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# SEESA *LABOUR DISPUTE GUARANTEE*

## *MISSION OF THE SEESA LABOUR DISPUTE GUARANTEE*

*The SEESA Labour Dispute Guarantee was established to protect the interests and cash flow of employers in the event of awards, judgements and settlement agreements subject to the following terms and conditions.*

## *TERMS AND CONDITIONS*

1. The SEESA Labour Dispute Guarantee (SLDG) is automatically available to all paid-up SEESA clients and to any new SEESA clients, upon receipt of his/her joining fee and first monthly premium.

2. Benefits payable to clients by the SEESA Labour Dispute Guarantee are restricted to the amount of R100 000-00 per annum for clients on the A-Package and R50 000-00 per annum for clients on the B-Package.

3. **The guarantee will cover awards made by the CCMA, Bargaining Councils and the Labour Court in respect of the following:**

   3.1 Unfair dismissals;
   3.2 Automatically unfair dismissals;
   3.3 Unfair retrenchment action;
   3.4 Unfair dismissal following a strike;
   3.5 Unfair labour practices;
   3.6 Unfair discrimination;
   3.7 Settlement agreements which SEESA is compelled to negotiate on behalf of a client relating to any of the above.

4. <u>**EXCLUSIONS**</u>

   **The SEESA Labour Dispute Benefit Guarantee will not be responsible for or cover:**

   4.1. **Any dispute, award or judgement:**
   - 4.1.1 **Where the dispute arose or the award/judgement was made:**
     - 4.1.1.1 Prior to the employer becoming a client of SEESA or prior to the inception of this guarantee, namely 01 November 2003; or
     - 4.1.1.2 After the client's agreement with SEESA was cancelled; or
     - 4.1.1.3 Where the client owes more than one monthly premium, or one annual premium (if such a client pays his/her membership fee annually).
   - 4.1.2 **Where a client acted unfairly due to his/her failure to:**
     - 4.1.2.1 Obtain advice from SEESA;
     - 4.1.2.2 Act in accordance with the advice received from SEESA on the appropriate course of action to be followed;
     - 4.1.2.3 Involve SEESA in the relevant procedure.

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4.1.3 **Where the dispute, award or judgement pertains to:**

4.1.3.1 The client's failure to act or register in terms of the Compensation for Occupational Injuries and Diseases Act 1993, UIF, Employment Equity Act or any Bargaining Council;

4.1.3.2 Unpaid remuneration or other fees which are or were payable in terms of any Bargaining Council's Main Agreement or Sectoral Determination;

4.1.3.4 Any statutory payment such as accrued leave, UIF or PAYE;

4.1.3.5 Any amount awarded in favour of a domestic worker;

4.1.3.6 Any constructive dismissal, where the client's actions support the allegations against him/her.

4.2 **The payment of any award or judgement where:**

4.2.1 The client failed to inform SEESA timeously of any pending dispute or an appearance date and/or failed or refused to make him/herself or any other witness available and/or failed to co-operate or supply any documentation as requested, to enable SEESA to defend a matter adequately;

4.2.2 The client negligently or intentionally failed to disclose information or evidence during any procedure conducted on their behalf by SEESA (or any other entity or person appointed by them), where the information or evidence would have made a difference in the substantive or procedural outcome of that procedure, should that information or evidence been disclosed initialy;

4.2.3 The client failed to provide evidence or provided contradictory evidence, to that which was disclosed in the procedure previously conducted by SEESA (or any other entity or person appointed by them), whether viva voce or documentary, in any Commission for Conciliation Mediation and Arbitration, Bargaining Council, Labour Court, Labour Appeal Court, Supreme Court of Appeal or Constitutional Court matter, which resulted in an unfavourable outcome.

4.2.4 The client's claim is in any respect fraudulent or criminal in nature or where such conduct is found to exist or implied in any finding or judgement.

## 5. <u>OBLIGATIONS</u>

5.1 The client must take the utmost care to obtain and act in accordance with SEESA's advice and must timeously consult with SEESA, as the labour representative, on the appropriate action to be taken and/or request SEESA to conduct the appropriate action or procedure in all instances where action, as per paragraph 3 above, is envisaged or where a dispute could arise.

5.2 **The client must immediately inform and provide copies to SEESA:**

5.2.1 Of any referral of a dispute or of any subsequent notification of a date of conciliation or arbitration or any other pending dispute;

5.2.2 Of any award made against a client.

5.3 A client may not accept any responsibility or give any assurances on behalf of SEESA.

## 6. <u>ADMINISTRATION AND DISCRETION</u>

6.1. **The Managing Director of SEESA (PTY) Ltd. may at his sole discretion, upon receipt of a written submission and on good cause shown:**

6.1.1 Authorise any claim amount higher than the amount specified in paragraph 2 above;

6.1.2 Authorise payment, out of the guarantee fund, of any excessive legal expenses incurred by a SEESA client, in respect of any labour dispute or eviction matter;

6.1.3 Authorise payment of any claim which does not comply with all the terms and conditions, as set out above.

6.2 No benefit in terms of this guarantee is transferable from one year to the next.

6.3 Whenever there is referred to "SEESA", in terms hereof, it will include any other entity or person appointed by SEESA to act on their behalf or on behalf of the Client.

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# SEESA *ARBEIDSDISPUUT WAARBORG*

## *MISSIE EN DOELSTELLINGS VAN DIE SEESA ARBEIDSDISPUUT WAARBORG*

*Die SEESA Arbeidsdispuut Waarborg is in die lewe geroep om die belange en kontantvloei-posisie van werkgewers te beskerm in die geval van toekennings, beslissings en skikkingsooreenkomste, onderhewig aan die volgende terme en voorwaardes.*

## *TERME EN VOORWAARDES*

1. Die SEESA Arbeidsdispuut Waarborg (SAW) is outomaties beskikbaar aan alle opbetaalde SEESA-kliënte asook aan enige nuwe SEESA-kliënt by ontvangs van sy/haar aanvangsfooi en eerste maandelikse premie.

2. Voordele wat aan kliënte uitbetaal sal word deur die SEESA Arbeidsdispuut Waarborg is beperk tot R100 000-00 per jaar vir kliënte op die A-Pakket, en R50 000-00 per jaar vir kliënte op die B-Pakket.

3. **Die waarborg dek toekennings deur die KVBA (CCMA), Bedingingsrade en die Arbeidshof ten opsigte van die volgende:**

   3.1 Onbillike afdankings;
   3.2 Outomaties onbillike afdankings;
   3.3 Onbillike afleggingsaksies;
   3.4 Onbillike afdanking na afloop van 'n staking;
   3.5 Onbillike arbeidspraktyke;
   3.6 Onbillike diskriminasie;
   3.7 Skikkingsooreenkoms waar SEESA genoodsaak is om namens 'n kliënt te beding ten opsigte van enige van bogenoemde aspekte.

4. <u>**UITSLUITINGS**</u>

   **Die SEESA Arbeidsdispuut Waarborg sal nie ten opsigte van die volgende aanspreeklikheid aanvaar of die volgende dek nie:**

   4.1. **Enige dispuut, toekenning of bevel:**

   4.1.1 **Waar die dispuut ontstaan het of die toekenning/bevel gemaak is:**

   4.1.1.1 Voordat die werkgewer `n kliënt van SEESA geword het of voordat die waarborg geïmplementeer is, te wete 1 November 2003;
   4.1.1.2 Nadat die kliënte-ooreenkoms tussen SEESA en die kliënt gekanselleer is;
   4.1.1.3 Waar enige sodanige kliënt agterstallig is met meer as een maandelikse premie, of meer as een jaarlikse premie, indien die kliënt jaarliks betaal

   4.1.2 **Waar 'n kliënt onbillik opgetree het weens sy/haar versuim om:**

   4.1.2.1 SEESA te raadpleeg;
   4.1.2.2 Op te tree ooreenkomstig SEESA se advies oor die toepaslike stappe om te volg;
   4.1.2.3 Nagelaat het om SEESA te betrek by die tersaaklike prosedure.

   4.1.3 **Waar die dispuut, toekenning of bevel betrekking het op:**

   4.1.3.1 Die kliënt se versuim om op te tree of te registreer ingevolge die Wet op Vergoeding vir Beroepsbeserings en Siektes 1993, WVF, die Wet op Gelyke Indiensneming of ingevolge enige Bedingingsraad;

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4.1.3.2 Onbetaalde vergoeding, fooie of ander gelde wat betaalbaar is of was ingevolge enige Bedingingsraad se Hoofooreenkoms of Sektorale Vasstelling;

4.1.3.3 Die betaling van afleggingspakkette in die geval van afleggings;

4.1.3.4 Enige statutêre betalings soos opgehoopte verlof, WVF of LBS;

4.1.3.5 Die betaling van enige bedrag vir 'n toekenning ten gunste van 'n huiswerker;

4.1.3.6 `n Konstruktiewe ontslag waar SEESA nie geraadpleeg is nie of waar die kliënt se optrede die bewerings teen hom/haar staaf.

4.2 **Die betaling van enige toekenning of bevel waar:**

4.2.1 Die kliënt versuim het om SEESA betyds in te lig oor enige hangende dispuut of `n verskyningsdatum of versuim of geweier het om hom/haarself of enige ander getuie beskikbaar te stel of saam te werk of dokumentasie te verskaf soos versoek, ten einde SEESA in staat te stel om die saak doeltreffend te verdedig;

4.2.2 Die kliënt nalatig of opsetlik versuim het om inligting of getuienis voor te lê gedurende enige prosedure gedoen deur SEESA namens die werkgewer, of deur enige ander entiteit of persoon aangestel deur SEESA, waar die inligting of getuienis 'n verskil sou maak in die substantiewe of prosedurele gevolg van daardie prosedure, indien die inligting of getuienis van meets af geopenbaar was;

4.2.3 Die kliënt versuim om getuienis te voorsien of getuienis lewer wat teenstrydig is met wat geopenbaar was in die prosedure voorheen aangevoer deur SEESA, of enige ander entiteit of persoon aangestel deur SEESA, hetsy viva voce of dokumentêr van aard, in enige Kommissie vir Bemiddeling Mediasie en Arbitrasie, Bedingingsraad, Arbeidshof, Arbeidsappèlhof, Appèlhof of Konstitusionele Hof aangeleentheid, wat 'n ongunstige uitkoms tot gevolg het;

4.2.4 Die kliënt se eis in enige opsig op bedrog of 'n kriminele handeling neerkom of waar so `n bevinding in `n uitspraak of toekenning gemaak word of daaruit blyk.

## 5. <u>VERPLIGTINGE</u>

5.1 Die kliënt moet die uiterste sorg aan die dag lê ten einde te verseker dat hy/sy SEESA om advies nader en daarvolgens handel en moet SEESA , as arbeidsverteenwoordiger, tydig raadpleeg oor die aangewese stappe wat geneem moet word en/of SEESA versoek word om die toepaslike stappe of prosedure te behartig, in gevalle waar optrede vermeld in paragraaf 3 hierbo voorsien word of waar 'n dispuut moontlik kan ontstaan.

5.2 **Die kliënt moet SEESA onmiddellik inlig en van afskrifte voorsien van:**

5.2.1 Enige verwysing van 'n dispuut of enige daaropvolgende kennisgewing van die datum van konsiliasie of arbitrasie of enige ander hangende dispuut;

5.2.2 Enige toekenning wat teen 'n SEESA kliënt gemaak is.

5.3 'n Kliënt mag geen verantwoordelikheid namens SEESA aanvaar of enige waarborge namens SEESA verskaf nie.

## 6. <u>ADMINISTRASIE EN DISKRESIE</u>

6.1. **Die Besturende Direkteur van SEESA (Edms.) Bpk. mag volgens sy uitsluitlike diskresie, op skriftelike versoek met voldoende motivering:**

6.1.1 Betaling magtig van 'n eis bedrag hoër as die bedrag bepaal in paragraaf 2 hierbo;

6.1.2 Betaling magtig uit die waarborgfonds van enige buitensporige regskoste aangegaan deur 'n SEESA-kliënt ten opsigte van enige arbeidsdispuut of uitsetting;

6.1.3 Betaling magtig van enige eis wat nie voldoen aan al die terme en voorwaardes hierbo vermeld nie.

6.2 Geen voordele ingevolge hierdie waarborg is oordraagbaar van een jaar na 'n volgende jaar nie.

6.3 Waar daar hierin verwys word na "SEESA" sal dit ook enige ander entiteit of persoon insluit wat deur SEESA aangestel word om namens hulle of namens die kliënt op te tree.