

## **Unfair Contract Assistance**

### **Services Agreement**

### **Terms and Conditions**

As a Protected Members **You** have access to Self-Employed Australia’s assistance in handling unfair contracts. This document sets out the terms and conditions of that member benefit entitlement.

#### **1. What is covered**

When **You** become a Protected Member, Self Employed Australia provides **You** advocacy services and assistance in relation to most forms of alleged unfair contract **You** may have when dealing with a large business or organization.

#### **2. Value of Services**

Services may be provided up to a limit of \$15,000.

#### **3. Conditions**

**You** must

- a. be a fully financial *Protected Member* of Self Employed Australia.
- b. contact **Us** as soon as practical when **You** have concerns that **Your** contract may be unfair
- c. work with **Us** after the Claim is first made
- e. appoint **Us** as your Contract Advocate
- f. have maintained and must continue to maintain accurate, truthful and up to date information on your contract
- g. provide copies of relevant documentation to **Us** between **Your Client** and **You** in relation to the contract.

#### **4. The services we provide You**

If **You** think **You** have an unfair contract **We** will review the contract, give **You** a report and discuss this with **You**. We identify the terms in **Your** contract that may breach the unfair contract laws. We discuss **Your** options with **You** and whether **You** wish to proceed or not.

If **You** want further help, **You** appoint **Us** as **Your** ‘Contract Advocate’

**We** can take action based on what **You** want to do and what **You** approve and may include any of the following;

- Draft a letter to the other party that **You** send (or)
- Draft a letter to the other party that **We** send which may or may not identify **You**, depending on **Your** wishes. That is, **We** can make representations to the other party to the contract highlighting clauses in the contract that may breach the law. (or)
- Assist **You** where **You** have direct discussions with the other party to seek resolution (or)
- Undertake discussions with the other party seeking to have the contract reviewed/fixd.

If these efforts fail to fix the contract:

- **We** can prepare a complaint against the other party with any or several government authorities with authority over unfair contracts. The complaint can be lodged by **You** or by **Us**—either revealing **Your** identify or not revealing **Your** identity, as **You** determine. We discuss with **You** the available strategies and **You** decide on the action.

- The appropriate government authority will investigate, report and take action where they conclude that there is a breach of the unfair contract laws.
- **We** follow through with the government authorities as to action that can be taken and maintain liaison with **You**.

At all times **You** retain control of the process. **You** can proceed or stop at any time.

## 5. Confidentiality

We undertake to keep all **Your** information confidential and to undertake action only with **Your** explicit approval.

## 6. What is not covered

- Any costs incurred in dealing with matters not specifically related to the contract **You** may have
- Any Claim where deliberate mis-statements have been made by **You** with intent to deceive;
- Any costs arising from or relating to situations where litigation occurs before a court or tribunal
- Cost of **Your** time associated with the preparation and submissions necessary to advance **Your** matter

## 7. Contracts before becoming a Protected Member

Where **You** enter a contract before becoming a Protected Member the services may be provided by **Us** only at our total discretion.

## 8. Various Liabilities

**Your** Protected Member benefits do not cover compensation, damages, interest, penalties or taxes which **You** or your **Partners** or **Directors** are ordered or agree to pay.

## 9. Excluded Claims

Any Claim:

- notified to **Us** before **Your** Protected Membership is approved except where **We** exercise **Our** discretion to provide the services.
- notified to **Us** after **Your** Protected Membership expires or ceases.
- Any claim for services under the **Policy** which is false, fraudulent or exaggerated.
- Any **Claim** concerning or arising from:
  - a dispute between the **You**, and **Us** , about this **Policy**;
  - an application for judicial review.
- not arising out of Normal Business Activities.
- against **You** or any **Partner** or **Director** for alleged negligent act, error or omission of a type covered under professional indemnity, directors and officers,

## 10. Excluded Costs

- All costs associated with an appeal involving litigation heard before a Court or Tribunal.
- All costs arising from **Your** unreasonable behaviour or failing.
- All costs arising from breach of **Your** duties under this Services Undertaking or acts of **Yours** that cause prejudice to **Us**.

- All costs arising from **You** acting against or differently from the advice of **Us** where **We** have notified **You** of the advice and **You** have been afforded a reasonable period to consider the advice
- All costs incurred in unnecessary correspondence.

## 11. Reporting of Claims

- **Claims** are only covered if **You** notify **Us** of the **Claim** before the expiration of your Protected Membership.
- **You** will be sent a claim form. **You** must fill this in fully and truthfully and return it to the **Us** and give **Us**, at **Your** own cost, any documentation, evidence, or other information that the **We** may reasonably need in order to assess the **Claim**.

## 12. Acceptance of claim

- **We** will pay the **Costs** incurred after **We** accept the **Claim** in writing.
- **We** will only meet the **Costs** of the **Claim** which have been agreed in advance by **Us** as to both amount and purpose.
- If **You** disagree with the **Our** decision, **You** can refer the matter under the DISPUTES procedure.

## 13. Insolvency

**We** are not obliged to provide services if, at any time, **You** are made bankrupt or go into liquidation or file a bankruptcy petition or winding up petition or makes an arrangement with **Us** or **Your** creditors or enter into a deed of arrangement or part or all of **Your** affairs or property are in the control of a receiver or administrator.

## 14. Agreement

**We** are not bound by any agreement that **You** make without **Our** prior approval or permission.

## 15. Waiver

If the **We** waiver any right or breach of any term of this **Services Agreement**, this will not waive any other right or later breach.

## 16. Transferring Your Rights

**You** cannot transfer your rights under this Protected Membership.

## 17. Other Parties and Interests

**We** will not indemnify any one that has not been accepted as a Protected Member by **Us**.

## 18. Definitions

Unless the context otherwise requires, the following words and expressions shall bear the meaning set out below:

### a) **Us/We/Our**

Means *Self Employed Australia* the business name of Independent Contractors of Australia Inc (ABN: 54 403 453 626) a not for profit association, their agents and representatives acting together or separately.

### b) **You/Your.**

Means the self-employed person operating a small business either as an individual, sole trader, partnership, company or trust, who has applied to and been accepted by *Self Employed Australia* as a Protected Member and who has paid the required fees such that the membership is current and financial and whose trading address is within the **Territorial Limits**.

- c) **Costs**  
Means the professional fees and disbursements payable in respect of the **Claim**, which have been incurred at the direction of **Us** and whose reasonable but excludes any such fees and disbursements recovered by **You**.
- d) **Court or Tribunal**  
means a court, tribunal or other statutory body of competent jurisdiction within the **Territorial Limits**.
- e) **Director**  
means a director or other board member of **You** where **You** is a company.
- f) **Limit of Indemnity**  
means \$A15,000 being the maximum sum payable in connection with the one event or series of events attributable to a single source or cause or to a single set of circumstances,
- g) **Normal Business Activities**  
means the normal business activities as declared by **You**, including reasonable associated and related activities.
- h) **Partner**  
means where **You** are a partnership, any of the partners within that partnership.
- i) **Member benefits**  
means the undertakings between **Us** and **You** as set out in this document.
- j) **Territorial Limits**  
means the Commonwealth of Australia and its external territories and an Australian State or Territory.
- k) **Unfair Contract**  
means a contract that is in breach or potentially in breach of the Commonwealth, *Treasury Legislation Amendment (Small Business Unfair Contract Terms Act 2015 No.147, 2015*  
<https://www.legislation.gov.au/Details/C2015A00147/Html/Text>

## 19. Disputes

*Protected Member.* If **You** have a dispute over the acceptance or cost of **Your** Claim and the dispute cannot be settled between **You** and **Us**, we agree to refer the dispute to the Small Business Commissioner in Victoria for mediation.

### **Please Note:**

Reference to any statute or statutory provision and orders or regulations there under shall include a reference to that statute, provision, order or regulation as amended, re-enacted or replaced from time to time.

Unless the context otherwise requires reference to the singular includes the plural and the plural includes the singular.

Headings are for convenience only and do not affect the interpretation or form part of this member benefits policy.



**Appointment of Contract Advocate  
Disclaimer and Release**

I,

Name: ..... of

Address: .....

.....,

being a Protected Member of Self-Employed Australia (SEA) have been in discussions with SEA in relation to a possible unfair contract under which I work. I hereby appoint SEA to act as my 'Contract Advocate' to assist me in seeking resolution of my contract issues.

I accept, agree and undertake that SEA, its representatives, board and directors are not acting for, or on behalf of, myself or representing me in any way but are acting as my advocate. As my advocate, I authorize SEA to initiate actions as agreed by me to see if they can assist me to achieve commercial resolution in my dispute over the contract.

I agree that SEA will keep me informed of their planned and actual actions and I agree that such actions are reasonable and helpful.

I understand and agree that SEA is not and does not offer me professional, legal, taxation, financial or other advice.

I accept, agree and undertake that any actions I may take in relation to my concern or dispute are taken entirely on my own initiative and at my exclusive risk following my obtaining independent legal and other professional advice. Further, that SEA is not responsible or liable for any actions I may initiate or undertake.

I accept, agree and undertake that SEA, its representatives, board and directors are not liable in any way for any costs, fines or any other financial imposition on me as a result my contract. I undertake that I will not initiate any action of any sort against SEA, its representatives, board or directors on any matter relating to my concern or dispute under the alleged unfair contract. Further that should I initiate any action of any sort against SEA, its representatives, board or directors I agree to pay in full any legal and professional assistance and court costs that SEA, its representatives, board and directors may incur as a result of having to defend themselves against my actions.

SEA undertakes to keep all my information and documentation confidential and to only use my information and documentation with my express approval.

Signed

Date