



employsure
protect



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



For more information contact us.

Membership/Protection

Client Experience Team

Telephone: 0800 675 700

Email: client.experience@employsure.co.nz

Claims

Client Services Team

Telephone: Employer Advice line - 0800 675 700

Email: advice@employsure.co.nz

By mail: Ground Floor, 1 Nelson Street,
Auckland Central 1010, New Zealand

Complaints

Client Experience Team

Telephone: 0800 675 700

Email: client.experience@employsure.co.nz

Mutual

Employsure Mutual Limited

Telephone: 0800 675 700

Email: service@employsuremutual.com.au

By Mail: L6, 180 Thomas Street, Haymarket,
NSW 2000, Australia

Manager

Regis

Telephone: 02 9252 1599

Email: employsure.claims@rmml.com

By mail: PO Box H96, Australia Square,
NSW 1215, Australia

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Parts.

Part 1.

Product Disclosure Statement

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 Limited 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.

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.

2. About Employure Mutual

Employure 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.

The Mutual is owned by its Members, who as clients of Employure have access to employment relations

Part 1. Product Disclosure Statement

and health and safety consulting and other services offered by EmploySURE. The Mutual offers its Members the opportunity to access a discretionary cover 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 in Australia by the Australian Securities & Investments Commission. EmploySURE Mutual is not regulated under the Financial Advisers Act 2008 or the Financial Services Providers (Registration and Dispute Resolution) Act 2008.

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.

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 Limited to access discretionary Protection for key risks associated with managing workplace risks (relating to employment relations and health and safety at work). 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 for employment claims such as personal grievances and unjustified dismissal (including any inquiries, investigations or legal proceedings).

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 At Work (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 when a sentence of reparation is imposed following a conviction under the Health and Safety at Work Act 2015.

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 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 alternative to insurance. The Protection offered by the Mutual is 'discretionary Protection'. Discretionary

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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 that the product would be considered an insurance product.

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.

In Australia, 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. In New Zealand, protection is not a regulated financial service under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the Financial Advisers Act 2008. EmploySure Mutual is not regulated by New Zealand regulators.

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.

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• 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 Employure

The Mutual is a mutual for the exclusive benefit of Employure's clients. Membership and Protection will automatically cease if a Member ceases to be a client of Employure. 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

Employure 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.

Significant Benefits

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

- Broad protection where Employure'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 Employure 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

Employure 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 Employure 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 Employure 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 Employure Protect and to set the

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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 tell us if your circumstances change in such a way that may require changes to your level or type of Protection, or that increase the risks that are relevant to your Protection. In particular, you need to advise us if any of the answers provided in the application form are no longer correct. 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. If necessary, the Mutual will issue you with a new Protection Schedule or it may endorse your existing Protection Schedule with the new details. The Mutual will also determine if any additional Contributions must be paid by you.

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. The invitation to renew is at the sole discretion of the Mutual and if renewal is offered you will be asked to provide details of any changes 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

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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 may be subject to taxes and other government charges, levies or duties.

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;
- 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.

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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.

11. Privacy

Our Privacy Policy is in accordance with the Privacy Act 1993, as amended, and the Information Privacy Principles. We will collect your personal information in order to enable us to perform necessary functions and activities, including:

- Processing your application for Membership and Protection;
- Administering your Membership and Protection;
- Calculating Contributions; and
- Assessing and paying eligible claims for Protection.

The supply of this information is mandatory. If you do not provide us with some or all of the information required, we may be unable to assess and process your application for Membership or Protection, appropriately administer your Membership and Protection, or assess and pay any claim that you may make. This may result in your application for Membership, Protection or a claim being denied.

We may assign a unique identifier to you that allows us to process your application for Membership, Protection and any claims. This is necessary for us to carry out our

functions efficiently.

If you provide personal information about another person to the Mutual or one of the organisations assisting it, you must have that person's authorisation to provide their information and you must inform that person of Employure Mutual's identity, how it will use and disclose the information and that person's rights to access that information.

The information collected will be provided to organisations that will assist in deciding whether to protect you, or to assess a claim. We may disclose it to organisations that are located overseas, however we will ensure that these organisations have appropriate privacy procedures, including but not limited to standards and procedures that are in accordance with:

- the Commonwealth Privacy Act 1988, as amended;
- the Australian Privacy Principles outlined in schedule 1 of the Privacy Act 1988 (Privacy Act) (Cth); and
- any state legislation in relation to the collection and use of health information, where such legislation is applicable in addition to the Privacy Act.

These organisations include:

- Regis, Gow-Gates, Employure Pty Ltd, Employure Law and their employees;
- Professional service providers engaged by Employure Mutual including lawyers, assessors, actuaries, accountants, investment managers and other advisers;
- Professional insurance and reinsurance advisers (including brokers and insurers).

By providing us with your personal information, you consent to its collection and use for these purposes. We will take reasonable steps to make sure that the personal information we collect, use or disclose is accurate, complete and up to date. You are entitled to access and review your personal information and request any corrections to that information.

Our internal complaints procedure is designed so that we may formally attend to any complaint where you believe your 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 Privacy Officer on 0800 675 700 or by email: compliance@employure.com.au.

Part 2. Protection Terms and Conditions

1. Defined terms

Word or Term	Meaning
Act	(a) any Act, Regulation or Code of Practice pertaining to health and safety applicable in New Zealand, including any subordinate or delegated legislation made under those Acts including but not limited to the Health and Safety at Work Act 2015; and (b) any amendment, consolidation or re-enactment of any of the above Acts or legislation and any code, rules, regulations, by-laws or other subordinate legislation.
AFSL	Australian Financial Services Licence.
Appointed Representative	the solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Protection when We accept Your Claim.
ASIC	Australian Securities and Investments Commission.
Board	the board of directors of EmploySure Mutual.
Business	the business conducted by You as described in the Protection Schedule.
Claim	the receipt by You of any verbal or written notice of demand for compensation including inquiries, investigations or legal proceedings and 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: (a) in the case of the benefit of Section A (Employment Relations), is made by an Employee against You and alleges an Employment Breach; or (b) in the case of the benefit in Section B (Health and Safety At Work), results in Reparation Costs.
Contribution	the total amount of fees plus any taxes, duties and charges that a Member is required to pay to access the Protection.
Defence Costs	all reasonable legal costs, charges, fees, expenses and advances which are incurred with Our written consent in connection with: (a) in the case of the benefit of Section A (Employment Relations), settling an Employment Breach including defending, investigating or monitoring a claim or related appeals and Your reasonable costs and expenses or fees; (b) in the case of the benefit of Section B (Health and Safety At Work), the costs and expenses reasonably incurred with Our prior consent in relation to investigating, defending, settling or appealing any action arising out of an Event and/or preparing for or responding to an investigation; provided that where proceedings are commenced to impose Reparation Costs 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.

Part 2. Protection Terms and Conditions

Word or Term	Meaning
Employee	<p>(a) in the case of the benefit in Section A (Employment Relations), any person who is or was (or who alleges that, but for the Employment Breach, they would have been) Your employee (as defined in the Employment Relations Act 2000);</p> <p>(b) In the case of the benefit in Section B (Health and Safety at Work), any person who at the time of the Event was an employee (as defined in the Employment Relations Act 2000) including Your directors, partners, trustees, Officers and includes a Subsidiary of You.</p>
Employment Breach	<p>any employment-related grievance brought against You by any Employee in relation to:</p> <p>(a) any actual or alleged conduct of the following kind, in the course of the Employee's employment or prospective employment with You:</p> <ul style="list-style-type: none"> • unlawful discrimination; • personal grievance (as defined in the Employment Relations Act 2000); • unlawful discrimination; • wrongful demotion; • failure or refusal to promote; • actual or constructive termination of the contract of service in breach of an Act; • misrepresentation; • harassment (sexual or otherwise); • the failure or refusal to hire a potential Employee; • invasion or breach of the right of privacy • victimization; or <p>(b) proceedings, an Investigation or a charge brought under the Human Rights Act 1993 but only in respect of a Claim not insured elsewhere.</p>
Employsure	Employsure Limited NZBN 9429042175179.
Employsure Mutual	Employsure Mutual Limited ACN 630 256 478.
Event	means any act or omission occurring in the course of business that gives rise, or may give rise, to an action under the Health and Safety At Work Act 2015 (including any amendment to or re-enactment, and any code, rules, regulations, by-laws or other subordinate legislation made under such Act).
External Administrator	<p>(a) a receiver, or receiver and manager, of any of Your property;</p> <p>(b) an administrator appointed to You;</p> <p>(c) an administrator of a deed of company arrangement executed by You;</p> <p>(d) a provisional liquidator or liquidator appointed to You;</p> <p>(e) a trustee or other person administering a compromise or arrangement made between You and someone else; or</p> <p>(f) any other external administrator to You.</p>
Gow-Gates	Gow-Gates Mutual Management Pty Ltd ACN 609 791 353.

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Word or Term	Meaning
Incident	the issue that starts an unbroken chain of events that results in a Claim.
Investigation	any official inquiry, investigation, public examination or commission into the employment practices of the Business: (a) which is instigated by a person or government authority that is legally empowered to conduct such an investigation or inquiry; and (b) which You are legally compelled to attend or respond; and (c) that is not of a general nature which affects the industry of the Business, as a whole.
Limit of Protection	the maximum amount of Protection for each benefit as stated in the Protection Schedule.
Loss	(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 Breach and includes: <ul style="list-style-type: none"> • damages, judgments or settlements and claimant's costs; and • Defence Costs (b) in the case of the benefit of Section B (Health and Safety At Work), any Reparation Costs and Defence Costs.
Member	the entity named in the Protection Schedule.
Merger or Acquisition	(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; (b) You or Your Business becomes a subsidiary of another entity by virtue of New Zealand law.
Mutual	Employsure Mutual.
Officer	any past, present or future director, managerial or executive officer (as defined by the Companies Act 1993) or company secretary appointed by You.
PDS	this Product Disclosure Statement, including any other documents that form part of this document.
Reparation Costs	any sentence of reparation imposed following a conviction under an Act and for which You are legally liable to pay.
Protection	the discretionary protection provided by Employsure Mutual described in Part 2 of this document and the Protection Schedule.
Protection Period	the period between the start date and the expiry date for the Protection stated in the Protection Schedule.
Protection Schedule	the document issued by Employsure Mutual setting out the protection period and limits of Protection including any renewal or endorsement schedules.

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Word or Term	Meaning
Reasonable Grounds for Defence	<p>(a) You have reasonable prospects of success in avoiding or reducing any Reparation Costs alleged in the Claim; or</p> <p>(b) You have reasonable prospects of success in reducing the quantum of any Reparation Costs 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;</p> <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>
Regulatory Authority	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 authorised to collect monies pursuant to such Act.
Regis	Regis Mutual Management Pty Ltd ABN: 71 130 820 727 AFSL No. 338156
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.
Subsidiary	has the meaning given in the Companies Act 1993.
Territorial Limits	anywhere in New Zealand unless otherwise specified in the Protection Schedule.
Terrorism	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.
We / Us / Our	Employsure Mutual
You, Your	<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 New Zealand;</p> <p>(c) in the case of the benefit in Section B (Health and Safety At Work) only, any trustee, director, Officer, sole trader, partner or Employee whilst acting in the performance of their duties to the Member; and</p> <p>(d) in the case of the benefit in Section B (Health and Safety At Work) only, any Employee whilst acting in the performance of their employment by You.</p>

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

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 arising out of an Employment Breach where such a Claim is first made against You and notified to Us during the Protection Period.

(b) Investigations

We may pay up to \$5,000 in the aggregate during any Protection Period for reasonable costs and expenses incurred in 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 Claim which is a Loss arising out of:

- Advice not sought*
any fact or circumstance if You have not:
 - sought and followed advice from EmploySURE or its nominee as soon as the Incident occurs that may reasonably be expected to give rise to a Claim;
 - continued to seek and follow advice from EmploySURE or its nominee until the conclusion of the Claim.
- Bodily injury or property damage*
directly or indirectly out of, death or physical injury to the Employee, or any illness to the Employee attributable to direct physical injury to the body.
- Breach of employer obligations*
an actual or alleged breach of Your express obligations: to make any payment (including the provision of non-cash benefits) whether such obligation arises under statute, regulation, award, contract of employment (including any judgment, arrangement or agreement collateral to any contract of employment), or any industrial, workplace or collective employment agreement or otherwise, provided that the obligation arises prior to the Employment Breach being committed.
- Building modifications*
the costs of physical modifications to Your workplace, or the costs of changes to workplace procedures.
- Fines and penalties*
any Employment Breach for the payment of fines or penalties (whether criminal, civil or pecuniary) imposed by law, for punitive or aggravated or exemplary or multiple damages or compensation, provided that this exclusion will not apply to any Defence Costs.
- Industrial Action*
Employment Breach committed during any lockout, strike, picket, stand-down or suspension,

Part 2. Protection Terms and Conditions

- or other industrial dispute.
7. *Legislative Loss*
any Employment Breach arising under any statute relating to accident or workers compensation or occupational health and safety.
8. *No Protection Schedule at time of claim*
if this Protection is not in force at the time when the Employment Breach for the Loss is first made against you.
9. *Prior or pending Claims*
- (i) any Employment Breach 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); or
 - (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 be 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.
10. *Property Damage*
directly or indirectly out of, based upon, attributable to, or in consequence of loss of or damage to property.
11. *Publication of false material*
any Employment Breach arising from publication of material by You known by You to be false, provided that this exclusion will not apply where You could not know or could not reasonably be expected to have known that the material was false.

12. *Territorial limits*
brought about by an Employment Breach committed wholly outside New Zealand unless specified elsewhere in the Protection Schedule.

SECTION B - HEALTH AND SAFETY AT WORK

5. What is Protected

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 6).

Subject to the terms and conditions herein, if We grant You Protection for a Claim, We will pay to You or on Your behalf costs in accordance with these terms and conditions:

- (a) any Reparation Costs; and
- (b) Defence Costs, except where it is alleged that You have acted, or omitted to act, knowingly, wilfully or intentionally unless You are subsequently Acquitted,

arising out of any Event and provided that the Event is first notified to Us by You during the Protection Period.

Consent

We will not provide Protection for Loss 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 consent, We will provide reasons for the refusal. If You contest Our refusal to provide such consent, You may refer the matter for an independent determination by 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 New Zealand Law Society. If the Senior Counsel is of the opinion that You have reasonable grounds for defence then their opinion is binding on both You and Us and We may accept Your Claim.

If You continue to defend a Claim where consent has been 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 or on Your behalf Reparation Costs and Defence Costs as if consent had been originally granted.

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If We accept Your Claim, We will 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 Event 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 Event or interrelated Events 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:

1. *Advice not sought*

any fact or circumstance if You have not:

- (i) sought and followed advice from EmploySure or its nominee as soon as the Incident that gave rise to the Event arose or became known to or became reasonably apparent; and
- (ii) continued to seek and follow advice from EmploySure or its nominee until the conclusion of the Claim.

2. *Asbestos*

any actual or alleged liability whatsoever for any Claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, contributed to, or aggravated by asbestos in whatever form or quantity.

3. *Daily continuing offences/orders and costs*

- (i) the cost or payment of any enforcement order, remedial order or compliance order;
- (ii) any court order in the nature of damages or compensation, except Reparation Costs following an Event; or

- (iii) any action, proceeding, inquiry, investigation or prosecution taken against You by the Inland Revenue Department or any other revenue collecting authority

4. *Deliberate disregard*

any Defence Costs, unless You are Acquitted, arising out of any Event which has allegedly resulted from the:

- (i) deliberate disregard by You of any of the provisions of the Health and Safety at Work Act 2015 which You are alleged to have contravened;
- (ii) You instructing another person to discharge one or more of Your obligations under any of the provisions of the Health and Safety at Work Act 2015 and failing to take all reasonable steps to ensure that Your obligations were discharged as instructed;
- (iii) 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.

5. *Dishonest acts*

any Event actually or allegedly brought about or contributed to by any dishonest, fraudulent or malicious act or omission by or on behalf of You.

6. *Fines or Penalties*

excluding Reparation Costs, any fine or monetary penalty imposed or costs assessed by a court to be paid by You upon being found guilty of an offence pursuant to the Health and Safety at Work Act 2015, in connection with an Event.

7. *Personal grievances*

any contract of service or any intended contract of service with any Employee, including any personal grievance or like action by an Employee, but this exclusion will not apply to any investigation, inquiry or prosecution by the Department of Labour pursuant to the Health and Safety at Work Act 2015.

8. *Prior or pending Claims*

- (i) of any Claim made against You prior to the Protection Period; or

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- (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; or
- (iv) a Claim 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 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 should have been declared at that time.

9. Radioactivity

Any actual or alleged liability whatsoever for any claim or claims directly or indirectly caused by, contributed to or arising from:

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

10. Terrorism

for any Reparation Costs:

- (i) any Act of Terrorism regardless of any other cause or Event contributing concurrently or in any other sequence to the Loss; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

11. War

Liability arising out of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, military rising, rebellion, revolution, insurrection,

military or usurped power, martial law or looting or pillaging in connection therewith, strike, lock-out, riot, civil commotion, mutiny, 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 or any act or condition incidental to any of the above.

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 shall become aware of during the Protection Period which may give rise to a Claim under this Protection, irrespective of whether the Loss or Reparation Costs likely to be within the Limits of the Protection or not.
- (b) 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.

Assistance and co-operation

You must provide Us with all reasonable 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.

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Multiple Claims

If You hold the benefit in Section A (Employment Relations), all causally connected or interrelated Employment Breaches jointly constitute a single Employment Breach under this Protection and will be deemed to have occurred on the date of the earliest Employment Breach.

Where a single Employment Breach or series of causally connected or interrelated Employment Breaches 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.

If You hold the benefit in Section B (Health and Safety At Work), where an Event is alleged to have taken place on, over or between a number of specified dates, which fall within more than one Protection Period, the Event will be treated as if it occurred in the Protection Period in which You have or should have first notified the Claim.

Apportionment of costs

- (a) Where a Claim against You contains more than one allegation or allegations against You and other parties, then where necessary We will use best efforts to agree with You upon fair and proper allocation of Defence Costs between the allegations.
- (b) If You disagree with Us over the allocation of Defence Costs, then We will advance such Defence Costs that We believe to be covered under this Protection, until a different allocation is negotiated, arbitrated or

judicially determined. In this case We will, if requested by You, refer the dispute for determination of allocation to an expert mutually agreeable to all parties and such determination will apply retrospectively to all Defence Costs incurred in the defence of that Claim.

Settlement, defence and appointment of lawyers

- (a) You must seek Our express written consent to pay Defence Costs before they are incurred.
- (b) If You hold Protection under Section B (Health and Safety At Work), You must do all things reasonably practicable to avoid an Event or to minimise a Loss. You must at all times use Your best endeavours to preserve all property, products, appliances, plant and other items which may assist Us in the investigation or conduct of a claim. As far as may be reasonably practical, no alteration or repair will be effected until We have first had the opportunity of inspection. Where the offence alleged is a continuing one, You must immediately take all reasonable steps to prevent its continuation.
- (c) If You hold Protection under Section B (Health and Safety At Work), until We have made a decision to accept Your claim, unless required by law, You must not make any offer, payment, admission, settlement or effect any resolution in respect of any Claim or agree to pay any Reparation Costs or consent to any order directing You to pay any Reparation Costs without Our consent. We will not be liable for any such Reparation

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Costs incurred without Our consent which will not unreasonably be withheld. 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 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. If You refuse to consent to any settlement and elect to continue to contest the defence of a Claim, then subject to the Limitation, Our liability will not exceed such recommended settlement amount, plus Defence Costs incurred with Our consent up to the date of such refusal.
- (f) If You hold the benefit in Section B (Health and Safety At Work) and We have made a decision to pay Your claim, if We recommend to You to agree to pay any Reparation Costs, consent to any order directing You to pay any Reparation Costs 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) You may request Us to nominate an Appointed Representative to act on Your behalf. Alternatively, if You wish to nominate an Appointed Representative, You must obtain Our consent to the appointment, which shall not be unreasonably withheld. 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) Upon Our acceptance of Your Claim, We will have the right to nominate an Appointed Representative and will have the total discretion as to the conduct and control of Your defence, including strategy, in respect of any prosecution, inquiry, settlement negotiation or proceedings against You. Where You disagree with Us over Your defence, including strategy, We will provide Our reasons to You in writing and will refer You to an independent barrister for a final determination as to Our reasonableness. This independent determination will be binding on both You and Us.
 - (i) We shall be entitled to take over and conduct any proceedings in connection with any Claim but will do so in full consultation with You. Legal advisers retained by Us to act on Your behalf shall at all times be at liberty to disclose to Us any information obtained in the course of so acting, and You agree to waive any claim for legal professional privilege to which it might otherwise have been entitled.
 - (j) 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, including remuneration that all costs and associated expenses are covered by this Protection.
 - (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,
 - (v) expense ensure that an Officer attends and if necessary gives evidence, on behalf of You, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against You;

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- (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) give Us notice 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 – 0800 675 700

Email: advice@employsure.co.nz

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.

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, prevent or minimise any circumstances that may give rise to an event resulting in any actual or potential Claim including compliance with all relevant statutory obligations.

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 You are 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 or if Your membership of EmploySure Mutual is cancelled.

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

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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 material change to the business 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.

Employsure 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

Except where You are compelled to do so by law, 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:

- (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 At Work) 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 an Event occurring prior to such an event, unless otherwise agreed in writing by Us.

Severability and non-imputation

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:

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- (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 Your rights under Employisure Mutual's Constitution and Rules.

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.

With respect to the information contained in the application, no statement or knowledge possessed by any party shall be imputed to any other party for the purposes of determining if Protection is available herein in respect of such other party.

Fraudulent misrepresentation

In the event You commit or attempt to commit any fraud or

make a fraudulent misrepresentation or omit to tell Us or Employisure 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 Employisure Mutual of the existence of such insurance or other indemnity, providing full details including the identity of the provider of such indemnity or insurance, policy or agreement number and further information as Employisure Mutual may require. Employisure Mutual shall only consider providing Protection to the Member for Loss which exceeds the amount of such insurance or other indemnity.

Alteration and assignment

No change in, or modification of, or assignment of interest under this Protection shall be effective unless agreed to in writing by Us.

Governing Law / Jurisdiction

This Protection will be governed by and interpreted in accordance with the laws and the jurisdiction of the courts of New Zealand.



employsure
protect