us of the Claim within 21 days after the expiry of the Protection Period, We may treat the Claim as notified to Us during the Protection Period.
- c. If during the Protection Period, an Incident occurs which may subsequently result in a Claim against You and You give written notice of those circumstances to Us during the Protection Period, then any Claim which is later made against You, will be treated by Us as a Claim made against You and notified to Us during the Protection Period.

### Assistance and co-operation

You must provide Us with all reasonable information and assistance We reasonably require when You deal with Us and You will:

- d. be truthful and frank;
- e. not behave in a way that is abusive, dangerous, hostile, improper or threatening;
- f. co-operate fully with Us, even after We have paid a claim under this Protection.

You must at all times promptly notify Us of any information, documents or reports in Your possession or knowledge relevant to any claim You make under this Protection and You shall, whenever so requested, give to, or procure for, Us free access to such information, documents or reports with the right to inspect and copy them.

### Multiple Claims

All causally connected or interrelated Employment Claims jointly constitute a single Employment Claim under this Protection and will be deemed to have occurred on the date of the earliest Employment Claim.

Where a single Employment Claim or series of causally connected or interrelated Employment Claims give rise to more than one Claim, all such Claims will jointly constitute one Claim which will be deemed to have been made at the time the first Claim was made.

### Settlement, defence and appointment of lawyers

- g. You must seek Our express written consent (which will not be unreasonably delayed or withheld) to pay Defence Costs before they are incurred.
- h. Until We have made a decision to pay Your Claim, You must not admit liability, or attempt to settle or make any admission with respect to a Claim. Even when We have exercised Our discretion to pay Your claim, You must follow Our instructions or those of the Appointed Representative in managing or dealing with the claim.
- i. We shall have the right, but not the obligation, to conduct in Your name, the investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount We incur shall be deemed to be part of the Loss.
- j. We will appoint, on Your behalf, a representative from Our panel to manage or deal with the Claim. Where there exists a conflict of interest or if there are exceptional circumstances, You may request Us to nominate an Appointed Representative to act on Your behalf. We may, in Our discretion, provide consent to the appointment (such consent will not be unreasonably delayed or withheld), provided that:
  - i. unless otherwise agreed by Us, Our maximum liability for any legal and/or other fees charged by the Appointed Representative shall not exceed \$500 (ex GST) per hour or their usual charge out hourly rate, whichever is the lesser; and
  - ii. We may accept or refuse Your nomination of any person or firm to act as Appointed Representative if We reasonably consider that a more experienced or competent representative is available.



- k. You shall not enter into any agreement to appoint the Appointed Representative without first obtaining Our consent (which will not be unreasonably delayed or withheld) as to the terms of the appointment of the Appointed Representative, including remuneration terms. Further, You shall not represent to the Appointed Representative that all costs and associated expenses are covered by this Protection.
- l. You must take reasonable steps to ensure that the Appointed Representative is required to comply with all reasonable requests for information or advice and must obtain instructions from Us in relation to the management and resolution of the Claim.
- m. Notwithstanding the foregoing, We may at any time exercise Our discretion to assume conduct of the Claim.
- n. You shall do all things reasonably necessary to allow Us to obtain from the Appointed Representative any information, report, documents or advice We reasonably required relating to the Claim.
- o. You shall upon Our request or the Appointed Representative and at Your own expense:
  - i. provide all reasonably information and assistance as may be reasonably required;
  - ii. give a complete and truthful account of the facts relevant to any Claim;
  - iii. supply all documents and other evidence relevant to the Claim; and
  - iv. obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested, and in respect of a Claim made against You;
  - v. ensure that an Officer attends and if necessary gives evidence, on Your behalf, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against You; and
  - vi. attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against such Officer or Employee.

### **Sending Us notice of Your Claim**

Notice of any Claim or circumstances that may give rise to a Claim that may be protected under this Protection should be made by contacting Us:

Peninsula Mutual Limited  
Tel: Bright HR Advice Line 0481 609 489  
Email: [advice@brighthr.com.au](mailto:advice@brighthr.com.au)

Notice should include reasons for the anticipation of a Claim with full particulars of the circumstances, dates and persons involved. Any subsequent Claim arising out of such circumstance will be deemed to have been made during the Protection Period in which the Claim was first notified to Us.<sup>6</sup> Other Terms

### **Mitigation of Loss**

You must take any reasonable step, including but not limited to any action that is reasonably requested by Us, to avoid or reduce loss or damage suffered as part of any actual or potential Claim.

### **Fraudulent Claims and failing to comply with these conditions**

If any of the conditions in this document are not met, We may refuse to pay a claim, reduce the amount We pay for

a claim or in some circumstances We may cancel Your Protection. When making a claim under the Protection, You must have met and then continue to comply with the conditions of this Protection. Any person entitled to a benefit under this Protection, or claiming under it, must also comply with these conditions.

### **Authorisation**

You agree to act on behalf of all other persons entitled to a benefit under this Protection and each person agrees that the Member is authorised to act on their behalf in giving and receiving the notice of any Claim, receiving and giving notice of cancellation or expiry of this Protection, the payment of the Contribution and any refund of moneys that may become due under this Protection, the negotiation, agreement to and acceptance of any changes to these terms and conditions.

### **Complying with statutory notices**

You must comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate regulatory authority under any applicable legislation within the time specified or if no time is specified, within a reasonable time.

### **Preventing Our right of recovery**

If You have agreed not to seek compensation from another person who is liable to compensate You for any Loss, damage or liability which is covered by this Protection, We will not accept a claim by You under this Protection for that Loss, damage or liability or may reduce the payment.

### **Subrogation**

Upon Our payment of Your claim You agree to subrogate all rights of recovery to Us. You must not waive any rights of recourse or recovery against any other person relating to a claim under this Protection and You must reasonably assist Us in all aspects in exercising such rights if requested to do so. In the event of any payment under this Protection, We will be subrogated to the extent of such payment to all Your rights of recovery, and You must execute all papers reasonably required and will do everything reasonably necessary to secure and preserve such rights, including the execution of documents necessary to enable Us to effectively bring proceedings in Your name.

### **Cancellation**

We may cancel this Protection if You do not comply with the terms and conditions, fail to pay Contributions when due, if You become ineligible for protection due to a change in Your circumstances, or if Your membership of the Mutual is cancelled. Other than cancellation for breach of terms and conditions as prescribed herein, and in the By-Laws of the Mutual, We will give You 90 days prior written notice if We decide not to renew Your Protection.

You can cancel the Protection at any time by providing Us with 30 days prior written notice.

If Protection is cancelled, We will retain part of the Contribution calculated by reference to the proportion that the expired part of the Protection Period bears to the whole Protection Period. Where You have made a claim during the Protection Period and We have agreed to accept it, We will retain all of the Contribution You paid for the Protection.

## Change in circumstances

You must give to Us written notice as soon as reasonably practicable of any material alteration to the risk during the Protection Period. Specifically, You must give Us written notice of a including, but not limited to, material change to the business activities, industry, and/or the number of Employees, where an External Administrator is appointed or You are going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or You are failing to pay debts or breaching or becoming the subject of bankruptcy or winding-up proceedings. We retain Our rights to reduce or refuse payment of a claim or cancel Your Protection in the event You fail to provide notification of any material alteration to Your Business during the Protection Period.

## Confidentiality

You must not disclose the existence of this Protection, or release to any person or publish information about the Protection, including the benefits provided by Us, the Limit of Protection or the amount of the Contribution paid, except to the extent that:

- n. such disclosure is made to BrightHR;
- o. You are required by law to do so; or
- p. We consent, in writing, to such disclosure.

## Notices

Any notice We give You will be in writing, and it will be effective if:

- q. it is delivered to You personally; or
- r. it is delivered to You at Your address (including an electronic address) last known to Us.

It is important for You to notify Us if Your address changes as soon as reasonably practicable.

## Fraudulent misrepresentation

In the event You commit or attempt to commit any fraud or make a fraudulent misrepresentation or omit to tell Us or BrightHR important information about circumstances giving rise to a Claim, We may exercise Our discretion to reduce the amount We pay for a Claim by the amount which fairly represents the extent to which Our interests are prejudiced.

## Insurance policies You hold

With respect to any claim made under this Protection, if there is/are any other avenue(s) of indemnity available to You, such as insurance, covering the same loss, You shall promptly notify Us of the existence of such insurance or other indemnity, providing full details including the identity of the provider of such insurance or indemnity, policy or agreement number and further information as We may require. We shall only consider providing Protection to You for Loss which exceeds the amount of such insurance or other indemnity.

## Governing Law /Jurisdiction

This Protection will be governed by and interpreted in accordance with the laws of the Commonwealth of Australia and the jurisdiction of the courts in the State of New South Wales.



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