



**employsure**  
protect

**Combined Product  
Disclosure Statement  
and Protection Terms  
and Conditions.**





# For more information contact us.

## Membership/Protection

**Client Experience Team:** 1300 651 415  
[client.experience@employsure.com.au](mailto:client.experience@employsure.com.au)

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## Claims

**Employer Advice line:** 1300 651 415  
[advice@employsure.com.au](mailto:advice@employsure.com.au)

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## Complaints

**Client Experience Team:** 1300 651 415  
[client.experience@employsure.com.au](mailto:client.experience@employsure.com.au)

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## Privacy

**Business Risk Officer:** 1300 651 415  
[compliance@employsure.com.au](mailto:compliance@employsure.com.au)

## Mutual

**Employsure Mutual Limited**  
**Telephone:** 1300 651 415  
**Email:** [service@employsuremutual.com.au](mailto:service@employsuremutual.com.au)  
**Post:** L6, 180 Thomas Street, Haymarket, NSW 2000

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## AFS Licensee

**Regis Mutual Management Pty Ltd**  
**Telephone:** 02 9252 1599  
**Email:** [employsure.claims@rmml.com](mailto:employsure.claims@rmml.com)  
**Post:** PO Box H96, Australia Square, NSW 1215

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# Parts.

## **Part 1.**

### Product Disclosure Statement

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## **Part 2.**

### Protection Terms and Conditions



# Part 1. Product Disclosure Statement



## 1. What is a Product Disclosure Statement?

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

The PDS is designed to help you understand what you need to know about Employure Mutual and Employure Protect so that you can make an informed choice about whether or not you wish to join the Mutual and be eligible to apply for the Protection that is only available to the Mutual's Members.

This PDS is issued by Employure Mutual Limited and distributed on its behalf by Employure Pty Ltd (Employure) Authorised Representative 001274577 of Regis Mutual Management Pty Ltd (Regis) AFS licensee 338156 which has entered into an intermediary authorisation agreement with the Mutual.

In this PDS words appearing with capital letters are used in accordance with the definitions in Part 2 unless a statement is made to the contrary.

**Part 1** of this document contains information about the Protection offered by the Mutual and how to become a Member. It sets out your rights and entitlements as a Mutual 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.

When you join the Mutual and become a Member You will be offered the opportunity to apply for Employure Protect and dependent on your service contract options may choose to take either or both of the Protections available. At that time, you will be given details of the amount charged for that 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 Employure Protect from the Mutual, please read this PDS carefully and keep it in a safe place for future reference.

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

This PDS replaces the PDS dated 1 April 2021. If you are an existing Member please consider carefully the changes in this PDS as your benefit in Section B - Health and Safety Statutory Liability in relation to Penalty may have changed.

## 2. About Employure Mutual

Mutual is a company limited by guarantee, formed to meet the needs of Employure's clients. Using a company structure, those clients will become Members of the Mutual with the rights and entitlements contained in the Mutual's Constitution.

# Part 1. Product Disclosure Statement

The Mutual is owned by its Members, who as clients of EmploySURE have access to employment relations and health and safety consulting and other services offered by EmploySURE. The Mutual offers its Members the opportunity to access a discretionary benefits called EmploySURE Protect 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. EmploySURE Protect is regulated as a financial product by the Australian Securities & Investments Commission.

## Who manages EmploySURE Mutual?

The Board of the Mutual has appointed Regis AFS Licensee 338156 to manage the Mutual and entered into an intermediary authorisation with Regis which allows Regis and its authorised representative to advise on and arrange for the issue of EmploySURE Protect which the Mutual issues as an unauthorised product issuer in accordance with section 911A(2)(b).

Other professional advisers will also be appointed to support the Mutual's activities including Gow-Gates and its related companies who will assist in claims handling and provide professional insurance broking services for the placement of an insurance program to support the Mutual.

Regis and Gow-Gates both receive a fixed annual management fee for the services they provide to the Mutual. Gow -Gates also receives a fee for the insurance broking service. Neither Regis or Gow-Gates receive any commission or any other payment for their services.

## 3. About EmploySURE Protect

EmploySURE Protect is the financial product issued by the Mutual to enable clients of EmploySURE Pty Ltd to access discretionary Protection for key risks associated with managing workplace risks (relating to employment relations and health and safety statutory liability). 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. EmploySURE Protect is available exclusively to members of the Mutual.

## 4. Types of Protection

There are two types of Protection available to Members of the Mutual and it is a condition of each that You are required to seek and follow advice from EmploySURE 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, Sections A and B).

### 1. Employment Relations (Part 2 Section A)

This Protection provides a Member (and its declared subsidiaries and related entities) with the right to lodge a claim for Protection for Loss resulting from action brought against the Member in the Fair Work Commission and other employment claims.

Protection is available where the claim is made against the Member and notified to the Mutual during the Protection Period (subject to the detailed terms and conditions in Part 2, Section A).

When a claim for Protection is granted the benefit provided includes legal costs and expenses incurred in defending an employment claim where the Mutual gives consent to those costs.

### 2. Health and Safety Statutory Liability (Part 2 Section B)

This Protection provides a Member (and its subsidiaries and declared related entities) with the right to lodge a claim for Protection for Loss that may be suffered if a penalty is imposed on the Member by a regulatory body for liabilities arising from a health and safety breach involving your business.

Protection is available where the claim is made against the Member and notified to the Mutual during the Protection Period (subject to the detailed terms and conditions in Part 2, Section B).

When a claim for Protection is granted it includes cover for penalties (where permitted by law) and legal costs and expenses in defending a claim (where reasonable grounds exist) and the Mutual gives consent to those costs.

## 5. How protection works

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

EmploySURE Mutual refers to the benefits it offers as 'Protection' to highlight the fact that it is offering an

# Part 1. Product Disclosure Statement

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 the product would be considered an insurance product, and the Mutual would be required to be authorised under the Insurance Act 1973 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 the Australian Securities & Investments Commission (ASIC). Regis is an AFS licensee supervised by ASIC.

The Australian Prudential Regulatory Authority (APRA) regulates insurance companies, but not discretionary mutuals such as Employsure Mutual, so the Mutual is not subject to the prudential standards set by APRA or the provisions of the Insurance Act 1973 and the Protection is not subject to the Insurance Contracts Act 1984.

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. 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.

## 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. The payment of all claims is at the discretion of the Board.

### • 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. In addition, the Mutual purchases excess of loss insurance cover that limits the Mutual's exposure to a large accumulation of claims.

### • It is a condition of Membership to be a client of Employsure

The Mutual is a mutual for the exclusive benefit of Employsure's clients. Membership and Protection will automatically cease if a Member ceases to be a client of Employsure. The Board reserves the right to expel Members who are no longer eligible, or who have 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.

### • Annual Protection

Employsure Protect is an annual contract. Your membership of the Mutual and Your Contributions must be up to date if, and when, you lodge a claim for Protection.

### • Terms, Conditions and 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.

# Part 1. Product Disclosure Statement

## Significant Benefits

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

- Broad protection where EmploySURE's advice has been sought and followed
- Generous limits of protection
- No deductible
- A 30-day cooling off period
- 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 EmploySURE when you become aware of circumstances which may give rise to a claim in order to gain the benefit of Protection (see also exclusions listed in Part 2, Sections A and B).

### 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.

As professional advisors to the Mutual Regis and Gow-Gates provide claims management support to the Mutual and may make recommendations to the Board on whether to accept a claim and the amount to be paid. However, 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

EmploySURE will invite its clients to become Members of the Mutual. As a Member of the Mutual there is an automatic entitlement to apply for the EmploySURE Protect so as part of that process, you will be asked to complete an application form in respect of the Protection benefits for which you are eligible.

If you decide to proceed, you will be offered Membership and EmploySURE Protect and if you accept you will be provided with a Protection Schedule including details of Your Membership.

The Board has discretion to accept your completed application form for EmploySURE Protect and to set the amount of the Contribution payable by each Member for the next 12-month period. The application form will require you to disclose any prior facts and circumstances which may reasonably give rise to a claim.

### 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 of changes in your circumstances that may affect the risk protected, or may require changes to your level of Protection. For example, 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. More details can be found in Part 2 of this PDS.

Changes required to your Protection that occur during the Protection Period can be made at the discretion of the Board or in accordance with changes in the law. 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.



# Part 1. Product Disclosure Statement

## Annual Renewal

Employsure Protect is active for 12 months. Prior to the expiry of your Protection you may be invited by the Mutual to renew your Protection for a further 12 months. At the time of renewal, you will be asked to confirm whether your business activities, industry or headcount have changed in the previous 12 months. The invitation to renew is at the sole discretion of the Mutual and may be refused if the Mutual is no longer able to offer Protection due to a change in your circumstances. If renewal is offered, you will be asked to provide details of any changes which may be relevant to the calculation of your Contribution. The Mutual may contact you by email or text to invite you to renew.

## Cancelling your Membership and Protection

You may cancel your Membership and Protection at any time by giving the Mutual 30 days' 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 year a refund of Contribution will apply in accordance with the process described in Part 2.

## 8. Contributions and other Payments

### How Contributions are calculated

Eligibility for Protection is linked to the core employment relations and/or health and safety services you receive from EmploySure. You are only able to select the Protection relating to the services you receive. Thus, depending on which core services you have selected you will be able to select one, or both of the benefits in Sections A and B of the Protection. If your application for Protection is successful, you will be required to pay your Contribution. 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 year.

EmploySure Mutual will consider a range of factors when calculating your Contribution. These factors may include:

- a. the detailed information provided by you in your application form;
- b. your number of employees;

- c. your previous claims history. Your Contribution may be higher if you have a poor claims history;
- 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;
- f. the Limits of the Protection; and
- g. any other factor regarded as relevant by EmploySure Mutual at the time of assessing your application.

Depending on the nature of these factors, these may reduce or increase your Contribution.

### 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 including Regis and Gow-Gates, EmploySure 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.

Regis will provide advice to the Board on 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:
  - management 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;



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- the cost of an average claim; and
- payment of claims within the Mutual's self retention limit.

The mathematical model is based on Employsure 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 and 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 year, the Board may exercise its discretion in applying that surplus for the benefit of Members. 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 company 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 and the Constitution.

If you are unhappy with a claim decision, you may refer the matter to the Mutual's Complaints Manager or you may request that the matter be referred to the Board for adjudication.

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. If, after making a complaint to Employsure, you are still not satisfied, you can make a complaint to the Australian Financial Complaints Authority (AFCA). 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)

# Part 1. Product Disclosure Statement



## 11. Privacy

Our Privacy Policy is in accordance with the Commonwealth Privacy Act 1988, 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 Commonwealth 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 Employsure 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 personal information to the Mutual where the information provided has arisen from an employment relationship and is disclosed to the Mutual for relevant business purposes (including 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 the Protections. This will include the investigation of claims for Protection, court proceedings and engaging professional advisors.

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:

- Regis, Gow-Gates, Employsure, Employsure Law and their employees;
- professional service providers engaged by Employsure Mutual including lawyers, assessors, actuaries, accountants, investment managers and other advisers;
- professional insurance and reinsurance 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 Business Risk Officer on 1300 651 415 or by e-mail: [compliance@employsure.com.au](mailto:compliance@employsure.com.au).

# Part 2. Protection Terms and Conditions

## 1. Defined terms

Word or Term	Meaning
<b>Act</b>	<ul style="list-style-type: none"><li>a. any Act, Regulation or Code of Practice pertaining to health and safety applicable nationally or in the states or territories of Australia, including any subordinate or delegated legislation made under those Acts; and</li><li>b. any amendment, consolidation or re-enactment of any of the above Acts or legislation.</li></ul>
<b>AFSL</b>	Australian Financial Services Licence.
<b>Appointed Representative</b>	the 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 EmploySure Mutual.
<b>Business</b>	the business conducted by You as described in the Protection Schedule.
<b>Claim</b>	<ul style="list-style-type: none"><li>a. in the case of the benefit of Section A (Employment Relations), the receipt by You of any notice of demand for compensation including a writ, statement of claim, summons, application or other originating legal or arbitrating process, cross-claim, counter-claim or third-or-similar-party notice which is made by an Employee against You and is an Employment Claim.</li><li>b. In the case of the benefit in Section B (Health and Safety Statutory Liability), any notice issued to You by a Regulatory Authority which alleges a Wrongful Breach by You.</li></ul>
<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>Corrective Action Plan</b>	the document, as drafted by EmploySure as part of the consultancy review, setting out areas of risk and corrective action required by the Business, to be implemented within a directed time frame.
<b>Defence Costs</b>	<p>all reasonable legal costs, charges, fees, expenses and advances which are incurred with Our written consent in connection with:</p> <ul style="list-style-type: none"><li>a. in the case of the benefit of Section A (Employment Relations), in appealing, defending, investigating or settling an Employment Claim or Your reasonable costs and expenses;</li><li>b. in the case of the benefit of Section B (Health and Safety Statutory Liability), in appealing, defending, responding to formal investigations or settling a Claim and Your reasonable costs and expenses,</li></ul> <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 (a) or (b) 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>

# Part 2. Protection Terms and Conditions

Word or Term	Meaning
<b>Employee</b>	<ul style="list-style-type: none"> <li>a. in the case of the benefit in Section A (Employment Relations), 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 will also include an independent contractor who is engaged by You pursuant to an independent contractor agreement who makes an Employment Claim. Employee does not include any of your partners, principals or directors of any agent, receiver or external auditor.</li> <li>b. in the case of the benefit in Section B (Health and Safety Statutory Liability), any person employed by You under a contract of service during or prior to the commencement of the Protection Period, but does not include any independent contractor or any employee of any independent contractor.</li> </ul>
<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> <ul style="list-style-type: none"> <li>a. wrongful, constructive or unfair dismissal, discharge or termination of employment;</li> <li>b. breach of general protections provisions under Australian law;</li> <li>c. breach of any oral, written or implied employment contract or contractual obligation arising out of any personnel manual, Employee handbook, policy statement or representation;</li> <li>d. discrimination on the basis of an Employee's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference, sexual and/or workplace harassment or other status protected under Australian law</li> <li>e. retaliatory treatment for that Employee exercising their rights under Australian employment laws, and/or supporting the rights of another Employee filing or pursuing any Claim against You under any 'whistle blower' legislation.</li> </ul>
<b>Employsure</b>	Employsure Pty Ltd ACN 145 676 026.
<b>Employsure Mutual</b>	Employsure Mutual Limited ACN 630 256 478.
<b>Employsure Law</b>	Employsure Law Pty Ltd ACN 614 311 885.
<b>External Administrator</b>	<ul style="list-style-type: none"> <li>a. a receiver, or receiver and manager, of any of Your property;</li> <li>b. an administrator appointed to You;</li> <li>c. an administrator of a deed of company arrangement executed by You;</li> <li>d. a provisional liquidator or liquidator appointed to You;</li> <li>e. a trustee or other person administering a compromise or arrangement made between You and someone else; or</li> <li>f. any other external administrator to You.</li> </ul>
<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>Gow-Gates</b>	Gow-Gates Mutual Management Pty Ltd ACN 609 791 353.
<b>Incident</b>	the issue that starts an unbroken chain of events that results in a Claim.
<b>Investigation</b>	<p>any official inquiry, investigation, public examination or commission into the employment practices of the Business:</p> <ul style="list-style-type: none"> <li>a. which is instigated by a person or government authority that is legally empowered to conduct such an investigation or inquiry; and</li> <li>b. which You are legally compelled to attend or respond; and</li> <li>c. that is not of a general nature which affects the industry of the Business, as a whole.</li> </ul>



# Part 2. Protection Terms and Conditions

Word or Term	Meaning
<b>Joint Venture</b>	any enterprise undertaken jointly by You and another party or parties.
<b>Limit of Protection</b>	the maximum amount of Protection for each benefit as stated in the Protection Schedule.
<b>Loss</b>	<p>a. in the case of the benefit in Section A (Employment Relations), 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>b. In the case of the benefit of Section B (Health and Safety Statutory Liability), any monetary penalty which You become legally liable to pay (where payment of such a penalty on Your behalf is lawful) and Defence Costs.</p>
<b>Member</b>	the entity 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 its assets to, any other person or entity or group of persons and/or entities acting in concert;</p> <p>b. You or Your Business becomes a subsidiary of another entity by virtue of Australian law.</p>
<b>Mutual</b>	Employsure Mutual.
<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>Penalty</b>	<p>any monetary sum payable by You to any Regulatory Authority pursuant to any act for a Wrongful Breach by You but excluding:</p> <ol style="list-style-type: none"> <li>any amounts payable as compensation;</li> <li>any compliance, remedial, reparation or restitution costs;</li> <li>any damages, including any exemplary, aggravated or punitive damages;</li> <li>any indirect or consequential economic loss;</li> <li>any legal costs and associated expenses;</li> <li>any monetary penalty such as a fine where such payment is prohibited by law</li> </ol> <p>notwithstanding item (e) above, We may accept a claim for reasonable legal costs and associated expenses payable by You to any Regulatory Authority otherwise covered by the benefit in Section B (Health and Safety Statutory Liability) provided that the proceedings that lead to the legal costs and associated expenses incurred are related to a health and safety breach.</p>
<b>Protection</b>	the discretionary protection provided by Employsure 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 Employsure Mutual setting out the protection period and limits of Protection including any renewal or endorsement schedules.

# Part 2. Protection Terms and Conditions

Word or Term	Meaning
<b>Reasonable Grounds for Defence</b>	<ul style="list-style-type: none"> <li>a. You have reasonable prospects of success in avoiding or reducing any liability alleged in the Claim; or</li> <li>b. You have reasonable prospects of success in reducing the quantum of any liability alleged in the Claim, and that having regard to the likely legal costs incurred in defending the Claim is reasonable for the Claim to be defended.</li> </ul> <p>provided that in either scenario (a) or (b) above, the Claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in Your position, properly advised, would enter.</p>
<b>Regulatory Authority</b>	A person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purpose of enforcement of such Act or another Act, including a person or entity authorized to collect monies pursuant to such.
<b>Regis</b>	Regis Mutual Management Pty Ltd ABN: 71 130 820 727 AFSL No. 338156
<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> <ul style="list-style-type: none"> <li>a. controls the composition of the Board of Directors</li> <li>b. is in a position to cast, or control the casting of more than 50% of the issued voting shares; or</li> <li>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.</li> </ul>
<b>Territorial Limits</b>	anywhere in Australia.
<b>Terrorism</b>	an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s) which from its nature or context is done 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.
<b>We / Us / Our</b>	Employsure Mutual
<b>Wrongful Breach</b>	<p>means any act, error or omission which occurs:</p> <ul style="list-style-type: none"> <li>a. in connection with the Business;</li> <li>b. within the Territorial Limits; and</li> <li>c. after the Retroactive Date,</li> </ul> <p>whereby:</p> <ul style="list-style-type: none"> <li>d. You contravene an Act or are involved in the contravention of an Act;</li> <li>e. You commit an offence pursuant to an Act; or</li> <li>f. such conduct is prohibited under an Act.</li> </ul>
<b>You, Your</b>	<ul style="list-style-type: none"> <li>a. the Member named in the Protection Schedule;</li> <li>b. all Subsidiaries (now or hereafter constituted) of the Member whose place of incorporation is within Australia;</li> <li>c. in the case of the benefit in Section B (Health and Safety Statutory Liability) only, any Officer whilst acting in the performance of their duties to the Member; and</li> <li>d. in the case of the benefit in Section B (Health and Safety Statutory Liability) only, any Employee whilst acting in the performance of their employment by You.</li> </ul>

# Part 2. Protection Terms and Conditions

## 2. Scope of protection

The Protection is subject to the rights and entitlements contained in Employsure Mutual's Constitution and explained in the PDS.

There are two types of Protection offered by Employsure Mutual in this document. They are set out in Section A and Section B. You may apply for and hold both Protections or only one of them depending on which level(s) of service you have taken with Employsure. Information about which Protection benefits/sections You hold are in Your Protection Schedule.

## SECTION A - EMPLOYMENT RELATIONS

### 3. What is protected

**Important Note:** You are required to seek and follow advice from Employsure 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 grant You Protection for a Claim, We will pay, on Your behalf, Loss:

- ii. brought against You in the Fair Work Commission; or
- iii. 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. 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
- iv. the total aggregate Limit of Protection will only apply to that part of each Loss (including Defence Costs) in respect of each Employment Claim.

#### b. *Investigations*

We may pay up to \$5,000 in the aggregate during any Protection Period for approved reasonable costs and expenses incurred from responding to an Investigation.

### Limit of Protection

Our liability for Claims accepted under this Protection in respect of all Losses arising out of all Claims covered by this Section A 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 under Section A of this document 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 Employsure or its nominee as soon as an Incident occurs that may reasonably be expected to give rise to an Employment Claim; and
- ii. continued to seek and follow advice from Employsure 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.

# Part 2. Protection Terms and Conditions

*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 this Protection is not in force 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; or
- 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; or
- iv. Claims made, threatened or intimidated against You prior to the commencement of the Protection Period; or
- 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.

## SECTION B - HEALTH AND SAFETY STATUTORY LIABILITY

### 5. What is Protected

In order to have the benefit of Protection You are required to seek and follow advice from EmploySure when you become aware of an event that may result in a Wrongful Breach or a potential Wrongful Breach which may give rise to a Claim (see exclusions at Clause 6).

Subject to the terms and conditions herein, if We grant You Protection, We will pay to You and on Your behalf, where the law permits\*, Loss arising from any notice issued to You by a Regulatory Authority which alleges a Wrongful Breach by You.

\*Note: State or Territory Work Health and Safety laws may prohibit any form of arrangement for the payment of monetary penalties on Your behalf. You will need to seek advice about the impact of law in each State or Territory applicable to You and your business.

#### Consent

We will not provide Protection for a Penalty under this clause unless You obtain Our written consent. We will only provide such consent if We are satisfied that You have reasonable grounds for defence.

If We do not provide consent, We will provide reasons for the refusal. If You contest Our refusal to provide such consent You may obtain the written opinion of a Senior Counsel. The Senior Counsel must be mutually agreed upon by both parties or failing agreement will be appointed by the President of the Law Society or the Law Institute in the relevant state or territory. If the Senior Counsel is of the opinion that You have reasonable grounds for defence then We may:

- a. give Our consent; and
- b. be responsible for the Senior Counsel's reasonable fees for providing such opinion.

If You continue to defend a Claim where consent has been



# Part 2. Protection Terms and Conditions

refused and the outcome of the Claim establishes that at the time at which We refused consent, You had reasonable grounds for defence, then We will pay to You on Your behalf Loss as if consent had been originally granted.

If We accept Your Claim, We may pay the following benefits to You:

## *Acquired companies and subsidiaries*

If You notify Us as soon as practicable, We will extend Protection to any Subsidiary in respect of any Wrongful Breach committed or alleged to have been committed by You in respect of such Subsidiary subsequent to such acquisition or creation.

## *Limits of Protection*

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

All Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

## 6. What is not Protected

We will not provide Protection in relation to the benefits provided in Section B of this document for any Claim arising out of:

### *a. Excluded events*

- i. a Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- ii. ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
- iii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- iv. war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority;
- v. any act of Terrorism; or

- vi. resulting from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

### *b. Advice not sought*

any fact or circumstance if You have not:

- i. promptly sought and followed advice from EmploySure or its nominee as soon as You become aware of an event which has the potential to result in a Wrongful Breach; and
- ii. continued to seek and follow advice from EmploySure or its nominee until the conclusion of the Claim.

### *c. Joint venture*

for any Loss or part of any Loss directly or indirectly arising out of, or which is attributable to Your participation in any Joint Venture.

### *d. Penalties already paid*

unless required by law in respect of any Penalty incurred or paid before Our consent has been given to do so or before We have exercised Our discretion to pay your Claim under this Protection.

### *e. Prior or pending Claims*

- i. of any Wrongful Breach which occurs prior to the Protection Period; or
- ii. any actual or alleged Incident committed prior to the retroactive date of the Protection (if such a date is specified); or
- iii. a Claim made after the expiry of the Protection Period even though the event giving rise to the Claim may have occurred during the Protection Period, except as provided for in clause 7(c); or
- iv. a Claim made, threatened or intimidated against You prior to the commencement of the Protection Period; or
- v. facts or circumstances of which You first became aware prior to the Protection Period, and which You knew or ought reasonably to have known had the potential to give rise to a Claim under this Protection; or
- vi. a Claim arising out of circumstances noted on the application form for the current Protection Period or on any previous application form, or which

# Part 2. Protection Terms and Conditions

should have been declared at that time.

*f. Strike, industrial and civil action*

directly or indirectly arising out of, based upon, attributable to, or in consequence of any Wrongful Breach involving a strike, lockout, picket line, stand down or industrial dispute (but not where the Claim is for an Officer or Employee and the Claim arises in the proper discharge of their duties).

*g. Territorial limitations*

for any Loss:

- i. imposed pursuant to any law of any country, state or territory outside the Territorial Limits; or
- ii. imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Loss.

*h. Taxes*

directly or indirectly arising out of, based upon, attributable to, or in consequence of a Wrongful Breach in involving a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

- i. Wilful, fraudulent, negligent or intentional acts directly or indirectly arising out of, based upon, attributable to, or in consequence of:
  - ii. any wilful, intentional or deliberate Wrongful Breach;
  - iii. a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
  - iv. any Wrongful Breach caused by gross negligence or recklessness by You;
  - v. deliberately or intentionally solicited by You (but not where the Claim is for an Officer or Employee and the Claim arises in the proper discharge of their duties);
  - vi. a dishonest, fraudulent, malicious act or omission by You; or
  - vii. You gaining any personal profit or advantage or receiving any remuneration to which he/ she was not legally entitled.
- i. Deliberate disregard*
- any Loss, unless You are acquitted, arising out of any

Claim which has allegedly resulted from the:

- i. deliberate disregard or gross negligence by You of any of the provisions of an Act which You are alleged to have contravened;
- ii. failure by You to comply with the advice provided by EmploySure in the Corrective Action Plan, in circumstances where You had sufficient opportunity to comply with the Corrective Action Plan and where such failure results in a Claim;
- iii. you instructing another person to discharge one or more of Your obligations under any provisions of an Act and failing to take all reasonable steps to ensure that Your obligations were discharged as instructed.
- iv. failure by You to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, Notice to Rectify, Compliance Schedule or Gazetted Notice.

## 7. Making a claim

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

### *Notification of Claims*

- a. You must immediately 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, You become aware of any circumstances 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.

# Part 2. Protection Terms and Conditions



## *Assistance and co-operation*

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

- a. be truthful and frank;
- b. not behave in a way that is abusive, dangerous, hostile, improper or threatening;
- c. co-operate fully with Us, even after We have paid a Claim.

You must at all times promptly notify Us of any information, documents or reports in Your possession or knowledge relevant to any Claim 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*

You must seek Our express written consent to pay

- a. Defence Costs before they are incurred.
- b. If You hold Protection under Section B ( Health and Safety Statutory Liability), You must do all things reasonably practicable to avoid a Wrongful Breach or to minimise a Loss.
- c. If You hold Protection under Section B ( Health and Safety Statutory Liability), until We have made a decision to accept Your Claim, You must not make any offer, payment, admission, settlement, enforceable undertaking or effect any resolution in respect of any Claim without Our consent. We will not be liable for any such payment or settlement or undertaking incurred without Our consent which will not unreasonably be withheld, if it is lawful to do so. Even when We have agreed to pay Your Claim, You must follow our instructions or those of Our appointed legal counsel in managing or dealing with the Claim.
- d. If You hold the benefit in Section A (Employment Relations), 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

# Part 2. Protection Terms and Conditions

- those of the Appointed Representative in managing or dealing with the Claim.
- e. 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.
  - f. If You hold the benefit in Section B (Health and Safety Statutory Liability) and We have made a decision to pay Your Claim, if We recommend to You to agree to pay any amount, consent to any order directing You to pay any amount or otherwise settle or resolve any Claim, and You do not agree to do so, then We may reduce the amount We pay for your Claim to take into account any prejudice caused because You failed to follow Our direction.
  - g. 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. The Mutual may, in its discretion, provide consent to the appointment. However;
    - 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 per hour or their usual charge out hourly rate, whichever is the lesser.
    - ii. We may accept or refuse any nomination of any person or firm to act as Appointed Representative if We consider that a more experienced or competent representative is available.
  - h. You shall not enter into any agreement to appoint the Appointed Representative without first obtaining our consent 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.
  - i. the Appointed Representative must comply with all requests for information or advice and must obtain instructions from the Mutual in relation to management and resolution of the Claim.
  - j. Notwithstanding the foregoing, the Mutual may at any time exercise its discretion to assume conduct of the Claim.
  - k. You shall do all things reasonably necessary to allow Us to obtain from the Appointed Representative any information, report, documents or advice relating to the Claim.
  - l. You shall upon Our request or the Appointed Representative and at Your own expense:
    - i. provide all information and assistance as may be 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:
    - v. ensure that an Officer attends and if necessary gives evidence, on behalf of the Member, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against the Member;
    - 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*

You must:

- a. notify Us by telephone or in writing as soon as practicable of any Claim; and
- b. at any time during the Period of Protection, give Us notice of any circumstance that might reasonably be expected to give rise to a Claim.

Notice of any Claim under this Protection should be made by contacting Us:

## ***Employsure Mutual Limited***

**Tel:** Employer Advice line – 1300 651 415

**Email:** [advice@employsure.com.au](mailto:advice@employsure.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.



# Part 2. Protection Terms and Conditions

## 8. Other Terms

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

### *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, 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 Act 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.

### *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 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 required and will do everything 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 EmploySure Mutual is cancelled. 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 practicable of any material alteration to the risk during the Protection Period 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 Your going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or Your failing to pay debts or breaching or becoming the subject of bankruptcy or winding-up proceedings. The Mutual retains its rights to reduce, refuse or cancel 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

# Part 2. Protection Terms and Conditions

the Protection, including the benefits provided by Us, the Limit of Protection or the amount of the Contribution paid, except to the extent that:

- a. such disclosure is made to Employsure;
- b. You are required by law to do so; or
- c. We consent, in writing, to such disclosure.

## *Notices*

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

- a. it is delivered to You personally; or
- b. 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 possible.

## *Merger, acquisition or receivership*

If You hold the benefit in Section B ( Health and Safety Statutory Liability) and during the Protection Period, You are the subject of a Merger or Acquisition or have a Receiver appointed then this Protection shall only apply in respect of a Wrongful Breach occurring prior to such an event, unless otherwise agreed in writing by us.

## *Severability and non-imputation*

If You hold the benefit in Section B ( Health and Safety Statutory Liability), We agree that where We have exercised our discretion to pay a Claim, where this Protection protects more than one party, any conduct on the part of any party or parties whereby such party or parties:

- a. failed to notify Us of material issues relating to the risk including significant changes to risk;
- b. made a misrepresentation to Us before this Protection was entered into;
- c. failed to comply with any term or condition of this Protection; and /or
- d. acted in a manner which gives rise to the application of an exclusion of this Protection,

shall not prejudice the right of the remaining parties to Protection as may be provided by this document and the rights of the Member under The Mutual's Constitution and By-Laws.

Provided always that any other party claiming under this Protection must:

- e. not have participated in and have had no prior knowledge of any such conduct; and
- f. as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct.

## *Fraudulent misrepresentation*

In the event You commit or attempt to commit any fraud or make a fraudulent misrepresentation or omit to tell Us or Employsure 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 the Member, such as insurance, covering the same loss, the Member shall promptly notify The Mutual 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 the Mutual may require. The Mutual shall only consider providing Protection to the Member 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.



**employsure**  
protect