

DATED

[INSERT DATE]

DAMAGES-BASED AGREEMENT

between

LAVEER LEGAL

and

[INSERT NAME]

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THIS AGREEMENT is dated [date]

PARTIES

- (1) Laveer Legal of 11th Floor, Regent House, Heaton Lane, Stockport, SK4 1BS.
- (2) [name] of [address].

BACKGROUND

This agreement is a Non-Contentious Business Agreement within the meaning of section 57 of the Solicitors Act 1974, and a Damages-Based Agreement within the meaning of section 58AA of the Courts and Legal Services Act 1990 and the Damages-Based Agreements Regulations 2013 (*SI 2013/609*).

AGREED TERMS

1. DEFINITIONS

In this agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

costs: our charges for the time we have spent on your case, calculated at an hourly rate of £250 plus VAT in accordance with *paragraph 13* below.

Defendant: [INSERT NAME/S OF R] of whom are (may be referred to as Respondent dependant on jurisdiction the claim is issued in) the individual/s, company or companies, you hereby instruct Laveer Legal to pursue a claim against. Any reference to Respondent in this agreement should be read as meaning the same as Defendant.

expenses: the cost of instructing third parties, such as barristers and experts, any fees payable to the court or employment tribunal, and our disbursements as set out in *paragraph 10*, incurred in connection with the pursuit of your claims.

lose: no settlement is reached between you and your opponent and the court or tribunal decides against you in respect of all of your claims.

Respondent: [INSERT NAME/S OF R] of whom are (maybe referred to as Defendant dependant on jurisdiction the claim is issued in) the individual/s, company or companies, you hereby instruct Laveer Legal to pursue a claim against. Any reference to Defendant in this agreement should be read as meaning the same as Respondent.

we: Laveer Legal

win: either the court or tribunal decides in your favour in respect of one or more of your claims or you accept an offer of settlement made by Respondent/s or Defendant/s) or its receivers, trustees in bankruptcy or administrators, or under a voluntary agreement. As part of a decision in your favour, or the terms of settlement, you may receive non-cash benefits (for example, you may get your job back) as well as financial compensation. We agree that any non-cash benefits will be assessed for

the purposes of calculating your payment to us on the following basis of our hourly rate.

Us: Laveer Legal

you: [NAME]

your claims: the claims set out in *paragraph 3*

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended 002E

- 1.1 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.

2. INFORMATION PROVIDED TO YOU IN ADVANCE

- 2.1 Where applicable, we have advised you about the following:
 - (a) the dispute resolution service provided by the Advisory, Conciliation and Arbitration Service (Acas) in relation to both potential and actual claims;
 - (b) possible alternative means of financing the claims you wish to pursue (including the Legal Aid Agency Scheme, and legal expenses insurance) and of the possibility of assistance from pro bono organisations or trade union representation;

- (c) your responsibility for payment of expenses if you decide to enter into this agreement, including the amount (including VAT) of expenses we estimate you will incur and the time at which those expenses will become payable; and
- (d) the circumstances in which you may seek a review of our costs and expenses and the procedure for doing so.

2.2 We confirmed that we would provide any further explanation, advice or information about any of these matters that you require.

3. THE PURPOSE OF THIS AGREEMENT

3.1 You enter this agreement with us for the pursuit of Your Claims arising out of your employment with the Respondent/ Defendant for [INSERT LIST OF claims] (“Your Claims”)

4. WHAT THIS AGREEMENT DOES NOT COVER

This agreement is limited to pursuit of your claims identified in *paragraph 3* above. In particular, it does **not** cover:

- (a) any claims or counterclaims that the Respondent/Defendant may bring against you;
- (b) any appeal that either you or the Respondent/Defendant may make including, but not limited to any appeal to the Employment Appeal Tribunal, county court, high court, court of appeal and any other court or tribunal which may have jurisdiction to hear an appeal; or
- (c) any reference to the Court of Justice of the European Union.

5. OUR DUTIES UNDER THIS AGREEMENT

Subject to our professional duty to the court and or tribunal, we will act in your best interests in pursuit of your claims. We will discuss each step of the litigation process with you, advise you on how to proceed and whether to accept any offer of settlement that the Respondent / Defendant may make.

6. YOUR DUTIES UNDER THIS AGREEMENT

6.1 So that we can do our job under this agreement, you must co-operate with us and promptly provide information and documents that we may ask for. You must not mislead us or ask us to work for you in an unreasonable or improper way.

6.2 Where applicable, You must comply with the requirements of Acas early conciliation and any internal grievance procedure we advise you to follow. You must comply with any pre-action protocol where required. You must attend all court and or tribunal

hearings when asked and pay expenses in accordance with the terms of this agreement.

- 6.3 Where applicable, if your employment with the Respondent / Defendant has ended, you must take all reasonable steps to find suitable alternative employment and keep thorough records of your job search. You must promptly tell us of any job offers made to you, whether you intend to accept the job or not.
- 6.4 If you are still working for Respondent/ Defendant, you must promptly notify us of any changes in your employment circumstances, including any changes to your job title, pay or hours of work, and any changes in your employer such as a TUPE transfer.

7. EARLY TERMINATION OF THIS AGREEMENT

- 7.1 In entering this agreement, it is our intention to reach a successful conclusion of your claims either before the court and or tribunal or through settlement. However, there are circumstances in which either one of us may wish to end this agreement before then. With the exception of the circumstances in *paragraph 7.2* below (in which you agree not to terminate this agreement), you may terminate this agreement at any time. You have 14-days from signing the agreement to cancel the contract for any reason. You will be given a refund of any premiums you have already paid. However, a small amount to cover work undertaken on your behalf may also be reduced from any payments made and an administration fee of £35 will be deducted from any monies held on account or you will be required to pay if accepted under a damages based agreement. For this reason, Laveer Legal will only begin work 14 days *after* this agreement has been signed so as to not incur charges that we may not be able to recover. If you require Laveer Legal to begin work *during* the 14-days ‘cooling off’ period, you must provide your express consent in writing to the fee earner handling your case. Thereafter the 14-days ‘cooling off’ period you are then liable to pay our costs and the expenses incurred up to the date of termination calculated as set out in *paragraph 13* within four weeks of delivery of our bill to you.
- 7.2 You agree not to terminate this agreement after any settlement has been agreed or in the seven days before a tribunal hearing.
- 7.3 We can end this agreement if we consider that you have not behaved reasonably, for example because you fail to meet your obligations as set out in *paragraph 6*. You will then be liable to pay our costs and the expenses incurred up to the date of termination calculated as set out in *paragraph 13* within four weeks of delivery of our bill to you.
- 7.4 For the avoidance of doubt, we consider that failing to accept our advice on your prospects of success AND/OR whether any offer of settlement should be accepted AND/OR whether any offer of settlement should be made (and, if so, on what terms)

and that failing to take reasonable steps to find alternative employment and keep a record of those steps will amount to unreasonable behaviour on your part. We can end this agreement if we consider that you are unlikely to win and you disagree with us. You will then be liable to pay our costs and the expenses incurred up to the date of termination.

7.5 *Paragraph 7.2 and paragraph 7.3* above are without prejudice to any right of either party under the general law of contract to terminate this agreement.

7.6 If this agreement ends in any of the circumstances referred to in this *paragraph 7*, we will tell the tribunal, Respondent/ Defendant and anyone who may be representing it that we are no longer representing you. You will be free to deal with your claims on your own behalf or to instruct someone else to do so. As long as all fees incurred with Laveer Legal are settled then your files and all property in our possession will be returned without delay.

8. REPRESENTATION AT HEARINGS

8.1 You agree that we can instruct a barrister or advocate to represent you at any tribunal hearing including, without limitation, any preliminary hearing, any merits hearing, any final substantive hearing and at any remedies hearing. However, we will not instruct anyone without your express consent first and will always advise you of the proposed fees in advance before we request your consent. You agree not to unreasonably withhold your consent in respect of this clause 8.1 and if you do so this would be considered a potential breach of our agreement which will give rise to us being able to terminate the agreement”.

8.2 You agree to be responsible for payment of the barrister's or advocate's fees (as explained in *paragraph 10* below). We may ask you to provide a payment in advance to cover these fees before any hearing at which they are instructed to represent you. You agree not to represent yourself or instruct anyone else to represent you at any tribunal hearing unless we agree in advance.

8.3 Laveer Legal work alongside a number of advocates who may accept to represent you at a final hearing under a ‘no win no fee’ agreement if they share our view that your claim has reasonable prospects of success. If so, this will be under similar terms as this Agreement, in that a fee will be agreed in advance (usually based on duration and complexity of the hearing) and if you win you agree to pay them the agreed fee which is deduced from any money and any non-monetary award or settlement received. If you Lose, like us, you will not be liable to pay the advocate anything. Once a final hearing date has been set we will obtain a fixed fee (which is usually subject to VAT) of what fee would be payable to the advocate in the event you are successful. If you lose you will not be liable to pay anything to the advocate for representation at the final hearing.

9. IF THE TRIBUNAL OR COURT MAKES A COSTS ORDER FOR OR AGAINST YOU

- 9.1 While your case is proceeding before the court or tribunal, a costs order may be made in your favour or one may be made against you. It is rare for a tribunal to make a costs order. We will advise you if we believe this is likely to happen.
- 9.2 If the Respondent/ Defendant acts unreasonably or vexatiously in defending your claim, you agree that we are entitled to charge you for our costs incurred in dealing with that unreasonable or vexatious conduct, calculated in accordance with clause 13 of this agreement. You agree that we may seek a costs order from the court or tribunal against Respondent/ Defendant to recover those costs. If we are unsuccessful in obtaining a costs order against the Respondent / Defendant we agree that we will refund those costs to you (if you have already paid them) or no longer charge those costs to you (if you are yet to pay them).
- 9.3 If the court or tribunal awards costs against the Respondent/ Defendant and you have not yet paid us in respect of those costs, you agree for those costs to be paid direct to us. If the Respondent/ Defendant refuses to pay us direct, you agree to pay us those costs on receipt.
- 9.4 For the purpose of recovering such costs from the Respondent/ Defendant, our costs will be the amount ordered by the court or tribunal or calculated in accordance with any court or tribunal order or direction. If the award includes payment of expenses that you are responsible for, as long as we receive payment from the Respondent/ Defendant, these will be repaid to you (if you have already paid them) or not charged to you (if you are yet to pay them).
- 9.5 The amount of any costs received from the Respondent/ Defendant following a tribunal order will be deducted from our share of any settlement or tribunal compensation ordered, in accordance with clause 11 of this agreement.
- 9.6 If the court or tribunal awards costs against you, you agree to pay the amount ordered by the court or tribunal or the amount calculated in accordance with any court or tribunal direction.

10. EXPENSES

- 10.1 You are responsible for paying expenses that are incurred on your behalf regardless of whether you Win or you Lose. After the event insurance (“ATE”): if you have purchased ATE insurance then in line with the terms of this policy, in the event that you are successful you will pay (or Laveer Legal will deduct the premium of this policy from any settlement or award you receive) the premium due under the terms

and conditions of the insurance policy. If you are unsuccessful the ATE policy will cover the cost of all expenses so you pay nothing.

10.2 Expenses typically include:

- (a) Fees that may be due to the court or tribunal;
- (b) Fees paid to a barrister. These may be for advice given in a conference and for representing you at hearings before the court or tribunal. If your case settles shortly before a hearing and your barrister has started to prepare your case, you may still have to pay part of their fee.
- (c) Fees paid to an expert. These may be for the production of an expert's report and for the expert's attendance at any court or tribunal hearing.
- (d) Premiums due under an ATE insurance policy.

11. IF YOU WIN

11.1 If you win, you agree to pay us a share of 35% of any money and any non-monetary award or settlement received. This includes VAT but does not include the expenses as detailed in 10.2 above that you are responsible for in accordance with the terms of this agreement.

11.2 You agree that we may receive any financial award the Respondent/ Defendant is ordered to pay to you. If the Respondent/ Defendant refuses to make payment to us and insists on paying you direct, you agree that a cheque will be paid or money transferred into a bank account in our joint names. We will take our payment and any outstanding expenses from that account in line with clause 10.2 and then you will take the balance.

11.3 You agree that if the Respondent/ Defendant fails to comply with an agreement or order to pay you compensation, you will use all reasonable endeavours in assisting us to recover the money due to you. You agree that this will include the right for us to take action in your name to enforce an order or agreement. We will seek to recover from your employer the costs of any enforcement action taken. However, you agree that you will be ultimately responsible for the costs of and expenses incurred in any action required by us in this regard. Our costs will be calculated in accordance with *paragraph 13*

12. IF YOU LOSE

If you lose your claims, you do not have to pay anything.

13. CALCULATION OF OUR COSTS

- 13.1 If you are ordered to pay costs or we are entitled to claim costs from you under the terms of this agreement, those costs will be calculated at our hourly rate of £250 + vat

14. COMPLAINTS PROCEDURE

- 14.1 It is our intention to provide you with a high level of customer service at all times. If there are occasions when you feel we failed to meet these standards and you wish to register a complaint, please contact the member of staff you were dealing with, either verbally or in writing at the above address as a first attempt to resolve any complaint you may have.
- 14.2 If you remain dissatisfied with the outcome, then please send a written complaint marked for the attention of one of our directors (Ben Norman or Samantha Quinn). This can be sent by post to 11th Floor, Regent House, Heaton Lane, Stockport, Cheshire, SK4 1BS. Alternatively send it via email to help@laveerlegal.co.uk marked for the attention of one of our directors and this will be passed on accordingly.
- 14.3 You will be contacted within 5 working days of your complaint being received and we will take any further details we feel may be required to adequately deal with your concerns and we will then acknowledge, in writing, advising you of who is dealing with the matter. We aim to provide a full response within 30 days of acknowledging receipt of your complaint.
- 14.4 In the event that you remain dissatisfied with the outcome of your complaint then you are at liberty to address your complaint to the legal ombudsman (www.legalombudsman.org.uk/cmcc) where you will find their complaints procedure. Alternatively, contact them directly on 0300 555 0333.
- 14.5 Our registered name is Laveer Legal Limited whose registered address is 11th Floor, Regent House, Heaton Lane, Stockport, Cheshire, SK4 1BS. Laveer Legal is regulated by the Claimant Management Regulator in respect of claims management activities (CRM3222).

15. DATA PROTECTION

- 15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 15, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.

- 15.2 The parties acknowledge that for the purposes of the Data Protection Legislation, You are the controller and We are the processor.
- 15.3 Without prejudice to the generality of Clause 15.1, the You will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Us for the duration and purposes of this Agreement.
- 15.4 Without prejudice to the generality of Clause 15.1, We shall, in relation to any personal data processed in connection with the performance by the Us of our obligations under the Contract:
- (a) process that personal data only on the documented written instructions of You unless We are required by Applicable Laws to otherwise process that personal data. Where We are relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, We shall promptly notify You of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Us from so notifying You;
 - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of You has been obtained and the following conditions are fulfilled:
 - (i) You or the Us have provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;

(iii) We have complied with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) We have complied with reasonable instructions notified to it in advance by You in respect to the processing of the personal data;

(f) notify You without undue delay on becoming aware of a personal data breach;

(g) at the written direction of You, delete or return personal data and copies thereof to You on termination of the agreement unless required by Applicable Law to store the personal data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 15 and allow for audits by You or Your designated auditor and immediately inform You if, in the opinion of Us, an instruction infringes the Data Protection Legislation.

15.5 You DO consent to Us appointing any third party processor, (in so much as is or may become necessary for Us to meet our obligations under the contract) of Personal Data under the Contract. We confirm that any it has entered or (as the case may be) will enter with the third party processor into a written agreement substantially on that third party's standard terms of business and which We confirm reflect and will continue to reflect the requirements of the Data Protection Legislation.

16. GOVERNING LAW AND JURISDICTION

16.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

16.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

This agreement is entered on [date]

Signed by
[name]

For and on behalf of Laveer Legal.

I, [insert name], confirm that my rights and liabilities under this agreement and any possible alternative methods of funding my claims have been explained to me before entering into this agreement.

Signed by
[insert name]