

## **DAMAGES-BASED AGREEMENT**

This Agreement is a Damages-Based Agreement (“DBA”). A DBA is a form of “no win no fee” arrangement whereby lawyers take a percentage of any compensation you obtain but only if you win your case.

This Agreement is a legally binding contract between you and Leigh Day.

Agreement Date: **(Insert Date)**.....

### **1. The parties**

- (1) Leigh Day of Priory House, 25 St John’s Lane, London EC1M 4LB (referred to below as “us” and “we”)
- (2) **(Insert Name)**.....(referred to below as “you”)

### **2. Work covered by this Agreement**

- Work done by us from the start of the case in respect of your Employment Tribunal claim against Asda Stores Limited or an associated company.

### **3. Work not covered by this Agreement**

- Any counterclaim against you
- Any appeal proceedings

### **4. What happens if you Win**

If you win your claim you pay us a fee equivalent to 25% (plus VAT) of any compensation awarded by the Employment Tribunal or any settlement sum obtained. You will not be charged any additional fee for disbursements. A “win” for the purposes of this Agreement means:

- The Employment Tribunal award you a sum of compensation in respect of all or any of your complaints; and/or
- You agree to accept compensation under a settlement.

Disbursements are payments we make on your behalf to others involved in the case. We would expect the only disbursements to be barristers’ fees, experts’ fees and Employment Tribunal fees. We may also incur travelling and subsistence expenses for attending any tribunal hearing or meetings.

Any fees due to the Employment Tribunal for issuing the claim and for the full hearing fee are included under this Agreement.

If you lose the claim (meaning that an employment tribunal reaches a decision which does not uphold the claim or part of the claim) you do not pay us anything. We will pay the disbursements that have been incurred on the claim and the VAT on disbursements including any tribunal fees.

The level of the fee is based upon our assessment of the claim as set out in the schedule at the end of this Agreement.

For what happens if the Agreement ends before the case is won or lost, please refer to paragraph 8.

You agree that we may receive the compensation your opponent has to pay and deduct our fee from that sum received. We agree to pay you the remainder of the compensation.

If your opponent fails to pay any compensation or settlement sum owed to you we have the right to take recovery action in your name to enforce a judgment, order or agreement. The costs of this action are payable by you to us in addition to our fee.

## **5. What happens if you lose**

If you lose the Claim you do not have to pay us anything.

## **6. Our responsibilities**

We must always act in your best interests in pursuing your claim for compensation and obtaining for you the best result reasonably obtainable. We must explain to you the risks and benefits of taking legal action. We must give you our best advice about whether to accept any offer of settlement.

## **7. Your responsibilities**

You must give us clear instructions, which allow us to do our work properly. You must not ask us to work in an improper or unreasonable way. You must not deliberately mislead us. You must co-operate with us when asked.

## 8. Our normal professional charges

These are for work done from the date of the Agreement until the Agreement ends. They will only apply if for one of the reasons set out above you become liable for our normal professional charges.

## 9. How we calculate our normal professional charges

These are calculated for each hour engaged on your matter. Routine letters and telephone calls will be charged as units of one tenth of an hour. Other letters and telephone calls will be charged on a time spent basis. The hourly rates are:

Grade of Fee Earner	Hourly Rate (London / Manchester office)
1 Solicitors or employed barristers with over eight years post qualification experience including at least eight years litigation experience.	<b>£420 / £217</b>
2 Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience.	<b>£320 / £192</b>
3 Other solicitors and legal executives and fee earners of equivalent experience	<b>£250 / £161</b>
4 Trainee solicitors, paralegals and other fee earners.	<b>£145 / £118</b>

These rates are subject to review and we will notify you of any change in the above rates in writing.

## 10. What happens if the Agreement ends before the Claim ends

You can end the Agreement at any time except for:

- after a settlement has been agreed; or
- within 7 days before the start of the Employment Tribunal full hearing.

But please be aware that if you end the Agreement before we agree with you that the work on the Claim has ended you agree that you shall be liable to pay our costs incurred up to the date you end the Agreement calculated at the hourly rate plus the costs of any disbursements and VAT.

We have agreed to act on your behalf without payment unless we win or settle the claim. We are potentially acting for you without payment and can therefore end the Agreement at any time.

If you have behaved or are behaving unreasonably we can end the Agreement at any time and charge you for our costs up to the date the Agreement ends.

The following are examples (but not an exclusive list) of the circumstances which might constitute unreasonable behavior and lead us to end the Agreement:-

- a. If you do not keep to your responsibilities in paragraph 7 above. You are then liable to pay us our costs incurred up to the date the Agreement ends calculated at the usual hourly rate plus VAT.
- b. If you reject our opinion about making a settlement with your opponent. You are then liable to pay us our costs incurred up to the date the Agreement ends calculated at the usual hourly rate plus VAT. Please note that we will only advise that you accept a settlement if the sum offered, having regard to the value of any likely compensation and your prospects of success, is, in our opinion, a reasonable sum.

We can end the Agreement at any time but will not charge you for our costs up to the date the Agreement ends in the following circumstances:

- a. If we come to believe that you are unlikely to win and/or should withdraw the Claim;
- b. If the value of the claim does not make it financially worthwhile for us to pursue the Claim;
- c. If your opponent makes a counterclaim against you or makes allegations or produces evidence which in our opinion increase the risk of losing the Claim and we no longer believe that we should act for you on a "No win, No fee" basis.

In any circumstances where we end the Agreement, we will explain our reasons to you in full and will discuss whether we are prepared to enter into a replacement agreement on different terms and, if not, what our normal professional charges would be to continue to act on your behalf.

Once you have entered into this agreement your right to challenge the terms including the hourly rates set out in this leaflet will be restricted. If you dispute the amount of our costs and expenses you have the right to make an application to the Court for these to be

checked. We will not make the application for you. You may make an application within a year of receiving a bill from us, but if you make the application more than a month after receiving a bill you may be ordered to pay some money to us or to court. If you delay for more than a year you may not be allowed to have our bill checked by the court.

## **11. Starting work**

By signing this Agreement you authorise us to start work on your case before the end of the 14-day cancellation period. If, in accordance with your instructions, we start work on your case and you then cancel the Agreement we will have the right to decide whether you must pay our basic charges and disbursements.

## **12. What happens after the Agreement ends**

After the Agreement ends we will apply to have our name removed from the record of the Employment Tribunal proceedings in which we are acting. We have the right to preserve our lien over any property of yours (including your full file of relevant documents) in our possession unless any money owed to us under this Agreement is paid in full. This means we can keep your papers until you pay us in full for any fees due from you under this Agreement.

## **13. Your opponent's costs**

Employment Tribunals have the power to award costs in limited circumstances only. Awarding costs means that one party is ordered to pay the other party's legal costs. At the date of entering into this Agreement we are not aware of any information about your Claim which gives rise to a risk of this happening. If such a risk arises as the Claim progresses we will notify you immediately.

If you win the Claim and we are able to recover all our normal professional charges from your opponent, you agree that we are entitled to keep these costs in full. This amount would be apportioned between the number of claimants, and deducted from the fee defined in paragraph 4 above. If we are only able to recover a portion of our costs from your opponent and that amount is less than the amount that would have been due under this Agreement you agree that you will be liable for the shortfall.

If you lose the Claim and you are ordered to pay costs to your opponent, then those costs will be payable by you. The circumstances in which costs may be ordered against you are set out below:

The 2013 Tribunal Regulations provide that a Tribunal may make a Costs Order against a Claimant (or Respondent) where the paying party has in bringing the proceedings, or her or his representative has in conducting the proceedings, acted vexatiously, abusively,

disruptively or otherwise unreasonably, or the claim or defence had no reasonable prospect of success.

The Tribunal may also make a costs order against a party who seeks an adjournment or postponement of a hearing or failed to comply with a Tribunal Order or Practice Direction.

.....  
Signed: for the Legal Representative:

.....  
Date

.....  
Signed by the client:

.....  
Date

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**FORM OF AUTHORITY**

I, **(Insert Name)**....., hereby authorise any compensation payable in my claim to be paid in the first instance to Messrs Leigh Day of Priory House, 25 St John's Lane, London EC1M 4LB either by BACS or cheque payable to Leigh Day.

I, **(Insert Name)**....., further authorise Leigh Day to deduct the Fee as defined at paragraph 4 in the Agreement prior to giving me the balance of my compensation.

Signed: .....

Dated: .....

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## Schedule

The Fee set out in the Agreement, which we are prepared to reduce from the maximum we are allowed to charge under the Damages Based Agreement Regulations 2013, reflects the following:

- a. the fact that if you lose, we will not earn anything and will have to pay for the disbursements incurred plus VAT. The disbursements, which will mainly be barristers' fees, could amount to millions of pounds;
- b. our assessment of the risks of your case, including the difficulties and complexities inherent in claims concerning Equal pay brought on behalf of large amount of Claimants which will impact upon the Claim
- c. the fact that we will not be paid except to the extent that you win and recover some financial benefit;
- d. the fact that the Claim may require several preliminary hearings, and a complex and lengthy final hearing before the employment tribunal;
- e. the fact that the Claim is a Group Claim (one of several similar claims).
- f. Our experience of Equal Pay litigation against Asda Stores Limited is that they are likely to contest every legal point open to them rather than seeking an amicable resolution.

We do not include in the Fee any charge for the fact that, by agreeing to act for you under a contingency fee agreement, we are not generally entitled to be paid for our work until the claim is concluded.

**Notice of the right to cancel**

If you sign this Damages Based Agreement (DBA) in a place other than our offices you have the right to cancel it within 14 days of receiving this Notice. You do not have to give any reason for cancelling. This is under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

If you wish to cancel the DBA, you must do so in writing. This can either be a personal delivery, post, fax or email, at any time within the period of 14 days, starting with the day you enter into this DBA. The address to send any cancellation notice to is:

**Michael Newman**

Leigh Day  
Priory House  
25 St Johns Lane  
London EC1M 4LB

T: 0800 037 4045  
F: 020 7253 4433  
e: [asda@leighday.co.uk](mailto:asda@leighday.co.uk)

Quoting ref: **CDB.MEN.91643**

To meet the 14 day deadline, it is enough that you send your cancellation notice before the 14 day period comes to an end.

You may use the form below to cancel your DBA if you wish to, but it is not obligatory.

By signing this Agreement you give us specific written authority to start work on your case before the 14 day cancellation period has concluded.

If, in accordance with your instructions, we start work on your case and you then cancel the DBA we will have the right to decide whether you must pay our basic charges and disbursements.

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*Complete, detach and return this form ONLY IF YOU WISH TO CANCEL THE DBA*

To: Leigh Day, Priory House, 25 St Johns Lane, London EC1M 4LB

I, **(Insert Name)**....., hereby give notice that I wish to cancel my DBA with Leigh Day

Signed: ..... Date: .....

Ref: **CDB.MEN.91643**