

S U R A LABOUR  
HIRE



# Commercial Legal Protection

Insurance Policy

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# Part 1 – Important Information

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## About this Document

This is an important document that must be read carefully before making a decision in relation to this insurance (which is not compulsory). The Insurer is responsible for the content of this document.

This document can help you to:

- decide whether this insurance will meet your needs; and
- compare it with other products you may be considering.

See the “General Definitions” section page for details regarding of terms that have special meaning. In some cases, a word with special meaning may be defined in a specific part of the Policy.

## What You Need to Read and Understand

This document contains:

- this Part 1 – Important Information section which contains certain important notices, terms and other information;
- Part 2 – Policy Cover Sections which sets out the Sections of cover this insurance can provide (subject to eligibility) and the other standard terms and conditions which will apply to the covers (including any applicable limits and exclusions). It includes General Definitions which set out the special meaning We give to certain words used in the Policy. Other words may be specially defined in a Policy Section, term or condition.

If We issue You with a Policy, You will be given a Schedule. The Schedule sets out certain additional terms applicable to the Policy and other matters specific to You such as the cover You have been issued and the Policy Limits.

The Schedule must be read together with this document and any other documents We agree with You will form part of the Policy that We issue. Where We agree, documents other than this document and the Schedule will form part of the Policy, any such documents will be dated and will include a statement identifying them as part of the Policy.

Together they form the Policy/contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

## About SURA Labour Hire

SURA Labour Hire Pty Ltd ABN 67 604 373 088 (SURA Labour Hire) is an authorised representative (AR No. 1000385) of SURA Pty Ltd ABN 68 115 672 350 AFSL 294 313 and has developed this Commercial Legal Protection Insurance Policy which is underwritten by the Insurer(s) referred to below.

SURA Labour Hire has an authority from the Insurer to issue, arrange, enter into, vary and dispose of the Policy and this insurance on the Insurer’s behalf. This means when providing any financial service in relation to the Policy SURA Labour Hire acts as an agent for the Insurer and not for You.

### **Our contact details are:**

Level 14, 141 Walker Street  
North Sydney, NSW 2060  
PO Box 1813  
North Sydney, NSW 2059  
Telephone: (02) 9930 9500

## **About the Insurers**

This insurance is underwritten by Certain Underwriters at Lloyd's (referred to as Insurer(s), We, Our and Us).

Lloyd's and Lloyd's Underwriters have been involved in the insurance of Australian risks for over 150 years. Lloyd's Underwriters are authorised to carry on general insurance business under the Insurance Act 1973 (Cth).

You or Your representatives can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Lloyd's Underwriters is liable by requesting them from Us. In the event of loss, each Lloyd's Underwriter (and their Executors and Administrators) is only liable for their own share of the loss. Refer to the Several Liability notice for more information on the specified Lloyd's Underwriter's liability.

You should contact SURA Labour Hire in the first instance in relation to this insurance.

### **Lloyd's contact details are:**

Lloyd's Australia Limited  
Level 16, Suite 1603, 1 Macquarie Place  
Sydney NSW 2000  
Telephone: (02) 8298 0783

## **Assumed Liability and Waived Rights**

You must not, without obtaining Our prior written consent (such consent not to be unreasonably withheld):

- assign any benefits, rights or obligations under Your Policy; or
- enter into any agreement, make any admissions or take any action or step with another party:
  - where You are assuming a greater liability than would apply had You not done so; or
  - which prevents You (or Us) from taking a recovery action for damages, indemnity or contribution from that other party You would have been entitled to.

If You do, it may adversely affect Your rights to cover under the Policy and/or allow Us to cancel the Policy. Applicable law may restrict Our rights in certain circumstances. See "When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim" for further information.

## Some Key Things to Understand About the Cover

It is important to understand that:

- all cover sections only provide protection in relation to a Covered Dispute which must first commence during the Period of Insurance (subject to certain qualifications). No cover is provided for Disputes that first commence before the start of the Period of Insurance or after it;
- this is a claims made and notified policy which means that to be entitled to cover, a “Claim” in relation to a Covered Dispute must be:
  - made by or against You during the Period of Insurance; and
  - notified to the Claims Manager during the Period of Insurance.
- We do not cover Disputes or Claims arising from facts or circumstances of which You first became aware prior to the Period of Insurance, and which You knew or ought reasonably to have known had the potential to give rise to a Claim.
- You must receive formal written confirmation from the Claims Manager that Your Claim is covered before You start incurring Your Costs or Opponent’s Costs. Any costs incurred by You before the Claim has formally been accepted by the Claims Manager may not be covered under the Policy.
- upon accepting a Claim, the Claims Manager will engage an Appointed Professional on Your behalf and will appoint any further professionals (for example legal counsel) as necessary and appropriate throughout the course of the Claim.

The above is subject to the other Policy terms and conditions which You need to read carefully, as well as any applicable law.

### Operation of section 40(3) of the Insurance Contracts Act 1984 (Cth)

This notice and explanation does not form part of and is not a term of the Policy.

Please note that if, during the Period of Insurance, You become aware of facts that might give rise to a claim against You, Section 40(3) of the Insurance Contracts Act 1984 (Cth) provides You with an option to notify Us of those facts during the Period of Insurance. If You give Us written notification of such facts during the Period of Insurance pursuant to section 40(3), as long as You were not aware of such facts prior to the commencement of the Period of Insurance, the Policy will apply to a claim (arising from those facts) made against You, even if the claim is made against You after expiry of the Period of Insurance, subject to other terms, conditions and exclusions of the Policy.

For Your information, section 40(3) is detailed below:

“(3) Where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract”.

## Complaints and Dispute Resolution Process

If you have any concerns or wish to make a complaint in relation to the Policy, Our services or your insurance claim, please let Us know and We will attempt to resolve your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact SURA Labour Hire in the first instance:

Complaints Officer  
**SURA Labour Hire**  
Level 14, 141 Walker Street  
North Sydney NSW 2060  
Telephone: (02) 9930 9500  
Email: [IDR@SURA.com.au](mailto:IDR@SURA.com.au)

We will acknowledge receipt of your complaint and do Our utmost to resolve the complaint to your satisfaction within 10 business days.

If We cannot resolve your complaint to your satisfaction, We will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

**Lloyd's Australia Limited**  
Suite 1603, Level 16, 1 Macquarie Place  
Sydney NSW 2000  
Telephone: (02) 8298 0783  
Email: [idraustralia@lloyds.com](mailto:idraustralia@lloyds.com)

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

**Australian Financial Complaints Authority**  
GPO Box 3, Melbourne  
VIC 3001  
Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Website: [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Insurers accepting this insurance agree that:

- a) if a dispute arises under the Policy, the Policy will be subject to Australian law and practice and the Insurers will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b) any summons notice or process to be served upon the Insurers may be served upon:

**Lloyd's Underwriters' General Representative in Australia**  
Suite 1603, Level 16, 1 Macquarie Place  
Sydney NSW 2000

who has authority to accept service on the Insurers' behalf;



- c) if a suit is instituted against any of the Insurers, all Insurers participating in the Policy will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under the Policy immediate notice should be given to SURA Labour Hire.

## **Disclaimer**

When You enter into this Policy You confirm and warrant that You have read the Policy documents provided to You.

## **Excess**

If You make a claim under the Policy, You may be required to pay one or more Excesses. The descriptions of these Excesses and the circumstances in which they are applied are explained in this document, the Policy Schedule and other documents forming the Policy.

## **When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim**

We may only ever refuse to pay or reduce the amount We pay under a claim to the extent permitted by applicable law.

Some situations in which We may refuse to pay or reduce the amount We pay under a claim under the Policy (to the extent permitted by law) include (but are not limited to):

- a) when You apply for cover (this includes new business, variations, extensions, reinstatements and renewals) and do not comply with Your Duty of Disclosure; or
- b) if You do not comply with or meet a Policy term or condition or We can rely on an exclusion or other limitation (All referred to as “terms” when used in the Policy) – See “Our rights regarding the operation of or breach of a term of the Policy”;
- c) if You make a fraudulent claim – See “Fraudulent claims” for more detail; or
- d) where You have not or are not acting in accordance with Your duty of utmost good faith under the Insurance Contracts Act 1984 (Cth) – See “Duty of Utmost Good Faith” for more detail.

We may also have cancellation rights in the above circumstances to the extent permitted by applicable law.

Subject to applicable law, the amount of any claim entitlement can also be affected and/or reduced by other things, including any limits (e.g. monetary or time limits) or Excess(es), any outstanding Premium and recoveries You or We might make relevant to a loss as set out in the Policy terms.

See “Our rights regarding the operation of or breach of a term of the Policy” for more detail.

## **Our rights regarding the operation of or breach of a term of the Policy**

We will only rely on any rights We have regarding the operation of or breach of a term of the Policy to the extent permitted by applicable law (including Our right to refuse or reduce a claim if You do not comply with or meet a Policy term or condition or where an exclusion or other limitation applies). The law can be complex and We provide a high-level summary below of some key examples on how the Insurance Contracts Act 1984 (Cth) may affect matters depending on the circumstances. To the extent of any inconsistency the Insurance Contracts Act 1984 (Cth) will prevail.

Other laws can apply beyond the Insurance Contracts Act 1984 (Cth) such as the Corporations Act 2001 (Cth) and the Australian Securities and Investment Commissions Act 2001 (Cth) and You need to seek Your own advice regarding all relevant legal rights You may have.

### **Terms allowing Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into**

Subject to Our rights in relation to fraudulent claims explained below, by reason of section 54 of the Insurance Contracts Act 1984 (Cth), where the effect of the Policy (this includes all terms or conditions, including any exclusion or other limitation) is to allow Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into, We will exercise Our rights under the Policy as explained below.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

Under section 54, an “act” by You or some other person includes an omission and inaction and an act or omission that has the effect of altering the state or condition of the subject-matter of the Policy or of allowing the state or condition of that subject-matter to alter.

#### **How We exercise Our rights where section 54 applies (unless there is a fraudulent claim)**

- Where:
  - the act was necessary to protect the safety of a person or to preserve property; or
  - it was not reasonably possible for You or the other person not to do the act; or
  - You prove no part of the loss that gave rise to the claim was caused by the act,We will not refuse to pay or reduce the claim by reason only of that act.
- Where the act:
  - could not reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy; or
  - could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy but You prove that some part of the loss that gave rise to the claim was not caused by the act, so far as the claim concerns that part of the loss,We may not refuse to pay or reduce the claim by reason only of that act, but We can reduce Our liability in respect of the claim by an amount that fairly represents the extent to which Our interests were prejudiced as a result of that act.
- Otherwise, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy, We may refuse to pay the claim.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Terms allowing Us to refuse or reduce a claim because of pre-existing defects or imperfections existing before the Policy was entered into**

Only where section 46 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim is made in respect of a loss that occurred as a result, in whole or in part, of a defect or imperfection in a thing; and
- at the time when the contract was entered into You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection,

We may not rely on any provision included in the Policy that has the effect of limiting or excluding Our liability under the Policy by reference to the condition, at a time before the Policy was entered into, of the thing. This does not apply if the Policy is in an excluded class to which section 46 does not apply.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Terms allowing Us to refuse or reduce a claim because of a pre-existing sickness or disability existing before the Policy was entered into**

Only where section 47 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim under the Policy is made in respect of a loss that occurred as a result, in whole or in part, of a sickness or disability to which a person was subject or had at any time been subject; and
- where, at the time when the contract was entered into, You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the sickness or disability,

We may not rely on a provision included in the Policy that has the effect of limiting or excluding Our liability under the Policy by reference to the sickness or disability to which You were subject at a time before the Policy was entered into.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Fraudulent claims**

In all cases, where a claim is made fraudulently under:

- the Policy; or
- the Insurance Contracts Act 1984 (Cth) against Us by a person who is not You,

We may refuse payment of the claim to the extent permitted by applicable law. Under section 56(2) of the Insurance Contracts Act 1984 (Cth) a court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order Us to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Duty of Utmost Good Faith**

The following can also (where applicable) affect Our and Your rights and obligations regarding the operation of, reliance on, or breach of a term of the Policy:

- section 13 of the Insurance Contracts Act 1984 (Cth) requires each party to the Policy to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith. The obligation also extends to third party beneficiaries as defined in the Act but only applies to them after the contract is entered into.
- section 14 of the Insurance Contracts Act 1984 (Cth) provides that if reliance by a party to the Policy on a provision of the Policy would be to fail to act with the utmost good faith, the party may not rely on the provision.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

## Terms Apply to Extent Enforceable

A term (or part of a term) of the Policy will be applied to the extent it is not unenforceable under applicable law.

## Your Duty of Disclosure

Before You enter into an insurance contract, You have a duty to tell Us of anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary, or reinstate an insurance contract.

You do not need to tell Us anything that:

- reduces the risk We insure You for;
- is of common knowledge;
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

### If You do not tell Us something

If You fail to comply with Your Duty of Disclosure, and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the failure not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your failure to tell Us is fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless we state otherwise, a breach of the duty by one contracting insured affects all contracting insureds in these ways.

### Avoiding misrepresentations

Under the Insurance Contracts Act 1984 (Cth) if You make a misrepresentation to Us before the insurance contract is entered into (this includes before each renewal, extension, variation, replacement or reinstatement of an insurance contract) and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the misrepresentation not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your misrepresentation was fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless we state otherwise, a breach of the duty by one insured affects all insureds in these ways.

A misrepresentation includes a statement that is in any way false, misleading, dishonest or which does not fairly reflect the truth. For example, a statement of fact that is not true, a statement of opinion that is not the subject of an honestly held belief or a statement of intent that never existed at the time provided. We will not treat something as a misrepresentation merely because You failed to answer a question or gave an obviously incomplete or irrelevant answer to a question.

Refer to the Insurance Contracts Act 1984 (Cth) for full details as this is only a summary.

### **Answering Our questions**

Answers to Our questions help Us decide whether to provide this insurance and if so, on what terms. When answering Our questions:

- take reasonable care to make sure Your answers are true, honest, up to date and complete in all respects. You may breach the duty if You answer without any care as to its truth or if You only guess or suspect the truth. If in doubt, pause the application and obtain the true facts before answering; and
- if another person is answering for You, We will treat their answers as Yours. In such a case, You should check the questions have been answered correctly on Your behalf by them.

Please note that You have obligations beyond these pre contractual duty of disclosure and avoiding misrepresentation obligations once the contract is entered into, which are set out in the contract terms and applicable law.

### **General Insurance Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (“the Code”), which is a self-regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd’s Australia Limited has adopted and endorses the Code.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code.

For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

For more information on the Code Governance Committee (CGC) go to <https://insurancecode.org.au>.

### **Goods and Services Tax (GST)**

The amount payable by You for the Policy includes an amount for GST.

When We pay a claim, Your GST status will determine the amount We pay.

The amount that We are liable to pay under the Policy will be reduced by the amount of any Input Tax Credit (ITC) that You are or may be entitled to claim for the supply of goods or services covered by that payment.

You must advise Us of Your correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your premium as a percentage of the total GST on that premium. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a claim is less than the applicable Policy Limits or the other limits applicable to the Policy, We will only pay the GST (less Your ITC) applicable to the settlement. This means that if these amounts are not sufficient to cover the whole claim, We will only pay the GST relating to Our share of the settlement for the whole claim.

We will pay the claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to the claim.

GST and ITC have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

## Legal Advice

You can email the legal advice service provider Sparke Helmore Lawyers, via [legal.advice@sparke.com.au](mailto:legal.advice@sparke.com.au), for free legal advice on any problem related to Your Core Business Activities conducted within the Territorial Limits. The advice available is limited to the law and practice of Australia.

## Privacy Statement

In this Privacy Statement the use of “We”, “Our” or “Us” means SURA Labour Hire and the Insurers unless specified otherwise.

In this Privacy Statement the use of personal information includes sensitive information.

We are committed to protecting the privacy of the personal information that You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- a) deciding whether to issue a Policy,
- b) determining the terms and conditions of the Policy,
- c) compiling data to help develop and identify other products and services that may interest clients, and
- d) handling claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not;
- b) whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual’s racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal information in order to provide You with the relevant services and/or products.

When You give Us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

We will protect Your information using physical, technical, and administrative security measures to reduce the risks of loss, misuse, unauthorised access, disclosure and alteration. Some of the safeguards that We use are firewalls and data encryption, physical access controls to Our data centres, and information access authorisation controls.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling claims, We may have to disclose Your personal information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We will limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas where it is reasonably necessary for, or directly related to, the functions, services or activities We provide to You. When We transfer Your information to other countries, including countries which may not have data protection laws that provide the same level of protection that exists in Australia, We will protect the information as described in this Privacy Policy.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer the Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

We will notify You as soon as possible if Your personal information is involved in a data breach that is likely to result in serious harm to You.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Your privacy or You have any query on how Your personal information is collected, stored or used, or any other query relating to Our handling of Your personal information, please contact Us.

## **Several Liability**

The liability of an Insurer under this contract is several and not joint with other Insurers party to the Policy. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite the Policy.

The proportion of liability under the Policy underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the Lloyd's Underwriters of the syndicate taken together) is shown in the Schedule.

In the case of a Lloyd's syndicate, each Lloyd's Underwriter of the syndicate (rather than the syndicate itself) is an Insurer.

Each Lloyd's Underwriter has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the Lloyd's Underwriters of the syndicate taken together). The liability of each Lloyd's Underwriter of the syndicate is several and not joint with any other Lloyd's Underwriter.

A Lloyd's Underwriter is liable only for that Lloyd's Underwriter's proportion.

A Lloyd's Underwriter is not jointly liable for any other Lloyd's Underwriter's proportion. Nor is any Lloyd's Underwriter otherwise responsible for any liability of any other Insurer that may underwrite this contract. The business address of each Lloyd's Underwriter is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each Lloyd's Underwriter of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various parts in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

The Insurers bind themselves each and for their own part and not one for another. Each Insurer's liability under the Policy shall not exceed that percentage or amount of the risk shown against that Insurer's name.

## Sanctions

We shall not provide cover and We shall not be liable to pay any claim or provide any benefit under the Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom or the United States of America.

## Third Party Beneficiaries

The contracting insureds (the Insured) are the only parties to the Policy.

No insurance is provided in relation to the interest of any persons not specified as being entitled to access a benefit under the Policy.

The benefit of the cover under the Policy is extended automatically to Third Party Beneficiaries. They are not contracting parties and only access the benefit of cover by reason of the operation of section 48 of the Insurance Contracts Act 1984 (Cth). The following sets out how the Policy operates in relation to such persons (subject always to the operation of applicable law).

Access to cover only applies from the time they become a Third Party Beneficiary and ends when they are no longer a Third Party Beneficiary.

Nothing in the Policy is intended to give any such Third Party Beneficiaries any right to enforce any term of the Policy which that person would not have had but for the Insurance Contracts Act 1984 (Cth). Their rights and obligations are subject to the operation of the Insurance Contracts Act as it applies to such persons and other applicable law.



They:

- have, in relation to a claim, the same obligations to Us as they would have if they were the insured; and
- may discharge the Insured's obligations in relation to the loss, damage or liability.

We also have the same defences to an action by such persons as We would have in an action by the Insured including, but not limited to, defences relating to the Insured's conduct (whether the conduct occurred before or after the Policy was entered into). Any exclusions applying to the Insured also apply to a Third Party Beneficiary claiming under the Policy.

Such persons have no right to cancel or vary the Policy or its cover – only the Insured (as the contracting party) and We can do this. If We cancel or vary the Policy or its cover, We do not need to obtain such persons' consent to do so.

We also do not provide any notices in relation to this insurance to such persons as they are not a contracting party to the Policy. We only send notices to the Insured who We have contractual obligations to under the Policy.

Neither We nor the Insured hold anything on trust for, or for the benefit or on behalf of any such persons under this insurance arrangement.

The Insured:

- does not act on Our behalf in relation to the insurance;
- is not authorised by Us to provide any financial product advice, recommendations or opinions about the insurance.

Any Third Party Beneficiary needs to read this document and other documents forming the Policy carefully to properly understand the benefits they have access to as non-contracting parties. The insurance cover is subject to the terms, conditions, limitations and exclusions of the Policy.

Any person who may be entitled to a benefit under the Policy should consider obtaining advice as to whether the benefits are appropriate or useful for their personal needs from a person who is licensed to give such advice. No advice is provided by Us or Our representatives that the benefits are appropriate or useful for any person's needs. Nothing prevents such persons from entering into other arrangements regarding insurance.

In some cases the Insured may specify loss payees We will make payments to (e.g. a financier).

## **This Important Information Section Does Not Tell You All You Need to Know**

The Important Information Section only provides some important information to be aware of. You must read the Policy for details of what Your and the Insurer's rights and obligations are under this insurance.

## **Policy Interpretation**

Headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:

- a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, successors, re-enactments and replacements thereof;
- a word importing the singular includes the plural (and vice versa);
- a word indicating a gender includes every other gender;
- the words “include”, “including”, “for example”, “particularly” or “such as” or equivalent are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- any examples provided are subject always to the Policy terms and applicable law; and
- a reference to “\$” or “dollar” is to Australian currency.

# Part 2 – Policy Cover Sections

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## General Definitions

Some key words and terms used in the Policy have a special meaning that appear below when the word starts with a capital letter in this document. Other words may be specially defined to have a meaning when used in relation to a Policy section, term or condition.

**Aggregate Claims Limit** means the amount specified as the “Aggregate Claims Limit” in the Schedule being the maximum amount We will pay to You for all Claims under the Policy in the Period of Insurance.

**Any One Claim** means all Claims or possible Claims arising from the same originating cause, event or circumstance(s), which will be treated as a single Claim for the purposes of the Policy.

**Applicable Law** means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law (collectively the “Law”) relating or applicable to such Person, property, transaction, event or matter and includes any interpretation, bulletins, circular letters, guidelines, instruments, provisions, notices and policy statements published or issued in respect of any such Law by any Person having jurisdiction over the Law, or charged with its administration or interpretation and also shall include any economic and trade sanctions, anti-bribery laws and personal data laws and regulations.

**Appointed Professional** means any legal advisor, financial advisor or other professional advisor or third-party Person appointed by the Claims Manager to act on Your behalf.

**ATO** means the Australian Taxation Office or appropriate government authority charged with the administration of Tax Legislation.

**Business Premises** means the premises from which You conduct and/or undertake Your Core Business Activities.

**Claim** means a claim which is made by or against You during the Period of Insurance in relation to a Covered Dispute.

**Claim Amount** means the amount of indemnity being claimed by You from Us for a Claim.

**Claims Manager** means the Person named as ‘Claims Manager’ in the Schedule.

**Communicable Disease** means any infectious, communicable, or contagious disease, and any mutation or variation thereof, which:

- a) can be caused by any substance or agent including, but not limited to, a virus, bacterium, parasite, microorganism or any other pathogen (whether living or not); and
- b) can be transmitted from organism to organism regardless of the method of transmission including, but not limited to, by direct or indirect airborne transmission; bodily fluid transmission; transmission from or to any surface or object, solid, liquid or gas.

For the avoidance of doubt Communicable Disease includes (but is not limited to) SARS-CoV-2 (COVID-19) and any mutation or variation thereof.

**Computer Virus** means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature, including 'Trojan Horses', 'worms' and 'time or logic bombs'.

**Construction Services** means:

- a) the design, construction or erection of buildings, spas and swimming pools;
- b) alterations, additions, extensions, refurbishment, repairs, replacement, reinstatement conversion or demolition of pre-existing buildings or structures; or
- c) landscaping.

Provided that this definition does not apply where Your Core Business Activities include the temporary placement of employees, independent contractors, apprentices and/or trainees with third parties for the provision of on-hired services in connection with any Construction Services.

**Core Business Activities** means the principal areas or activities specified in the Schedule.

**Court or Tribunal** means a court, tribunal or other Statutory Body within the Commonwealth of Australia and its external territories that has jurisdiction in respect of the Applicable Laws.

**Covered Dispute** means a Dispute covered under a relevant section of the Policy (where stated to be applicable on the Schedule) and the Policy terms and conditions.

**Debt Recovery Professional** means the Person named as 'Debt Recovery Professional' in the Schedule.

**Dispute** means a dispute, including any civil legal proceeding or action in a Court or Tribunal, either commenced by You or commenced against You by an Opponent which relates to Your Core Business Activities.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

**Excess** means the agreed amount specified in the Schedule that You are required to pay towards a Claim in respect of each Claim. Any applicable Excess will be advised to You before You agree to enter into a Policy with Us.

**GST** means goods and services tax.

**Opponent** means any third-party Person who You are engaged in a Covered Dispute with.

**Opponent's Costs** means the legal fees and disbursements of an Opponent arising from a Covered Dispute which are either:

- a) ordered by a Court or Tribunal to be paid by You to an Opponent; or
- b) agreed by the Claims Manager in a negotiated settlement with an Opponent as payable by You to an Opponent.

**Person** means any individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organisation or other legal entity.

**Policy** means this document (except to the extent part of it is expressly excluded), the Schedule and any other documents We agree with You will form part of the Policy that We issue. Together they form Your contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

**Policy Limits** means the maximum amounts We will pay under the Policy, as stated in the Schedule in respect of Any One Claim, and for all Claims in the Period of Insurance, the Aggregate Claims Limit.

**Period of Insurance** means the period specified in the Schedule unless the Policy ends earlier in accordance with its terms or law, in which case the Period of Insurance ends at that earlier time.

**Positive Outcome** means a financial outcome that is more favourable to You as a consequence of the continuance of any proceedings after We determine (acting reasonably) there were no Reasonable Prospects having regard to the offers that were made before that determination and the costs incurred before and after that determination.

**Reasonable Prospects** means it is more probable than not that the determination of the Dispute at a final hearing will:

- a) in respect of a Covered Dispute brought against You, result in You obtaining a better outcome than the compensation or remedy sought by the Opponent;
- b) in respect of a Covered Dispute brought by You, result in You obtaining a better outcome than has been offered to You by the Opponent;
- c) in respect of an appeal, it is more probable than not that You will on appeal obtain a more favourable outcome than the judgement or decision appealed; or
- d) in respect of a Claim under Section 3: Statutory Licence Protection it is more probable than not that You will overturn the suspension, revocation or amendment of the Statutory Licence.

**Relating To** means relating to, in connection with, arising under, arising out of, arising from, as a result of, resulting from, as a consequence of, attributable to, contributed to by, caused by, or involving.

**Schedule** means the schedule to the Policy showing details of the cover You have been issued for the applicable Period of Insurance.

**Significant Financial Loss** means \$5,000 (five thousand dollars).

**Statutory Body** means a government department, agency or body, and judicial officers appointed by any government charged with the administration of, investigation into, or compliance with Applicable Law in the Territorial Limits.

**Statutory Licence** means a licence granted to You by the government, a Statutory Body, or a local authority which is utilised by You to conduct Your Core Business Activities.

**Tax Legislation** means any Australian Commonwealth legislation which imposes obligations in relation to income tax, GST or fringe benefits tax.

**Territorial Limits** means the Commonwealth of Australia, including its external territories and all Australian States and Territories.

**Third Party Beneficiary/ies** means persons who are not contracting parties to the Policy but to whom the benefit of cover is extended by reason of Section 48 of the Insurance Contracts Act (1984) that:

- a) are expressly specified in the Policy as a person or type of person to which the benefit of cover is extended; or
- b) are listed in the Schedule as “third party beneficiaries”,

unless otherwise excluded, but only to the extent of their interest specified. See “Third Party Beneficiaries” clause for details on the rights and obligations of Third Party Beneficiaries.

**Us/We/Our/Insurer** means Certain Underwriters at Lloyd’s acting through their agent SURA Labour Hire.

**You/Your** means the Persons named as the ‘Insured’ in the Schedule.

**Your Costs** means the reasonable legal and professional fees and disbursements for an Appointed Professional incurred on Your behalf in the course of pursuing or defending a Claim which are payable by You to the Appointed Professional.

# Cover Generally

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Sections 1-7 set out the types of Covered Disputes this Policy covers. Each section only applies where specified as applicable in the Schedule.

In relation to each section, You are only covered (if a Claim in relation to the relevant Covered Dispute is:

- made by or against You during the Period of Insurance; and
- notified to the Claims Manager during the Period of Insurance as specified in clause 9.1, subject to the terms and conditions of the Policy.

The following are also subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see “When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim”.

## Section 1 – Contractual Disputes

We will indemnify You, subject always to the terms of the Policy including the applicable Policy Limits and Excess.

### 1.1 What You are insured against

We will indemnify You for Your Costs and Your Opponent’s Costs that arise from a Dispute which first commences during the Period of Insurance between You and Your Opponent in respect of an alleged breach, whether by You or by Your Opponent, of the terms of a written contract entered into by You and Your Opponent for the supply of goods and/or services.

### 1.2 Exclusions applicable to Contractual Disputes

In addition to the General Exclusions Applicable to All Sections:

1.2.1 We have no liability for a Claim under clause 1.1. where:

- a) the Claim Amount is less than the greater of:
  - i. \$5,000 (five thousand dollars); or
  - ii. the applicable small claims threshold stipulated by the Court or Tribunal in which proceedings Relating To the Dispute are or will be commenced.
- b) the Claim Amount is likely to exceed 75% (seventy-five percent) of the total amount in Dispute.
- c) written notice of the Dispute was served by/on You within 90 (ninety) calendar days of the commencement of the Policy.

1.2.2 We will not indemnify You under clause 1.1 for:

- a) a Dispute which relates to any contract other than for the supply of goods and/or services.
- b) a Dispute which relates to any contract entered into by You in respect of which coverage under any other Section in the Policy is applicable and therefore indemnity shall be provided in accordance with the terms of that Section subject to its terms.

- c) a Dispute which relates solely to non-payment where You or an Opponent has failed to pay in a timely manner in accordance with the terms of the relevant contract unless You have first completed the debt recovery process outlined in Section 7 – Debt Recovery, 7.3 Conditions Applicable to Debt Recovery.
- d) a Dispute arising from a contract Relating To Construction Services unless:
  - i. Your Core Business Activities include Construction Services; and
  - ii. the Dispute is with a supplier directly related to the Construction Services undertaken by You as part of Your Core Business Activities.
- e) a Dispute arising from a contract:
  - i. for employment;
  - ii. for the provision of insurance, securities, financial accommodation, credit or guarantees;
  - iii. Relating To a motor vehicle;
  - iv. related to the occupation of property including leases, tenancy agreements or a licence to occupy; or
  - v. Relating To the sale or purchase of real property.
- f) Disputes over franchise agreements.



# Section 2 – Tax Audit

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We will indemnify You, subject always to the terms of the Policy including the applicable Policy Limits and Excess.

## 2.1 What You are insured against

We will indemnify You for Your Costs that arise from a Dispute in relation to an audit first commenced by the ATO during the Period of Insurance in respect of:

- a) an investigation or inquiry into Your tax affairs by the ATO in accordance with Tax Legislation; or
- b) a claim from the ATO that:
  - i. additional GST is due from You; or
  - ii. additional income tax or fringe benefits tax is due from You,

in accordance with Tax Legislation.

## 2.2 Exclusions applicable to Tax Audit

In addition to the General Exclusions Applicable to All Sections:

2.2.1 We have no liability for a Dispute or Claim under clause 2.1 where:

- a) written notice of an audit by the ATO has been served on You within 90 (ninety) calendar days of the commencement of the Policy.
- b) the tax returns which are the subject of the Dispute:
  - i. were not lodged by a suitably qualified and licenced accountant or tax professional appointed by You to prepare and lodge Your tax returns; or
  - ii. were not lodged within the relevant statutory time limits.
- c) You have not made all payments for due taxes and provided all necessary documentation to the ATO within the relevant time limits specified by the ATO.

2.2.2 We will not indemnify You under clause 2.1 for:

- a) routine responses to requests for information and other contacts with the ATO which do not amount to an audit of Your tax affairs, including but not limited to lodgement of Business Activity Statements, superannuation payments and returns.
- b) costs which are not directly incurred in relation to the audit which is the subject of the Claim. If Your Appointed Professional conducts additional work outside of the scope of the Claim, costs will be apportioned as appropriate to ensure that only those costs directly incurred in relation to the audit are indemnified.
- c) costs incurred as a result of an audit arising from a change in Applicable Law (including but not limited to Tax Legislation) which has retrospective effect.
- d) costs incurred in relation to action taken by the ATO once an audit or investigation is transferred to the department in the ATO responsible for prosecution of offences under the Tax Legislation.
- e) costs in relation to professional services advising on tax avoidance schemes or other attempts to avoid due payment of tax or superannuation of any kind, and audits Relating To such schemes.

## 2.3 Conditions applicable to Tax Audit

The following only apply to the extent relevant and subject to applicable law which may restrict our rights in certain circumstances. For more detail on these restrictions see "When We can refuse to pay or reduce the amount we pay under a claim".

In addition to the Claims Conditions and General Conditions Applicable to All Sections:

- 2.3.1 You must notify the Claims Manager as soon as possible, and in the Period of Insurance, if You are in receipt of a notice of an ATO audit.
- 2.3.2 You must advise the Claims Manager as soon as possible of any notice from the ATO notifying You of the end of an audit and from the date that notice is received by You We will not be liable for Your Costs which are incurred after the end of the audit.

# Section 3 – Statutory Licence Protection

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We will indemnify You, subject always to the terms of the Policy including the applicable Policy Limits and Excess.

## 3.1 What You are insured against

We will indemnify You for Your Costs and Your Opponent's Costs that arise from a Dispute which first commenced during the Period of Insurance in relation to You seeking to protect Your rights under a Statutory Licence which is under threat of suspension, revocation or amendment during the Period of Insurance and which, if not disputed, will have a financial impact on You if You are not able to conduct Your Core Business Activities as a result.

## 3.2 Exclusions applicable to Statutory License Protection

In addition to the General Exclusions Applicable to All Sections:

- 3.2.1 We will not, and are not liable to indemnify You under this clause 3.1 for any Dispute or Claim Relating To a Statutory Licence which is:
- a) suspended, revoked or amended as a result of a general industry wide policy rather than for a reason particular to You;
  - b) not granted, or granted on terms other than those applied for, where it is Your first application for the Statutory Licence;
  - c) lapsed, suspended, revoked or amended due to Your failure to renew on time;
  - d) due to a suspension, revocation or amendment arising from a change in Applicable Law.

# Section 4 – Landlord Disputes

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We will indemnify You, subject always to the terms of this Policy including the applicable Policy Limits and Excess.

## 4.1 What You are insured against

We will indemnify You for:

- a) Your Costs and Your Opponent's Costs that arise from a Dispute which first commenced during the Period of Insurance with Your commercial landlord arising out of an alleged breach of the lease, tenancy agreement or licence in place in respect of Your Business Premises; or
- b) Your Costs and Your Opponent's Costs that arise from a Dispute which first commenced during the Period of Insurance with a tenant over an alleged breach of the lease, tenancy agreement or licence in place in respect of commercial premises leased to them by You where Your Core Business Activities are those of a commercial landlord,

provided that the consequences of not pursuing or defending the Dispute include that You will suffer Significant Financial Loss and Your Costs and Your Opponents Costs are likely to exceed 75% (seventy-five percent) of the total amount in Dispute.

## 4.2 Exclusions applicable to Landlord Disputes

In addition to the General Exclusions Applicable to All Sections:

4.2.1 We will not indemnify You under clause 4.1 for any Dispute or Claim arising:

- a) from the first negotiation of a lease, tenancy agreement or licence;
- b) from the renewal, renegotiation or review of a lease, tenancy agreement or licence at normal expiry;
- c) solely from a failure to pay rent or other amounts due under the terms of a lease, tenancy agreement or licence;
- d) from the refusal of a party to meet obligations under the terms of a lease, tenancy agreement or licence when there is no Dispute that such obligations are owed;
- e) from a contract or agreement which is not a lease, tenancy agreement or licence.

## 4.3 Conditions applicable to Landlord Disputes

In addition to the Claims Conditions and General Conditions Applicable to All Sections You must have served any and all required statutory and/or contractual notices prior to commencing any Dispute.

# Section 5 – Restrictive Covenants

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We will indemnify You, subject always to the terms of this Policy including the applicable Policy Limits and Excess.

## 5.1 What You are insured against

We will indemnify You for Your Costs and Your Opponent's Costs that arise from a Dispute which first commenced during the Period of Insurance with a former employee in relation to an alleged breach of a restrictive covenant, either by You or the former employee, contained within a written employment contract between You and the former employee.

## 5.2 Exclusions applicable to Restrictive Covenants

In addition to the General Exclusions Applicable to All Sections:

5.2.1 We have no liability for a Dispute or Claim under clause 5.1 where:

- a) the restrictive covenant is unreasonable as to scope or duration; or
- b) the alleged breach by the former employee will not have a material detrimental effect on Your business' revenue generation;
- c) there will be no financial benefit for You if the restraint is enforced; or
- d) the restrictive covenant exceeds 12 (twelve) months in duration.

# Section 6 – Third Party Damage to Goods or Premises

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We will indemnify You, subject always to the terms of this Policy including the applicable Policy Limits and Excess.

## 6.1 What You are insured against

We will indemnify You for Your Costs and Your Opponent's Costs that arise during the Period of Insurance arising from a Dispute which first commenced during the Period of Insurance in relation to the pursuit of a third party who has by their own act or omission caused You uninsured losses by causing physical damage to:

- a) Your Business Premises; or
- b) goods, machinery or other property located at Your Business Premises.

## 6.2 Exclusions applicable to Third Party Damage to Goods or Premises

In addition to the General Exclusions Applicable to All Sections:

- 6.2.1 We will not, and are not, liable to indemnify You under clause 6.1 for any costs incurred in respect of damage:
- a) caused by You or Your employees;
  - b) to goods, machinery or other property not at Your Business Premises, unless the goods, machinery or other property are under Your direct care and control;
  - c) to a motor vehicle, except where stationary and located at Your Business Premises.

# Section 7 – Debt Recovery

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We will indemnify You, subject always to the terms of this Policy including the applicable Policy Limits and Excess.

## 7.1 What You are insured against

We will indemnify You for Your Costs that arise from a Dispute with an Opponent which first commenced during the Period of Insurance in relation to You being owed payment under an invoice which has not been settled despite the payment terms having expired.

## 7.2 Exclusions applicable to Debt Recovery

In addition to the General Exclusions Applicable to All Sections:

- a) We will not, and are not, liable to indemnify You under clause 7.1 for any Dispute or Claim in relation to a debt sum of less than \$2,500 (two thousand five hundred) for the services under the heading "Stage 2" in clause 7.3.3 or for the services specified in clause 7.3.3 c) where the debt sum is less than \$5,000 (five thousand).

## 7.3 Conditions applicable to Debt Recovery

The following only apply to the extent relevant and subject to applicable law which may restrict our rights in certain circumstances. For more detail on these restrictions see "When We can refuse to pay or reduce the amount we pay under a claim".

In addition to the Claims Conditions and General Conditions Applicable to All Sections:

7.3.1 any Claim in relation to clause 7.1 shall be subject to You following the process below:

### 7.3.2 Stage 1

- a) You must log on to [www.sura.com.au/labour-hire/](http://www.sura.com.au/labour-hire/) and complete the template letter with the applicable details and send this letter to the debtor.
- b) If on expiry of the 14 (fourteen) calendar days allowed to pay as specified in the template letter You have not received payment, You must move to stage 2.

### 7.3.3 Stage 2

- a) You must provide full details of the amount due to the Debt Recovery Professional via the following email address: [legalexperiences@proclaim.com.au](mailto:legalexperiences@proclaim.com.au).
- b) the Debt Recovery Professional will then communicate a letter on Your behalf advising the debtor that if they do not pay in 7 (seven) calendar days court proceedings will be issued.
- c) if payment is still not forthcoming, the recovery will become a Claim under Section 1 – Contractual Disputes, clause 1.1 "What You are insured against", and the Debt Recovery Professional will issue court proceedings on Your behalf to seek recovery of the amount due.

## Section 8 – General Exclusions Applicable to All Sections

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The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see “When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim”.

### 8.1 Cover is excluded under the Policy in respect of any Dispute or Claim:

- a) arising from outside of the Territorial Limits
- b) arising from an appeal, unless there are Reasonable Prospects that You will on appeal obtain a more favourable outcome than the judgement or decision appealed;
- c) arising from a dispute between You, Us, SURA Labour Hire and/or Claims Manager;
- d) arising from a Dispute between You and any holding, subsidiary or associated corporation of Yours (including franchisor/franchisees), or any trust operated by You;
- e) to the extent permitted by law, where You have in place other insurance which indemnifies You for the same Claim (in which case the Policy will only provide cover in excess of some or all of the loss which is not covered by the more specific insurance policy), or where You are required by Applicable Law to have such a policy, whether one is in place or not;
- f) to the extent permitted by law, in respect of a Dispute where You are insured under another insurance policy for the liability that is the subject of the Dispute (in which case the Policy will only provide cover in excess of some or all of the loss which is not covered by the more specific insurance policy);
- g) arising from Your deliberate, intentional or reckless failure to take all reasonable steps to avoid a Claim or Dispute arising;
- h) where You have acted with any criminal intent or have otherwise recklessly or through omission committed criminal act(s);
- i) arising from the following:
  - i. Construction Services, except to the extent provided otherwise in Section 1 Contractual Disputes clause 1.2.2(d);
  - ii. franchise agreements;
  - iii. planning laws or regulations;
  - iv. intellectual property of any kind, including but not limited to patents, copyrights, trademarks, passing off, registered designs and similar (unless directly related to a Claim under Section 5 Restrictive Covenants clause 5.1);
  - v. a warranty or guarantee;
  - vi. subsidence, land heave, land slip, mining or quarrying;
  - vii. allegations of defamation of any kind or malicious falsehood;
  - viii. judicial review;
  - ix. worker’s compensation.
- j) for costs incurred by You after You fail to accept the advice of the Appointed Professional to settle a Claim.



- 8.2 The Policy excludes and does not insure any Dispute, Claim, loss, liability, damage, cost, fine, penalty, expense or other sum of any kind whatsoever Relating To, whether directly or indirectly and/or regardless of any other cause or event contributing concurrently or in any other sequence thereto, a Communicable Disease and/or any fear or threat (whether actual or perceived) thereof or action taken in response to a Communicable Disease.
- 8.3 We are not liable for any fines, damages, compensation, taxes, penalties or interest which You are ordered to or agree to pay.
- 8.4 We shall not provide cover and We shall not be liable to pay any Claim or any benefit under the Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom, New Zealand or the United States of America.
- 8.5 We shall not provide cover and We shall not be liable to pay any Claim or any benefit under the Policy for losses arising as a result of terrorism.
- 8.6 The Policy excludes loss, destruction, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in other sequence to the loss:
- 8.6.1 war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, conspiracy, rebellion, revolution, insurrection, mutiny, military or usurped power; or
- 8.6.2 confiscation or nationalisation, or requisition or destruction of or damage to property by or under the order of any government (whether lawfully constituted or otherwise) or public or local authority.
- Furthermore, any loss, destruction or damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to clause 8.6.1 or clause 8.6. 2 is also excluded from the Policy.
- 8.7 The Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any sequence to the loss.
- 8.8 We are not liable for any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by or arising from riot, civil commotion, strikers, locked out workers, or persons in labour disturbances.
- 8.9 The Policy does not cover any Claims or legal proceedings (including Your Costs, Your Opponent's Costs or any other costs or expenses of any description) directly or indirectly caused by or contributed to by or arising from:
- 8.9.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 8.9.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

8.10 The Policy does not cover any Claims or legal proceedings (including Your Costs, Your Opponent's Costs or any other costs or expenses of any description) directly or indirectly caused by or contributed to by or arising from a Cyber Act or Cyber Incident.

For the purpose of this exclusion the following definitions apply:

**Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

**Cyber Incident** means:

- i. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- ii. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

**Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

# Section 9 – Claims Conditions

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The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see “When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim”.

## 9.1 Notifying Us of a Claim

In the event of:

- a) a Claim arising under the Policy;
- b) the receipt by You of notice from any Person of facts or circumstances that may give rise to a Covered Dispute; or
- c) any cause, event, Dispute or circumstance which may give rise to a Claim,

You must give written notice to the Claims Manager during the Period of Insurance as follows:

Proclaim Management Solutions Pty Ltd  
271 Collins Street  
Melbourne, VIC 3000  
Email: [legalexperiences@proclaim.com.au](mailto:legalexperiences@proclaim.com.au)

## 9.2 Incurring Costs

You must receive formal written confirmation from the Claims Manager that Your Claim is covered before You start incurring Your Costs or Opponent’s Costs. Any costs incurred by You before the Claim has formally been accepted by the Claims Manager may not be covered under the Policy. See “When We can Refuse to Pay or Reduce the Amount We Pay Under a Claim” for further details.

## 9.3 Claims Made and Notified

This is a claims made and notified Policy, which means that You shall only be indemnified for a Claim:

- a) first made by or against You during the Period of Insurance; and
- b) notified to the Claims Manager during the Period of Insurance.

## 9.4 Requirement for Reasonable Prospects of Success

### 9.4.1 We may not indemnify You for Claims under the Policy, unless:

- a) the action taken by You in pursuing or defending the Claim is reasonable and proportionate with regard to the costs to be expended and the benefit You will obtain, and there must not be a more appropriate manner in which to protect Your interests;
- b) the Covered Dispute has Reasonable Prospects; and
- c) it is more likely than not that Your version of events relevant to the Covered Dispute will be accepted by a Court or Tribunal.

9.4.2 Having Reasonable Prospects is an ongoing requirement for Our liability for a Claim and if during a Covered Dispute or where a Claim no longer has Reasonable Prospects, We will not, and shall not be liable to indemnify You under the applicable insured Section for costs where there are no Reasonable Prospects. If You choose to continue the defence or pursuit of a Covered Dispute where there are no Reasonable Prospects, all costs and expenses incurred by You are at Your own cost, but should You ultimately achieve a Positive Outcome We will reimburse You for any costs or disbursements You fail to recover from Your Opponent.

9.4.3 The Claims Manager will provide You with written reasons if the Appointed Professional decides that the Claim does not have Reasonable Prospects. If You disagree with the Appointed Professional over whether a Claim has Reasonable Prospects or not, You can either:

- a) at Your own expense seek an opinion from another legal practitioner. If this opinion is contrary to the Appointed Professional's initial opinion, We will reimburse You for the cost of the opinion (subject to Policy Limits) and Your Claim shall be covered from that point subject to the terms and conditions of the Policy and that legal practitioner will be the Appointed Professional who will continue to act for You; or
- b) access Our complaints process outlined in this document.

9.5 Other Claims Conditions

- a) Upon accepting the Claim, the Claims Manager will engage an Appointed Professional on Your behalf and will appoint any further professionals (for example legal counsel) as necessary and appropriate throughout the course of the Claim.
- b) You must authorise and instruct the Appointed Professional to comply fully with the instructions and directions of the Claims Manager at all times throughout the duration of the Claim.
- c) You must comply promptly with all reasonable requests for information or other forms of assistance made by either the Claims Manager or Appointed Professional which is in Your power to provide in connection with the investigation, defence or settlement of any Claim or investigation of any circumstances which may give rise to a Claim in respect of which indemnity is sought under the Policy including attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.
- d) You must where possible take all reasonable and necessary steps to assist Us to recover any costs paid by Us and recoverable by You from other Persons and have these costs paid directly to Us.
- e) You must advise the Claims Manager in writing immediately if You receive an offer to settle or compromise a Claim and must not admit liability for, settle or make or promise any payment in respect of any Claim, circumstance or event which is likely to be the subject of indemnity under the Policy without the prior written approval of the Claims Manager (such approval not to be unreasonably withheld).
- f) We shall be entitled, if We so desire, to take over and conduct in Your name the defence or settlement of any Claim, or to prosecute in Your name for Our benefit and at Our expense, any Claim.

# Section 10 – General Conditions Applicable to All Sections

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The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see “When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim”.

## 10.1 Cancellation

### **Cancellation by You**

You may cancel the Policy at any time by contacting Us in writing at the address shown in About SURA Labour Hire. Cancellation will take effect from 4:00pm on the day We receive Your notice of cancellation, or such time as may be otherwise agreed between Us and You.

### **Cancellation by Us**

Subject to applicable law, We may cancel the Policy as set out in the Insurance Contracts Act 1984 (Cth) by giving You written notice to that effect. This includes where:

- a) You failed to comply with the duty of the utmost good faith;
- b) You failed to comply with the duty of disclosure where that duty applies to You, or made a misrepresentation to Us during the negotiations for the Policy, before entering into, varying, extending or renewing the Policy, where this duty applied to You;
- c) You failed to comply with a provision of the Policy, including a provision with respect to payment of the premium;
- d) You have made a fraudulent claim under the Policy or under some other contract of insurance (whether with Us or with some other insurer) that provides insurance cover during any part of the period during which the Policy provides insurance cover;
- e) You failed to notify Us of any specific act or omission or failure that has occurred after the Policy is entered into where notification is required under the terms of the Policy; or
- f) the effect of the Policy is to authorise Us to refuse to pay a claim, either in whole or in part, by reason of an act or omission or failure of You or of some other person and, after the Policy was entered into, such an act or omission or failure has occurred.

When We cancel the Policy, it will have effect from whichever of the following times is the earliest (unless We tell You otherwise in Our cancellation notice and subject to applicable law):

- a) the time when another policy of insurance replacing the Policy is entered into by You with Us or another insurer; or
- b) 4:00pm of the third (3rd) business day after the day on which notice was given to You unless specified otherwise or the Policy is in force because of section 58 of the Insurance Contracts Act 1984 (Cth), in which case the cancellation will have effect from 4:00pm on the fourteenth (14th) business day after the day on which notice was given to You.

## Effect of cancellation

Subject to applicable law the Policy with Us ends from the time of cancellation. You will not have cover for events occurring or Claims made after that time.

However, cancellation by Us or You does not affect any rights that You had under the Policy when it was in force. For Your rights to any premium refund in relation to a cancellation see “Premium refund” section.

## Premium refund

If You or We cancel the Policy We may deduct:

- a pro rata proportion of the premium for any time for which You have been covered. For example, if Your Period of Insurance is 12 (twelve) months and You have been covered for 6 (six) months, the deduction for the time You have been covered will be half the annual premium; and
- any government taxes or duties paid by Us in relation to the Policy We cannot recover.

However, in the event that You have made a Claim under the Policy and We have agreed to the Claim no return of premium will be made.

### 10.2 Insolvency

If at any point during the Period of Insurance or duration of a Claim You file for bankruptcy; file a winding up petition; go into liquidation or voluntary administration; enter into any arrangement with creditors; or have a receiver or controller appointed (each an “Insolvency Act”), We will not, and shall not, be liable under any insured Section after an Insolvency Act.

### 10.3 Confidentiality

You will not, without Our prior written consent (such consent not to be unreasonably withheld), disclose the existence of the Policy to any person or party outside Your organisation except insofar as is required in order to comply with the terms of the Policy or by Applicable Law.

### 10.4 Subrogation

In the event of any payment under the Policy, We will be subrogated to the extent of such payment to all Your rights of recovery. In such case You will execute all documents required and will do everything necessary to secure and preserve such rights including the executions of such documents necessary to enable Us effectively to bring suit in Your name.

### 10.5 Amendments

Any amendment of a clause, condition, term or provision of the Policy must be set out in writing and agreed by You and Us.

### 10.6 Third Party Beneficiary Rights

We and You do not intend to create in any other person the status of a third-party beneficiary by reason of the operation of section 48 of the Insurance Contracts Act 1984 (Cth), and the Policy will not be construed so as to create such status.

### 10.7 Assignment

The provisions of the Policy shall inure to the benefit of and be binding upon You and neither the Policy nor any right, authority or obligation arising under it may be assigned, transferred or otherwise disposed of, in whole or in part, by You without Our prior written consent (such consent not to be unreasonably withheld).

## 10.8 Notices

Any notice, including notice of cancellation of the Policy or any statutory notice or any notice Relating To Applicable Law required or permitted to be given to Us shall be in writing and shall be delivered personally or sent by post or provided by email and addressed as follows:

SURA Labour Hire Pty Ltd  
Level 14, 141 Walker Street  
North Sydney NSW 2059  
Email: [labourhire@sura.com.au](mailto:labourhire@sura.com.au)

## 10.9 Waiver

No provision of the Policy shall be deemed waived by a course of conduct. Any waiver must be in writing signed by Us and You and stating specifically that it was intended to modify a right or provision under the Policy. No waiver of any provision of the Policy shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver.

## 10.10 Severability

If any provision of this Policy is, for any reason, held to be invalid, prohibited, or otherwise unenforceable, the other provisions of this Policy shall remain enforceable and the invalid or unenforceable provision shall be deemed modified so that they are valid and enforceable to the maximum extent permitted by Applicable Law.

## 10.11 Governing Law

The Policy will be governed in accordance with the laws of the Commonwealth of Australia. Any disputes arising out of the Policy will be subject to determination by an Australian Court within the State or Territory in which the Policy was issued and according to the laws applicable to the jurisdiction.

SURA Labour Hire Pty Ltd  
ABN 67 604 373 088 acts as an  
agent for certain Underwriters at  
Lloyd's and is authorised to arrange,  
enter into/bind and administer this  
insurance on their behalf.

SURA Labour Hire Pty Ltd is  
an authorised representative of  
SURA Pty Ltd ABN 36 115 672 350  
AFSL 294313.

Thank you for receiving  
this document electronically.  
SURA Labour Hire Ltd supports  
positive initiatives for our  
environment.

**S U R A** LABOUR  
HIRE

**NSW**

Level 14, 141 Walker Street  
North Sydney NSW 2060  
PO Box 1813  
North Sydney NSW 2059  
Telephone: (02) 9930 9500

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