

Annex B

Damages-Based Agreement (“Agreement”)

BETWEEN

- (1) Charles Lyndon Limited of 110 Cannon Street, London EC4N 6EU (“**Charles Lyndon**” or “**we**”) and
- (2) “**The Client**” or “**you**”

BACKGROUND

- (A) This Agreement is a contract made pursuant to the Damages-Based Agreements Regulations 2013 (SI 2013/609) (“**the DBA Regulations 2013**”) and contains the terms and conditions in which Charles Lyndon agrees to take on the Client’s claim on a contingency basis.

AGREED TERMS

1. DEFINITIONS

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

Claim: the Client’s claim for Damages against the Opponent(s) arising out of the fitting of the ‘defeat device’ within the Client’s vehicle or where the Client’s vehicle has been subject to a voluntary software recall.

Client: the natural person or corporate identified in the Engagement Letter.

Counsel Fees: fees charged by barristers engaged in respect of your claim. Counsel Fees are utilised for the purpose of calculating and seeking recovery of costs from the Opponent(s) by way of Recovered Costs.

Damages: money that the Client recovers in respect of the Claim from the Opponent(s) (or from another party on behalf of the Opponent(s)) other than Recovered Costs.

DBA Payment: is the amount that you are due to pay to us in the event that you Win your Claim, as set out in Clause 5 below.

Expenses: any disbursements that are incurred on your behalf in connection with the Claim within the meaning of “expenses” in the DBA Regulations 2013. For the avoidance of doubt, Expenses do not include our Fees or Counsel Fees.

Charles Lyndon Limited, 110 Cannon Street, London, EC4N 6EU.

t: +44 (0) 207 058 0050 e: info@charleslyndon.com www.charleslyndon.com

Registered office and correspondence address: 110 Cannon Street, London, EC4N 6EU. Charles Lyndon Limited is registered in England and Wales (Company No. 9636783). Charles Lyndon Limited is authorised and regulated by the Solicitors Regulation Authority (SRA No. 622797). Charles Lyndon Limited is a limited liability company and a list of directors’ names may be inspected at the above address.

Fees: the legal fees we would charge to act for you pursuant to a retainer which provides for payment of our fees based on the hours worked and our hourly rates. Fees are used for the purpose of calculating and seeking recovery of our legal fees from the Opponent(s) by way of Recovered Costs.

Lose: where the Client does not Win the Claim.

Opponent(s): Daimler AG, its subsidiaries, authorised dealerships or any other party found liable for your claim or its receivers, trustees in bankruptcy or administrators, or under a voluntary agreement, and/or any other entity against whom you issue proceedings against or agree a settlement with in respect of your Claim; and as may be amended from time to time.

Recovered Costs: all amounts paid or payable to you or us by the Opponent(s) (or anyone on their behalf) on account of: (i) our Fees; (ii) Counsel Fees; and/or (iii) Expenses.

we: Charles Lyndon and any or all of our lawful agents .

Win: by final judgment or settlement the Client obtains or obtains the right to Damages.

2.THE PURPOSE OF THIS AGREEMENT

2.1 You enter this Agreement with us for the pursuit of your Claim.

3.WHAT THIS AGREEMENT DOES NOT COVER

This Agreement is limited to pursuit of your Claim. It does not cover:

- (a) any claims or counterclaims that the Opponent(s) may bring against you;
- (b) any appeal that either you or the Opponent(s) may make;
- (c) any reference to the Court of Justice of the European Union; or
- (d) any steps taken to enforce the judgment, order or settlement agreement against the Opponent(s).

4.OUR DUTIES UNDER THIS AGREEMENT AND THE MANAGEMENT OF YOUR CLAIM

4.1 Subject to our professional duty to the court, we will act in your best interests in the pursuit of your claim. We will also comply with our obligations set out in the Engagement Letter.

4.2 As your claim is one of a large number of related claims being made against the Opponent(s), we have set out in our Engagement Letter how we propose the claims as a whole are managed.

5. OUR CHARGES

The DBA Payment

5.1 We have agreed to charge you based on a percentage of the Damages if you Win your Claim. The amount of this payment is called the DBA Payment. The DBA Payment will be 30% (excluding VAT) of the Damages. It is only payable if you Win the Claim.

5.2 The reasons for setting the percentage at 30% (excluding VAT) of the Damages are:

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(a) Charles Lyndon is taking the risk of not being paid at all if the Client Loses the Claim.

(b) Charles Lyndon is not being paid by you until you Win.

(c) The Opponent(s) are well-resourced and likely to contest your claim.

For the above reasons, Charles Lyndon believes this is a reasonable percentage to receive as the DBA Payment.

5.3 The DBA Payment is reduced by any Fees or Counsel Fees that have been paid or are payable by the Opponent(s) by way of Recovered Costs so that you only pay the DBA Payment net of those sums.

5.4 We are entitled to retain any Recovered Costs which are paid to you or to us by the Opponent(s) (or anyone on the Opponent(s)' behalf).

5.5 The DBA Payment is exclusive of any VAT, which will be charged in addition at the prevailing rate.

5.6. Even though we have agreed to charge for our work on the basis of a damages-based agreement, it is necessary to explain how our Fees and Counsel Fees are calculated for the purposes of claiming Recovered Costs from the Opponent. Details of our Fees are set out in the letter of engagement ("**Engagement Letter**"). Details of Counsel Fees are set out below.

Expenses

5.7 Expenses are treated differently. You will be liable for Expenses regardless of whether you Win the Claim. However, you will only be liable to pay Expenses at the conclusion of the Claim to the extent that such Expenses have not been paid or are not payable by the Opponent(s) by way of Recovered Costs ("the Expenses Liability").

5.8 Our Expenses include:

(a) Expenses incurred solely for the benefit of your Claim; and

(b) Your share of the Expenses incurred which are common to the group of claimants that we act for (as explained in our Engagement Letter). This will include your share of Expenses incurred by us from 11 February 2019 and this Agreement therefore operates retrospectively (if the same is permissible under the DBA Regulations 2013).

As explained in the Engagement Letter, certain expenses will be paid on your behalf by a third party Funder. Although those expenses are paid on your behalf, you will remain ultimately liable for them.

Counsel Fees

5.9 We may incur Counsel Fees on the basis of a separate agreement, which may be a DBA, conditional fee agreement or another basis.

5.10 The DBA Payment includes the cost of Counsel Fees. This is the case whether or not counsel agrees to act pursuant to a DBA or conditional fee agreement or any other basis.

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5.11 In calculating the DBA Payment, we must deduct any Counsel Fees that have been paid or which are payable by the Opponent(s), so that you only pay the DBA Payment net of any of our Fees and any Counsel Fees that have been paid or are payable by the Opponent(s) by way of Recovered Costs.

6.YOUR DUTIES UNDER THIS AGREEMENT

6.1 So that we can perform our obligations under this Agreement, you must co-operate with us fully in preparation of your claim, provide full, honest and timely instructions 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 You must pay all amounts due to us in accordance with this Agreement.

6.3 If you are requested to attend any court hearings in relation to your claim by the court or advised to attend by us, you must do so.

6.4 If you become aware of any circumstances that may require us to review the validity of your claim, you must inform us immediately, and provide the necessary documentation and evidence for the basis of the change of circumstances.

6.5 You agree not to represent yourself or instruct anyone other than we advise (such as the Steering Committee, as explained in the Engagement Letter) to represent you at court hearings or settlements meeting.

7. TERMINATION OF THIS AGREEMENT

7.1 In entering this Agreement it is our intention to reach a successful conclusion of your claim either through settlement or by issuing your claim at court. However, there are circumstances in which either one of us may wish to end this Agreement before then.

7.2 You may terminate this Agreement at any time. Unless you exercise your right to cancel within the cancellation period, if you do decide to terminate this Agreement, you are then liable to pay:

(a) our Expenses calculated in accordance with Clauses 5.7 and 5.8 above incurred up to the end of the calendar month in which the Agreement is terminated within 28 days of delivery of our bill to you; and

(b) the DBA Payment calculated in accordance with Clauses 5.1 – 5.6 above if you go on to Win the Claim and recover Damages from the Opponent(s).

7.3 In the event that you end our relationship you agree to keep us regularly informed of the progress of the Claim and you irrevocably agree that any new solicitor that you appoint shall provide us with regular information on request as to the progress of your Claim and answering such reasonable queries as we may raise on a timeous basis. You are obliged to immediately notify us in writing of any monies received (including any Damages or Recovered Costs), and to give irrevocable instructions to your new solicitors to hold the DBA Payment on trust for us.

7.4 We can end this Agreement if we have good reason to do so and upon reasonable notice. Good reason will include:

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- (a) where you have failed to meet your obligations as set out in clause 6;
- (b) if you fail to accept our advice on your prospects of success on whether any offer of settlement should be accepted or made;
- (c) if, in our reasonable opinion, the prospects of your claim succeeding falls below 51%;
- (d) if the third-party funder withdraws from funding your claim because the prospects of your claim succeeding falls below 51%;
- (e) if there is no third-party funding (ATE policy) in place to pay your Expenses;
- (f) following a material and irremediable breach by you of any other term of the Engagement Letter or the DBA;
- (g) following a material and remediable breach by you of any other term of the Engagement Letter or the DBA that has not been remedied within a reasonable period; and/or
- (h) if to continue acting would involve a material breach of a relevant rule of professional conduct.

If we terminate this Agreement in accordance with this clause, then you will be liable to pay our Expenses calculated in accordance with Clauses 5.7 and 5.8 above incurred up to the end of the calendar month in which the Agreement is terminated within 28 days of delivery of our bill to you. If we terminate this Agreement under clauses 7.4(a), (b), (f), (g) and/or (h) above, if you go on to Win your Claim you will also pay us in the DBA Payment calculated in accordance with Clauses 5.1 – 5.6 above.

7.5 If this Agreement ends in any of the circumstances referred to in this clause 7, we will be required to inform the court and anyone who may be representing you that we are no longer representing you. You will be free to deal with your claim on your own behalf or to instruct someone else to do so. However, until we are paid any money that you owe us under this Agreement, we are entitled to exercise a "lien" over any of your property that is in our possession including Charles Lyndon's working documents and any advice given to you in relation to your claim. Therefore, until we are paid, we will be entitled to keep the entirety of your case papers.

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

8.1 While your case is proceeding at court, a costs order may be made in your favour or one may be made against you. We will advise you if we believe this is likely to happen prior to the final conclusion of your claim.

8.2 It remains unclear whether you would be permitted to enforce an order for costs in your favour until the outcome of the Claim is known. You agree that, in the event the court permits the recovery of an interim award for costs then we can apply such costs in accordance with the court's ruling or we can retain those costs (and clauses 5.2, 5.3 and 5.4 above shall apply to such Recovered Costs).

8.3 If the court awards costs against you, you agree to pay the amount ordered by the court or the amount calculated in accordance with any court direction for costs to be assessed.

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9. ATE INSURANCE

9.1 We have also explained in the Engagement Letter when and if protection against adverse costs is necessary and how this will be addressed.

10. PROCEEDS IF YOU WIN

10.1 If you Win, you agree that any financial award or settlement agreed with the Opponent(s) is paid to Charles Lyndon's client account. If the Opponent(s) refuses to make payment to us and insists on paying you directly, you agree that a cheque will be paid or money transferred into a bank account in our joint names. We will take the DBA Payment and any outstanding Expenses and any Recovered Costs from that account and you will take the balance.

10.2 You agree that if the Opponent(s) fail to comply with an agreement or order to pay your financial award, 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 also seek to recover from the Opponent(s) the costs including expenses of any enforcement action taken. We will agree the terms on which we will act for you in doing so if and when it becomes necessary to take enforcement action.

11. IF YOU LOSE

If you lose your claim, you will only be liable for the Expenses incurred in accordance with the terms of this Agreement and subject to the terms of any ATE Insurance policy you have acquired. Provided you have kept to the terms of this Agreement, we will not enforce that liability. Unless there are exceptional circumstances, you will also have to pay the Opponent(s)' costs, to the extent not covered by an ATE policy.

12. CALCULATION OF OUR COSTS AND EXPENSES FOR THE PURPOSES OF RECOVERING COSTS

12.1 For the purposes of recovering our costs from the Opponent(s) only, our Fees shall be calculated on an hourly rates basis in accordance with paragraph 3 of our Engagement Letter and Terms of Business. This will include your share of any common costs that are incurred from 11 February 2019 (as explained in our Engagement Letter). The amount you pay to us is, however, calculated in accordance with Clause 5 above.

13. AGENCY

13.1 Other solicitors are acting for claimants who are pursuing the same or similar claims against the Opponent(s) to your Claim. It may be necessary for us to agree with those solicitors that they carry out work on your behalf (including, for example, engaging in settlement negotiations on behalf of you and other claimants). You agree that we may appoint those solicitors as our agents to perform our obligations under this Agreement and the Engagement Letter. If we do appoint such agents, this will not increase your liability to us. They will be paid out of our charges to you set out in clauses 5.1 to 5.6 above.

14. SEVERABILITY AND INTERPRETATION

14.1 This Agreement is intended to comply with the Damages-Based Agreement Regulations 2013 and should be construed to be so compliant insofar as possible.

14.2 If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, or any such term or provision shall render the whole of this Agreement illegal or unenforceable, then that term or provision or part thereof shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. A cancellation notice is appended under Annex A of the Engagement Letter.

15. GOVERNING LAW AND JURISDICTION

15.1 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.

15.2 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.

16. EXECUTION

16.1 By signing the Engagement Letter you have received, read, understood and agree fully with the terms of this Agreement.