



MIB Untraced Drivers Agreement - Jersey

THIS AGREEMENT is made on the 11 December 2020 between the **GOVERNMENT OF JERSEY (ACTING THROUGH THE MINISTER FOR INFRASTRUCTURE)** of 19-21 Broad Street, St Helier JE2 3RR (hereinafter referred to as "the Government") and the **MOTOR INSURERS' BUREAU** (hereinafter referred to as "MIB"), whose registered office is for the time being at Linford Wood House, 6-12 Capital Drive, Linford Wood, Milton Keynes, MK14 6XT.

IT IS HEREBY AGREED AS FOLLOWS:-

INTERPRETATION AND DEFINITIONS

1. (1) Unless this Agreement provides otherwise, the Interpretation (Jersey) Law 1954 applies to its interpretation as it applies to the interpretation of any Law passed by the States of Jersey.

(2) Unless otherwise stated, a reference in this Agreement (however framed) to the doing of an act by, or the happening of an event in relation to, a claimant includes reference to that act or event in relation to a solicitor, an advocate or other person acting on the claimant's behalf.

(3) A requirement to give notice, or provide documents, to MIB in this Agreement may be satisfied by giving such notice or providing such documents to a solicitor acting on MIB's behalf and MIB may perform any of its obligations and act under this Agreement by agents.

(4) Unless otherwise stated, where, in this Agreement, something is required to be done within a specified period after a date or the happening of a particular event, the period begins on the day after that date or the happening of that event.

(5) In this Agreement, unless the context requires otherwise, the following expressions have the following meanings —

"1948 Law" means the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948 as amended to date;

"2005 Agreement" means the Untraced Drivers Agreement dated 27 April 2005 between the Home Affairs Committee of the States of Jersey and MIB;

"authorised person" means a person acting on the claimant's behalf who is recognised in law as having authority so to act but this does not include a solicitor, advocate or other



legal representative of the claimant, unless appointed as the person authorised to represent the claimant pursuant to the Capacity and Self-Determination (Jersey) Law 2016;

“award” means the total of the sums which MIB has agreed or is obliged to pay under this Agreement in respect of a claim;

“bodily injury” has the same meaning as it bears for the purposes of the 1948 Law;

“claim” means a claim made by or on behalf of a claimant;

“claimant” means a person who has applied to MIB for compensation under this Agreement (or the person on whose behalf such a claim has been made);

“letter” includes electronic communication via MIB’s online claims service;

“MIB’s claim form” means the claim form which, at the time the claim is submitted, can be completed and submitted by accessing MIB’s online claims service or, for claimants without access to the internet, can be completed by contacting MIB;

“MIB’s online claims service” means the facility made available by MIB for the completion and submission of MIB’s claim form and for certain other communications as explained online;

“periodical payments” has the same meaning as in the Damages (Jersey) Law 2019;

“police” means the States of Jersey Police or the Honorary Police;

“property” means any property whether movable or immovable;

“provisional compensation” and “further compensation” have the same meanings that the terms “provisional damages” and “further damages” respectively bear for the purposes of the Administration of Justice (Interim Payments and Provisional Damages) (Jersey) Law 1993;

“recorded delivery post” means a method of sending documents where proof of delivery is provided to the sender;

“specified excess” means £400.00 or such other sum as may from time to time be agreed in writing between the Government and MIB;

“the Uninsured Drivers Agreements” means the Uninsured Drivers Agreement dated 11th December 2020 between the Government and MIB, all predecessor Uninsured Drivers Agreements between the predecessors to the Government and MIB and any Agreement which supersedes the Agreement in whole or in part;



“unidentified person” means a person who is, or appears to be, wholly or partly liable in respect of the claim and who cannot be identified.

DURATION OF THE AGREEMENT

2. (1) This Agreement comes into force on 1st January 2021 in relation to accidents occurring on or after that date subject to clause 6(3)(ii).
- (2) The 2005 Agreement continues in force in relation to accidents occurring on or after 1 April 2005 but before 1st January 2021.
- (3) This Agreement may be terminated by the Government or by MIB giving to the other not less than twelve months’ notice in writing but without prejudice to its continued operation in respect of accidents occurring before the date of termination.

PART 1 - GENERAL TERMS AND CONDITIONS

SCOPE OF THE AGREEMENT

3. (1) The provisions of this Agreement apply where —
 - (a) the claim is in respect of the death of or bodily injury to any person or damage to property which has been caused by, or has arisen out of, the use of a motor vehicle on a road in Jersey, and
 - (b) the death of or bodily injury to any person or damage to property occurred in circumstances giving rise to a liability of a kind required to be covered by a contract of insurance under Article 3 of the 1948 Law, and
 - (c) subject to clause 23, the person who is alleged to be liable in respect of the death of or bodily injury to any person or damage to property is an unidentified person (and where more than one person is alleged to be so liable, all such persons are unidentified persons), and
 - (d) the claim is made within the time limits provided for the victims of identified drivers bringing actions in tort by the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960.
- (2) The provisions of this Agreement extend to any death of or bodily injury to any person or damage to property which arises from the use of a trailer as a vehicle, where



“trailer” has the meaning given in the Motor Vehicles (Construction and Use) (Jersey) Order 1998;

(3) The expressions “motor vehicle” and “road” have the meanings given in Article 1 of the 1948 Law.

EXCEPTIONS TO THE AGREEMENT

Crown vehicles

4. (1) MIB is not liable for any claim, or any part of a claim, where liability is incurred by the user of a vehicle owned by or in the possession of the Crown, unless —
 - (a) the vehicle is in fact covered by a contract of insurance; or
 - (b) some other person is responsible for maintaining a contract of insurance for the vehicle in question.
- (2) For the purposes of this clause, a vehicle which has been unlawfully removed from the possession of the Crown is deemed to continue in the Crown’s possession nevertheless.
- (3) For the purposes of this clause, “the Crown” includes the Crown, States of Jersey or any parochial authority.

Other vehicles exempt from the insurance obligation

5. MIB is not liable for any claim, or any part of a claim, arising out of the use of a vehicle which is not required to be covered by a contract of insurance by virtue of paragraphs (3) and (4) of Article 2 of the 1948 Law, unless the use is in fact covered by a contract of insurance.

Other sources of recovery

6. (1) Subject to paragraph (2), MIB is not liable for any claim, or any part of a claim, in respect of which the claimant has received, or is entitled to receive or demand, payment or indemnity from any other person (including an insurer), not being pursuant to the Jersey Criminal Injuries Compensation Scheme 2015 or its successor.
- (2) Paragraph (1) does not apply —
 - (a) where the claim is for sums to meet the claimant’s liability to reimburse an employer provided the employer is not insured for that loss, or

(b) in respect of the claimant's legal costs allowable under clauses 21 and 22.

(3) An entitlement to receive or demand payment or indemnity in paragraph (1) extends to where the insurer (or giver of a security), under a contract of insurance or any other insurance, regardless of the commencement date of such insurance, does not make the payment or provide the indemnity because

(i) the claimant —

(a) has not made or does not make a claim under that insurance;

(b) has made or does make a claim under that insurance, but not within its stipulated timeframe; or

(c) has incurred a liability to any other person where that liability could have been avoided by making a claim under and in accordance with the provisions of that insurance; or because

(ii) any liability of the insurer (whether through contract, statutorily or otherwise) cannot be met by the insurer due to it having insufficient funds or it being in insolvency and this subparagraph (ii) applies to a claim which arises from an accident occurring either before or after the date referred to in clause 2(1) provided that the insufficiency of funds or insolvency arises on or after that date.

Vehicle damage and other property damage

7. (1) MIB is not liable for any claim, or any part of a claim, in respect of damage to property (including damage to a motor vehicle or losses arising therefrom) caused by or arising out of the use of an unidentified vehicle, unless —

(a) an award for significant personal injury has been paid to any claimant in respect of the same event, and

(b) the loss incurred in respect of damage to property exceeds the specified excess.

(2) The expression “significant personal injury” in paragraph (1) means bodily injury resulting in —

(a) death, or

(b) 2 nights or more of hospital in-patient treatment, or

- (c) 3 sessions or more of hospital out-patient treatment.
- (3) MIB is not liable for any claim, or any part of a claim, in respect of damage to a motor vehicle, or losses arising therefrom, where at the time when the damage to it was sustained —
 - (a) there was no contract of insurance in force in relation to the use of that vehicle; and
 - (b) the claimant either knew or had reason to believe that that was the case.
- (4) For the purposes of paragraph 7(3)(b) —
 - (a) in the case of a claim brought by any person for whose benefit an action may be brought under the Fatal Accidents (Jersey) Law 1962, it is the state of knowledge of the deceased which is determinative for the purpose of determining a claimant's state of knowledge, and
 - (b) knowledge which the claimant had, or had reason to have, includes knowledge of matters which the claimant could reasonably be expected to have been aware of had the claimant not been under the self-induced influence of drink or drugs.

Passenger claims

- 8. (1) Subject to paragraph (2), MIB is not liable for any claim, or any part of a claim, in respect of the death of or bodily injury to any person or damage to property sustained by a claimant who, at the time of the use giving rise to that liability, was voluntarily allowing himself to be a passenger in the vehicle and, either before the start of the claimant's journey in the vehicle or after its start, if the claimant could reasonably be expected to have alighted from it, knew or had reason to believe that —
 - (a) the vehicle had been stolen or unlawfully taken;
 - (b) the vehicle was being used without there being in force in relation to its use a contract of insurance complying with the 1948 Law;
 - (c) the vehicle was being used in the course or furtherance of a crime; or
 - (d) the vehicle was being used as a means of escape from, or avoidance of, lawful apprehension.



- (2) Paragraph (1) only applies where the relevant liability is incurred by the owner or registered keeper or a person using the vehicle in which the claimant was a passenger.
- (3) The burden of proving that the claimant knew or had reason to believe any matter set out in paragraph (1) is on MIB but, in the absence of evidence to the contrary, proof by MIB of any of the following matters is to be taken as proof of the claimant's knowledge of the matter set out in paragraph (1)(b) —
- (a) that the claimant was the owner or registered keeper of the vehicle or had caused or permitted its use;
 - (b) that the claimant knew the vehicle was being used by a person who was below the minimum age at which he could be granted a licence authorising the driving of a vehicle of that class; or
 - (c) that the claimant knew that the person driving the vehicle was disqualified from holding or obtaining a driving licence.
- (4) In the case of a claim brought by any person for whose benefit an action may be brought under the Fatal Accidents (Jersey) Law 1962, it is the state of knowledge of the deceased which is determinative for the purpose of determining a claimant's state of knowledge under paragraph (1).
- (5) For the purposes of this clause —
- (a) references to the claimant being a passenger in a vehicle include references to the claimant being carried upon or entering or getting on to or alighting from the vehicle;
 - (b) knowledge which the claimant had, or had reason to have, includes knowledge of matters which the claimant could reasonably be expected to have been aware of had the claimant not been under the self-induced influence of drink or drugs; and
 - (c) the "owner", in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession of the vehicle under that agreement.

Recovery charges by appropriate authority

9. MIB shall not be liable to pay compensation to the highway authority in respect of any loss incurred by that authority as a result of its failure to recover a charge for the recovery,



storage or disposal of an abandoned vehicle under a power contained in the Highways (Jersey) Law 1956.

OBLIGATIONS UPON THE CLAIMANT

10. (1) The claimant shall comply with the requirements of this clause failing which MIB shall be entitled to reject the claim (or the relevant part of the claim) and, for the purposes of this clause, reference to the claimant shall include an authorised person.
- (2) The claimant must notify the claim to MIB by the completion and submission of MIB's claim form which must be signed by the claimant or an authorised person (but no other person) where required by MIB.
- (3) The claimant must provide to MIB, within a reasonable time after being required to do so, such further information, documentation or written authority to access such documentation in support of the claim as MIB may reasonably require.
- (4)
- (a) The claimant shall generally give all such assistance as MIB may reasonably require to enable it to investigate the claim including, in particular, the provision of a statement and other information either in writing or, if so required by MIB, orally at interview between the claimant and MIB or its agents;
 - (b) For the purposes of paragraph (a), the claimant must, if he has not previously done so, and where reasonably requested by MIB, report the matter to the police as soon as reasonably practicable and co-operate with any subsequent police investigation or enquiries.
- (5) In the case of a claim for compensation for damage to property (whether or not death or bodily injury has also arisen from the same event), the claimant must produce satisfactory evidence both of the fact of the damage as well as the cost of repair or replacement and, save in a rare and exceptional case, satisfactory evidence must include —
- (a) in the case of property which has been repaired, a detailed invoice relating to that repair and objective proof of payment for the repair;
 - (b) in the case of property not falling into sub-paragraph (a), either a report from a suitably qualified expert describing the damage caused to the property and setting out the cost of repair or replacement or making the property available to MIB to inspect whilst in its damaged condition.



(6) The claimant, if so required by MIB and having been granted an indemnity by MIB as to the reasonable costs incurred, must take all reasonable steps to obtain judgment against every person who may be liable (including any person who may be vicariously liable) in respect of the death, bodily injury or damage to property, allowing MIB to control the steps to be taken and only acting in accordance with MIB's reasonable instructions.

(7) The claimant, if so required by MIB, must, for the purposes of clause 23, assign to MIB the benefit of any unsatisfied judgment (including costs) obtained in proceedings brought pursuant to paragraph (6), in respect of the claim on the basis that MIB will account to the claimant for any amount by which the total of all sums recovered by MIB under the judgment exceeds the award which MIB makes under this Agreement.

(8) Where the claimant has commenced proceedings against a person as described in paragraph (6) without having been required to do so by MIB, he must notify MIB of such proceedings as soon as reasonably practicable and the claimant's obligations pursuant to paragraphs (6) and (7) shall apply in respect of such proceedings as if they had been brought at the requirement of MIB.

COMPENSATION AND INTEREST

11. (1) Subject to clauses 3 to 10, MIB shall, by adopting the same method as a court in Jersey would adopt, be obliged to make an award or interim payment only if it is satisfied, on the balance of probabilities, that the death, bodily injury or damage to property was caused in circumstances such that the unidentified person would (had he been identified) have been liable to pay damages to the claimant.

(2) In accordance with paragraph (1), MIB shall determine the following matters as appropriate —

- (a) whether the claimant is entitled to an award under this Agreement and, if so, the amount of such award, having taken into account any deduction for contributory negligence;
- (b) where the amount of the award cannot yet be determined, whether the claimant is entitled to an award in principle (and, if so, the percentage of any award to which the claimant is entitled having regard to contributory negligence);
- (c) where the claimant is entitled to an award, whether such award is to comprise —
 - (i) lump sum compensation alone, or



- (ii) a combination of lump sum compensation and periodical payments, and/or
 - (iii) an element of provisional compensation (and if so, the conditions on which further compensation will be paid);
- (d) where the claimant is entitled to an award which cannot yet be quantified, whether the claimant is entitled to an interim payment and, if so, the amount of such interim payment.
- (3) If MIB determines that the claimant is entitled to an award or interim payment, MIB shall pay to the claimant, a sum equivalent to the amount (including interest) which a court would have awarded to the claimant had he brought a successful claim for damages against the unidentified person as general and special damages.
- (4) MIB shall adopt the same method of calculation as a court would adopt in calculating interest, save that interest on general damages shall run from the date 3 years after the accident or the date of an award made strictly pursuant to clause 12, whichever is the sooner.
- (5) Where the claim is solely or in part in respect of damage to property, MIB's liability for that claim (or part of the claim as the case may be) shall be limited in accordance with the following rules —
- (a) subject to paragraph (b), MIB's liability to an individual claimant shall be the amount of the award calculated in accordance with the provisions of this clause;
 - (b) subject to paragraph (c), in any case in which damage to property is being claimed arising out of the use of an unidentified vehicle, MIB's liability to an individual claimant shall, subject to clause 7, be the amount of the award or interim payment calculated in accordance with this clause, less the specified excess;
 - (c) in all cases, where MIB's total liability in respect of all damage to property claims made in respect of any one event would otherwise exceed the specified property damage cap, MIB's total liability in respect of all such claims is limited to a sum equal to the specified property damage cap less a sum equal to the specified excess multiplied by the number of claimants who have incurred loss



due to damage to property and whose claims are subject to the specified excess under paragraph (b);

- (d) for the purposes of applying the specified property damage cap in respect of any one event, MIB's liability will be calculated from the date of receipt of each claim made in respect of that event such that, once the specified property damage cap is reached, MIB is not liable for any further such claims;
- (e) the expression "specified property damage cap" in paragraphs (c) and (d) means such sum as may from time to time be specified in Article 3(1) of the 1948 Law.

PART 2 - PROCEDURE

MIB's obligation to investigate claims and reach a determination

12. (1)

- (a) MIB shall, at its own cost, carry out all reasonable enquiries to investigate the claim, in order to decide —
 - (i) whether to make an award or interim payment in accordance with this Agreement and, if so,
 - (ii) the amount and form of the award or interim payment.
- (b) For the avoidance of doubt, MIB may reject the claim without investigation if, from an initial consideration of the information provided by the claimant, it decides that the claim is not in scope pursuant to clause 3 and shall notify the claimant in writing, setting out its reasons for making the decision.

(2) Where MIB investigates and decides that the claim is not in scope pursuant to clause 3, it shall not make an award and shall notify the claimant in writing, setting out all the evidence relied upon, its findings of fact (if any) relevant to the decision and its reasons for making the decision.

(3) Where MIB decides that the claim is in scope pursuant to clause 3, but decides to reject the claim because —

- (a) it is not satisfied pursuant to clause 11(1) that an unidentified person would (had he been identified) have been liable to pay damages to the claimant, or

(b) of the application of one or more of the exceptions in clauses 4 to 9, or

(c) of the claimant's failure to comply with any of the requirements of clause 10,

it shall notify the claimant in writing, setting out all the evidence obtained during the investigation, its findings of fact relevant to the decision and its reasons for reaching the decision.

(4) Where MIB decides that the claim is in scope pursuant to clause 3 and decides —

(a) to make an award (on a 100% liability basis) in a particular amount (not being an interim payment pursuant to paragraph (5)), or

(b) that the claimant is entitled to recover;

(i) a particular percentage of the claim (without specifying the amount), or

(ii) a particular percentage of the claim and the amount of the award

it shall notify the claimant in writing, setting out all the evidence obtained during the investigation, its findings of fact (if any) relevant to the decision or award and its reasons for reaching the decision or making the award.

(5) Where MIB decides to make an award, it may decide or, if the claimant makes a reasonable and justified request, it must decide, by adopting the same method as a court in Jersey would adopt, whether —

(a) the claimant is entitled to an interim payment and, if so,

(b) the amount of such interim payment, and

it shall notify the claimant in writing, setting out all the evidence relevant to the decision, its findings of fact relevant to the decision or amount and its reasons for reaching the decision or amount.

Acceptance of decision and payment of award

13. (1) Where MIB notifies the claimant pursuant to clause 12 that it has decided to make an interim payment or award to him and, in the case of an award, what the form of that award will be, it shall, subject to paragraph (3) (and, where applicable, to clause 14), make that payment as a lump sum —



- (a) not later than 14 days after the date on which MIB receives unconditional acceptance of the interim payment or award, or
 - (b) in the absence of receipt by MIB either of an unconditional acceptance or a notice of appeal in accordance with clause 16 not later than 14 days after the expiry of the period during which such notice of appeal could have been given.
- (2)
- (a) Any payment of an award shall, subject to paragraphs (2)(b) and (3)(b), discharge MIB from all liability under this Agreement in respect of which the award is made, and
 - (b) any interim payment, periodical payment or further compensation payment shall operate as a partial discharge to the extent intended by such payment.
- (3) Where an award notified to the claimant pursuant to paragraph (1) includes an allowance for periodical payments or provisional compensation —
- (a) MIB shall pay the lump sum element of the award in accordance with paragraph (1), and
 - (b) any subsequent periodical payments or further compensation payments will be paid strictly in accordance with the details contained in MIB's award.

Approval of claims from Children and Protected Parties

14. (1) If, when MIB receives unconditional acceptance of its proposed award (and the proposed form of that award) pursuant to clause 13(1)(a) or the claimant has provided neither unconditional acceptance nor a notice of appeal against the proposed award (and its form) within the time limit pursuant to clause 13(1)(b) —
- (a) the claimant is a child being under the age of 18 years, or
 - (b) MIB decides from the evidence that the claimant lacks capacity within the meaning of the Capacity and Self-Determination (Jersey) Law 2016 to conduct and/or make decisions in relation to his claim

MIB shall, rather than being obliged to pay the award in accordance with the time limits provided by clause 13, apply to the Government for the appointment of an arbitrator and the provisions of clause 18 shall apply.



- (2) The arbitrator's principal function is to determine whether the proposed award represents a fair settlement for the claimant.
- (3) In any case to which paragraph (1) applies, MIB shall, before seeking approval of the award by the arbitrator, request the following information from the claimant and provide any such information obtained to the arbitrator at the time that approval is sought —
- (a) in the case of a claimant who may lack capacity, the identity of any —
 - (i) attorney under a registered lasting power of attorney; or
 - (ii) a person appointed by the Royal Court as a delegate under the Capacity and Self-Determination (Jersey) Law 2016, to make decisions on behalf of the claimant;
 - (iii) person who manages the claimant's property or money and details of the basis on which they do so;
 - (b) In the case of a claimant who is under the age of 18 years —
 - (i) whether the claimant has a junior ISA or similar savings account;
 - (ii) the name(s) and details of any person who has parental responsibility for the claimant;
 - (c) In any case —
 - (i) whether the claimant is the beneficiary of a personal injury or similar trust and the details of such trust and any trustees; and
 - (ii) the claimant's suggestion as to how any award should be paid together with any reasons and any evidence the claimant provides in support.
- (4) Not later than 21 days of notifying the claimant of the appointment of an arbitrator pursuant to clause 18 or 14 days of receiving the information requested pursuant to paragraph (3), whichever is the later date, MIB shall send to the arbitrator (copying in the claimant) a letter seeking approval of the award it has decided to make.
- (5) The letter referred to in paragraph (4) shall be accompanied by a copy of —
- (a) MIB's claim form (duly completed),
 - (b) MIB's award letter and accompanying documents supplied in accordance with clause 12,



(c) evidence to show that the claimant wishes to accept MIB's award,

(d) any information received from the claimant pursuant to paragraph (3).

(6) If the claimant has not received a copy of MIB's letter to the arbitrator within the period specified in paragraph (4), the claimant may instruct the arbitrator and provide the same documentation and evidence as MIB was required to send in accordance with paragraphs (3) to (5).

(7) In any claim to which paragraph (1) applies, the claimant shall provide a copy of any advice from counsel in respect of the adequacy of the award direct to the arbitrator within 14 days of being notified of the arbitrator's appointment; the arbitrator shall not disclose to MIB the contents of such advice in any circumstances save with the written permission of the claimant and shall destroy such advice or return it to the claimant upon the discharge of his duties as arbitrator in that claim.

(8) If the arbitrator approves the award, he shall specify who is the appropriate representative to whom MIB shall pay the award (or, in the case of an award which includes an element of periodical payments and/or provisional compensation, the lump sum element of the compensation) and MIB shall make such payment not later than 14 days after receiving notification of the arbitrator's approval (and, where applicable, periodical payments/further compensation on or before the date/dates they fall due).

(9) The 'appropriate representative' in paragraph (8) means any person or body designated by the arbitrator as the most suitable available person or body to receive and administer the award on the claimant's behalf; in the case of a claimant who is under the age of 18, this may include the claimant himself where the arbitrator directs that the award should be paid into a junior ISA or similar savings account in the claimant's name.

(10) If in any case it appears to the arbitrator that no suitable appropriate representative exists or is available, the arbitrator may direct MIB to pay the reasonable costs of the claimant in setting up a trust of the whole or part of the award or, as the case may be, to initiate any proceedings necessary to have the award administered by an appropriate representative.

(11) If the arbitrator is unable to approve the award and/or the form of the award on the information and documentation available to him, he may —

(a) ask MIB to consider the claim further and give directions to MIB in this regard, in which case MIB must act in accordance with the arbitrator's directions, and/or

- (b) request counsel's advice or further advice and/or
 - (c) set a date for an oral hearing where he wishes to see the claimant or anyone else in person before deciding on whether to approve the award.
- (12) If the arbitrator refuses to approve the award and/or the form of the award, the claim will continue and MIB must either —
- (a) decide to alter the terms of its proposed award and/or its form, in which case (providing the claimant indicates acceptance or is treated as having done so in accordance with the provisions of clause 13(1)) it must seek approval of the new award by the same arbitrator in accordance with the provisions of this clause, or
 - (b) maintain its original proposal, in which case the claim will be submitted to a different arbitrator as an appeal with that arbitrator appointed pursuant to clause 18 and the procedure under clause 19 being followed, amended as necessary to reflect that the claimant has not himself served a notice of appeal.
- (13) The arbitrator's decision on approval or otherwise of an award and/or its form pursuant to the provisions of this clause shall be in writing and final.
- (14) There shall be no additional contribution towards the claimant's legal costs above the sum payable pursuant to clause 21 by reason of the requirement for approval under the provisions of this clause, save that —
- (a) MIB shall, upon being notified of the decision of the arbitrator, pay to the arbitrator a fee based on the half daily rate for a Recorder, as set out in the Ministry of Justice's Judicial Fees schedule and published on its website, and
 - (b) counsel's fees in support of an award approved under this clause.
- (15) For the purposes of paragraph (14), counsel's fees will be deemed reasonably incurred pursuant to clause 21(11)(b), and —
- (a) the amount of such fees shall be determined by the arbitrator where they are disputed by MIB, and
 - (b) where the award approved would have been for less than £25,000, such fees may not exceed £250 plus GST (Goods and Services Tax).

PART 3 – APPEALS AND DISPUTE RESOLUTION

Right of appeal and right to refer disputes to arbitration

15. Where a claimant does not accept any decision of MIB made pursuant to clause 12 or where there is any other dispute between the claimant and MIB concerning any determination or requirement by MIB under the terms of this Agreement (including in relation to costs pursuant to clause 21), the claimant may give notice of appeal that he wishes to submit the matter to arbitration in accordance with the provisions of clauses 16 to 19 inclusive.

Notice of appeal under clause 15

16. (1) Subject to paragraph (3), a notice of appeal must be received in writing by MIB within 6 weeks beginning either —
- (a) in the case of a decision made pursuant to clause 12, from the second day after that on which the letter notifying the claimant of the decision being appealed was sent by MIB to the claimant, or
 - (b) in any other case, from the second day after that on which the letter setting out the determination or requirement which remains in dispute was sent by MIB to the claimant, and

the notice of appeal will only be valid if received outside that period if MIB accepts, or the arbitrator appointed pursuant to clause 18 determines, that, due to wholly exceptional circumstances, the claimant could not have sent his notice of appeal within the 6 week period.

- (2) The notice of appeal shall —
- (a) state the grounds on which the appeal is made, and
 - (b) be accompanied by such observations of the claimant, further evidence and documentation in support of the appeal as the claimant thinks fit, and
 - (c) contain an undertaking by the claimant or an authorised person that (subject to his rights under the Arbitration (Jersey) Law 1998) the claimant will abide by the final decision of the arbitrator made under this Agreement.
- (3) Where the claimant —



- (a) notifies MIB in writing of his intention to appeal within the 6 week period mentioned in paragraph (1), and —
- (b) provides the undertaking mentioned in paragraph (2)(c), and
- (c) requests an extension of time to enable him to comply with the requirements of paragraphs (2)(a) and (b),

MIB shall —

- (i) agree to the claimant's request made pursuant to (3)(c), or
- (ii) determine any extension of time which it considers to be reasonable and necessary, and,

in the event of a dispute, that matter will be determined by an arbitrator appointed pursuant to clause 18.

(4) MIB agrees to abide by the final decision of the arbitrator made under this Agreement (subject to its rights under the Arbitration (Jersey) Law 1998).

Procedure following notice of appeal

17. (1) Not later than 14 days after receiving all of the material required for a notice of appeal pursuant to clause 16, MIB shall —
- (a) apply to the Government for the appointment of an arbitrator, or
 - (b) having notified the claimant of its intention to do so, cause an investigation to be made into any further evidence supplied by the claimant and notify the claimant in writing of the outcome of that investigation and of any change in its decision, determination or requirement (as appropriate) which may result from it.
- (2) Where MIB notifies the claimant of any change in its decision, determination or requirement (as appropriate) as a result of the investigation carried out pursuant to paragraph (1)(b), the claimant may, within 6 weeks from the second day after that on which the letter setting out that change was sent by MIB to the claimant, notify MIB that he wishes to —
- (a) withdraw the notice of appeal, or

(b) continue with the appeal and send with such notification any observations on MIB's revised decision, determination or requirement (as appropriate) which he wishes to draw to the attention of the arbitrator.

(3) Where the claimant notifies MIB under paragraph(2)(b) of his wish to continue with the appeal or if the Claimant fails, within the 6 week period set out in paragraph (2), to give notification of his wish either to withdraw or to continue with the appeal, MIB shall, not later than 14 days after receiving the notification or 14 days after the expiry of the said 6 week period (as the case may be) apply to the Government for the appointment of an arbitrator.

(4) Where pursuant to paragraph (1) or paragraph (3) as applicable, MIB neither —

(a) applies to the Government for the appointment of an arbitrator, nor

(b) notifies the claimant of its intention to cause an investigation into further evidence supplied by the claimant,

the claimant may apply to the Government for the appointment of an arbitrator.

Appointment of arbitrator

18. The Government shall, within 7 days of receiving the application for the appointment of an arbitrator under clauses 14 or 17, appoint the first available member, by rotation, from a panel of Queen's Counsel, Solicitors or Advocates of not less than 10 years call, appointed for the purpose of determining disputes under this Agreement by the Master of the Royal Court and the Government shall notify the appointment to MIB, who shall notify the claimant within 7 days of receiving it.

Arbitration procedure

19. (1) Not later than 21 days after notifying the claimant of the appointment of an arbitrator pursuant to clause 18, MIB shall send to the arbitrator (copying in the claimant) a letter asking for a determination of the appeal and specifying the issue which the arbitrator is asked to address.

(2) The letter referred to in paragraph (1) shall include a copy of —

(i) the notice of appeal together with a copy of all the evidence, observations and documentation submitted pursuant to clause 16,

(ii) MIB's claim form,



(iii) MIB's decision, determination or requirement (as appropriate), together with all statements, documents and other evidence which accompanied it, and

(iv) any observations MIB wishes to make.

(3) If the claimant has not received a copy of MIB's letter to the arbitrator in accordance with paragraph (1) within the 21 day period specified in that paragraph or such letter does not include all the documentation and evidence as required by paragraph (2), the claimant may instruct the arbitrator and provide the same documentation and evidence as MIB was required to send in accordance with paragraphs (1) and (2) but without MIB's observations.

(4) The arbitrator may, if it appears to him to be necessary or expedient for the purpose of resolving any issue, ask MIB to conduct a further investigation and to submit a written report of its findings together with any further evidence to him and, in such a case —

(a) MIB shall undertake the investigation and send copies of the report and evidence to the arbitrator and the claimant, and

(b) the claimant may, not later than 4 weeks after the date on which a copy of the report is received by him, submit written observations on it to the arbitrator and, if he does so, he shall send a copy of those observations to MIB at the same time.

(5) The arbitrator shall, having received all the items referred to in paragraphs (1) to (4) (as appropriate), send to the claimant and MIB a preliminary decision in writing setting out the decision he proposes to make and his reasons for doing so.

(6) Not later than 28 days after the date of sending of the preliminary decision letter (or such later date as the claimant and MIB may agree), the claimant and/or MIB may, by written notification given to the arbitrator and copied to the other —

(a) accept the preliminary decision, or

(b) submit written observations on the preliminary decision, or

(c) request an oral hearing.

(7) If the claimant or MIB fails to give any of the notifications in paragraph (6) within the period specified in that paragraph (including a failure to provide a copy of the notification to the other), he or it shall be treated as having accepted the decision.



(8) If the claimant submits new evidence with any written observations under paragraph (6)(b), MIB may, at its discretion and within the 28 day period mentioned in paragraph (6) (or such longer period as the arbitrator may allow), do any of the following —

- (a) make an investigation into that evidence, and/or
- (b) submit its own written observations on that evidence, and/or
- (c) if it has not already done so, request an oral hearing.

(9) Except where an oral hearing has been requested by MIB pursuant to paragraph (8)(c), the arbitrator shall (in the exercise of his powers under Article 11 of the Arbitration (Jersey) Law 1998) determine whether and, if so, how and to what extent the new evidence referred to in paragraph (8) shall be admitted and tested.

(10) If both the claimant and MIB accept the preliminary decision (or are to be treated as accepting it pursuant to paragraph (7)), that decision shall be treated as the arbitrator's final decision for the purposes of clause 20.

(11) If MIB or the claimant submits written observations on the preliminary decision pursuant to paragraph (6)(b), the arbitrator must take those observations into account before making a final decision and shall send his final decision in writing to MIB and the claimant.

(12) If either the claimant or MIB requests an oral hearing pursuant to paragraph (6)(c), the arbitrator shall not provide a final decision pursuant to paragraph (10) and shall determine the appeal by way of an oral hearing and, in such a case —

- (a) the hearing shall be held in private;
- (b) the hearing shall take place at a location, to be arranged by MIB at its cost, which, in the opinion of the arbitrator, is most convenient for both MIB and the claimant (after consultation with each of them) as well as for himself;
- (c) both MIB and the claimant may be represented by a lawyer or other person of their choosing;
- (d) a party to the hearing shall, subject to sub-paragraph (e), be entitled to address the arbitrator, call witnesses and put questions to any person called as a witness; and



(e) in advance of the hearing, the arbitrator may give such directions as he deems appropriate regarding the evidence to be adduced at the hearing, the witnesses to be called, the venue for the hearing or any other relevant matter;

(f) the arbitrator shall provide his decision in writing together with his reasons.

(13) When issuing his final decision pursuant to paragraph (10) or (12)(f), the arbitrator may include his decision in relation to the costs of the arbitration proceedings pursuant to clause 22 or he may require details as to the costs claimed before he makes his decision on costs.

(14) This clause does not apply when an arbitrator is appointed pursuant to clause 14(1) (save where paragraph (12)(b) of that clause applies).

Arbitrator's decision

20. (1) The arbitrator must determine, having regard only to the subject matter of the appeal and such of the following issues as are referred to him in accordance with the provisions of this Agreement —
- (a) whether or not the claim is in scope pursuant to clause 3 and if so, whether to remit the claim to MIB for a full or further investigation and a decision in accordance with the provisions of this Agreement;
 - (b) whether MIB's decision pursuant to clause 12 or any other determination or requirement by MIB, which in either case is the subject of the appeal, is to be upheld or whether a different outcome is to be substituted; this includes whether MIB should make an award or an interim payment under this Agreement and, if so, what that award or interim payment should be and what the form the award should take;
 - (c) whether MIB has calculated correctly the contribution towards legal costs and whether wholly exceptional circumstances exist to justify a higher contribution to legal costs in accordance with the provisions of clause 21;
 - (d) in accordance with the provisions of clause 22, whether to make an order for the costs of the arbitration proceedings, including in relation to the payment of the arbitrator's fee;

- (e) in like manner to a court, whether it would be equitable to allow the claim to proceed having regard to the customary law of Jersey principle of empêchement;
 - (f) whether wholly exceptional circumstances existed so as to permit the claimant's notice of appeal to have been validly received by MIB outside the 6 week period provided for an appeal pursuant to clause 16(1);
 - (g) whether more time should be afforded to the claimant to adduce evidence and/documentation to support his notice of appeal provided for in clause 16(3);
 - (h) how service may validly be effected pursuant to clause 24(5);
 - (i) whether MIB's decision that the claimant lacks capacity pursuant to clause 14(1)(b) is correct;
 - (j) whether counsel's fees were reasonably incurred pursuant to clause 21(11)(b).
- (2) MIB shall, within 14 days of —
- (a) acceptance (or deemed acceptance) of the preliminary decision pursuant to clause 19(10), or
 - (b) the final decision after observations pursuant to clause 19(11), or
 - (c) the decision reached at an oral hearing pursuant to clause 19(12),

pay to the claimant any amount which the arbitrator has decided shall be awarded to him (including in respect of the legal costs of the arbitration proceedings pursuant to clause 22) and that payment shall discharge MIB from all liability under this Agreement in respect of the death, bodily injury or damage to property and legal costs of the arbitration proceedings in respect of which that decision is given (save for any further payments where some element of the award is to take the form of periodical payments or further compensation).

PART 4 – COSTS

Contribution towards legal costs

21. (1) Where MIB pays an award (but not an interim payment) it shall also pay a contribution ('the contribution'), towards any legal costs incurred by the claimant in seeking advice from a solicitor or advocate regarding the claim and any award made by MIB.
- (2) The contribution shall be paid at the same time as the award unless, at that stage, the extent of the reasonable disbursements as defined by paragraph (11) are not yet known, in which case, payment will follow as soon as reasonably possible after these details are known.
- (3) The contribution shall be calculated strictly in accordance with the provisions of this clause.
- (4) MIB shall not be under a duty to make the contribution unless it is satisfied that the claimant did obtain some legal advice regarding the claim in accordance with paragraph (1).
- (5) The contribution will —
- (a) involve a single payment regardless of whether the claimant may have sought advice from more than one solicitor or advocate, and
 - (b) be calculated by reference to the totality of the claimant's entitlement to compensation in respect of the death, bodily injury or damage to property, and
 - (c) subject to clause 22, represent the totality of the claimant's entitlement to legal costs.
- (6) The contribution shall be entirely separate from any liability on MIB to pay the costs of arbitration proceedings pursuant to clause 22 or an arbitrator's fee pursuant either to clause 14 or clause 22.
- (7) The contribution shall be the total of —
- (a) the fee calculated in accordance with paragraph (8),
 - (b) the amount of GST (goods and services tax) validly charged on that fee, and
 - (c) reasonable disbursements (if any).
- (8) The fee referred to in paragraph (7)(a) shall be calculated in accordance with the following table —

Amount of the award	Fee Entitlement
Not more than £10,000	£450
More than £10,000 but not more than £25,000	£700
More than £25,000 but not more than £50,000	The total of— (a) £700; and (b) 10% of the damages over £25,000
More than £50,000 but not more than £100,000	The total of— (a) £3,200; and (b) 10% of the damages over £50,000
More than £100,000 but not more than £175,000	The total of— (a) £8,200; and (b) 7% of the damages over £100,000
More than £175,000 but not more than £250,000	The total of— (a) £13,450; and (b) 7% of the damages over £175,000
More than £250,000	The total of— (i) £18,700; and (ii) 7% of the damages over £250,000 subject to a maximum £250,000

Where —

‘Amount of the award’ refers to the amount of the award paid to the claimant

(a) before deduction of —

- (i) any interim payment/payments already paid, and
- (ii) the specified excess (where applicable);



- (b) ignoring any amount which has to be paid in respect of hospital charges.
- (9) Where the award includes an element of compensation in the form of periodical payments —
 - (a) the award for the purpose of paragraph (8) shall be calculated by adding to the lump sum compensation the amount which represents the total of the annual instalment payments multiplied by the multiplier/multipliers adopted by MIB (or an arbitrator as the case may be) by reference to the Damages (Jersey) Law 2019, and
 - (b) MIB will set out the approach it has followed to show how it has calculated the contribution.
- (10) Where the award includes an element of provisional compensation, the contribution shall make no allowance for the possibility that the claimant may, at some future time, be entitled to apply for further compensation but where the claimant is successful in applying for further compensation, an additional contribution shall be calculated in accordance with this clause by reference solely to the amount of further compensation which the claimant recovers at that stage.
- (11) The reference to reasonable disbursements in paragraph (7)(c) shall mean —
 - (a) reasonable expenditure incurred by or on behalf of the claimant which MIB has specifically authorised in advance (MIB's consent not having been unreasonably withheld) where the evidence resulting from such expenditure has been disclosed to MIB; and
 - (b) advocate's reasonable fees where reasonably incurred.
- (12) The claimant may request MIB to pay a higher figure towards legal costs than the contribution calculated in accordance with the other provisions of this clause, but only where he can show that the claim was exceptionally complex and thereby warranted a higher figure and a claim will not be viewed as exceptionally complex by reason of its value alone.
- (13) Where a request for a higher figure is made by the claimant pursuant to paragraph (12) —
 - (a) MIB shall decide whether to make a further payment and, if so, what further payment it considers is justified.



(b) MIB must thereafter make this further payment as soon as possible, and

(14) Any dispute about the amount of the contribution under this clause or about any additional amount pursuant to paragraph (12), shall be referred to an arbitrator pursuant to clause 15.

Costs of arbitration proceedings

22. (1) For the purposes of the Arbitration (Jersey) Law 1998, the arbitration proceedings are to be regarded as commencing on —

(a) the date of receipt by MIB of the notice of appeal pursuant to clause 16 (1), or

(b) where notice of intention to appeal is provided pursuant to clause 16 (3), the date of receipt by MIB of such notice of intention,

but this clause does not apply where MIB applies to an arbitrator for approval of an award pursuant to clause 14 (and references to arbitration proceedings in clause 21 are to be read accordingly).

(2) Subject to paragraph (3), MIB shall, upon being notified of the final decision of the arbitrator, pay to the arbitrator a fee based on the daily rate for a Recorder, as set out in the Ministry of Justice's Judicial Fees schedule and published on its website.

(3) Where it appears to the arbitrator that, having regard to all the circumstances of the case, there were no reasonable grounds for the claimant to have appealed MIB's decision or award (as the case may be), the arbitrator may, in his discretion, order —

(a) the claimant, or

(b) where he considers it appropriate to do so, any solicitor, advocate or other person acting on behalf of the claimant,

to reimburse MIB the fee it has paid to the arbitrator or any part thereof.

(4) The arbitrator may, in his discretion but subject to paragraph (5), order MIB to pay (in addition to the arbitrator's fee) the claimant's reasonable legal costs of —

(a) the arbitration proceedings, and

(b) preparing the notice of appeal.

(5) Where the award being appealed (or the amount being claimed if the appeal relates to a dispute or decision other than one relating to the amount of the award)



involves an amount of less than £25,000, the maximum sums which the arbitrator may award in total for legal costs pursuant to paragraph (4) are as follows —

- (a) £500 plus VAT for proceeding with an appeal in accordance with clauses 15 and 16 and, in addition, where the preliminary decision of the arbitrator is challenged before a final decision is reached pursuant to clause 19, either
 - (b) £250 plus VAT where the challenge is by way of written observations, or
 - (c) £500 plus VAT where the challenge is by way of an oral hearing.
- (6) The arbitrator may order the claimant (or any solicitor, advocate or other person acting on his behalf) to pay MIB’s reasonable legal costs of the arbitration proceedings (including the costs of any oral hearing) but only where he considers that the appeal or dispute (as the case may be) was frivolous, vexatious or otherwise entirely unmeritorious or involved fraud or fundamental dishonesty and he shall have regard to (but shall not be bound by) the maximum sums allowable pursuant to paragraph (5) for claims falling within the fast track as defined in that paragraph.
- (7) Where, pursuant to paragraphs (3) and (6), the arbitrator orders —
- (a) the claimant to reimburse MIB in respect of any legal costs or fees, MIB may deduct an amount equal to that reimbursement from any amount which it pays to the claimant to discharge its liability under this Agreement; or
 - (b) a solicitor, advocate or other person to reimburse MIB in respect of any legal costs and/or fees, MIB may deduct an amount equal to that reimbursement from any amount which it pays to that solicitor or other person to discharge its liability to the claimant under this Agreement.
- (8) Save for the reasonable costs of preparing the notice of appeal pursuant to paragraph (4), the arbitrator may only order payment of any legal costs of the arbitration proceedings which were incurred on or after the date of commencement of the arbitration proceedings as defined by paragraph (1).

PART 5 - MISCELLANEOUS

JOINT AND SEVERAL LIABILITY

MIB’s liability where wrongdoer is identified



23. (1) This clause applies where an identified person is liable or partly liable in circumstances where MIB would not be liable under the Uninsured Drivers Agreements and there is also an unidentified person for whom MIB is liable or partly liable to the claimant under this Agreement.
- (2) MIB shall not be liable under this Agreement to the extent that the claimant is able to recover in respect of death, bodily injury or damage to property from the identified person.
- (3) Where the claimant has obtained a judgment against the identified person in proceedings in respect of death, bodily injury or damage to property, which judgment has not been satisfied to any extent within three months after the date on which the claimant became entitled to enforce it —
- (a) MIB shall be liable under this Agreement only to the extent that it determines that the unidentified person is liable and,
 - (b) MIB shall make an award equal to the unidentified person's liability.
- (4) Where the claimant has obtained a judgment against the identified person in proceedings in respect of death, bodily injury or damage to property, which judgment has only been partly satisfied within three months after the date on which the claimant became entitled to enforce it, MIB shall be liable under this Agreement only to the extent that it determines that the unidentified person is liable and, subject to this, shall make an award equal to —
- (a) the unsatisfied part, if this does not exceed the unidentified person's liability, or
 - (b) the unidentified person's liability if the unsatisfied part exceeds the unidentified person's liability.
- (5) A judgment given in proceedings against the identified person shall be conclusive as to any issue in those proceedings which is relevant to the determination of MIB's liability under this Agreement.
- (6) Where the judgment against the identified person is appealed within the 3 month period mentioned in paragraphs (3) and (4), MIB may await the outcome of the appeal process before determining the extent of the unidentified person's liability such that the 3 month period will run from the conclusion of the appeal process.
- (7) Where the claimant has not obtained a judgment in proceedings against the identified person but has received an agreed payment in full satisfaction of his claim from



or on behalf of the identified person in respect of death, bodily injury or damage to property, such payment shall be treated for the purposes of this Agreement as a full settlement of the claimant's claim and MIB shall not be liable under this Agreement to make any payment.

Service of notices or documents

24. (1) Any notice required to be served on or any other communication, notification or document required to be given or sent to MIB in connection with Part 2 and the appeal or dispute resolution procedure under Part 3 of this Agreement shall be sufficiently served or given if -

(a) sent by facsimile transmission or by recorded delivery post to MIB's registered office for the time being or,

(b) submitted electronically to MIB via MIB's online claims service where applicable

and delivery shall be proved by the production of a facsimile transmission report produced by the sender's facsimile machine, a postal receipt or by confirmation of delivery through MIB's online claims service whichever is applicable.

(2) If notice in writing is given other than set out in paragraph (1), such notice shall still be valid provided MIB accepts, or it can be conclusively proved, that MIB has received such notice.

(3) MIB will send any communication, notification or document required to be given or sent by it to the claimant pursuant to Part 2 and in connection with the appeal or dispute resolution procedure under Part 3 of this Agreement

(a) by facsimile or by recorded delivery post to the claimant's last known address (or to the address of his legal representative where applicable), or

(b) via MIB's online claims service where applicable

and delivery shall be proved by the production of a facsimile transmission report produced by MIB's facsimile machine or an appropriate postal receipt or by confirmation of delivery through MIB's online claims service whichever is applicable.

(4) If notice in writing is given by MIB pursuant to paragraph (3) other than as set out in that paragraph, such notice shall still be valid provided the claimant accepts, or it can be conclusively proved, that he or his legal representative have received such notice.

(5) Where MIB is not able to make contact with the claimant for the purpose of sending any notification or documentation pursuant to paragraph (3), it may apply to the appointed arbitrator for a direction as to how such notification or documentation may validly be served.

Enforcement of rights

25. (1) This Agreement may be —
- (a) varied or rescinded without the consent of any person other than the parties hereto, and
 - (b) determined pursuant to clause 2(3) without the consent of any such person.
- (2) MIB shall have available to it against the claimant any counterclaim or set-off (but not otherwise) arising by virtue of the provisions of —
- (a) this Agreement;
 - (b) the 2005 Agreement;
 - (c) the Uninsured Drivers Agreements; and
 - (d) any predecessor to the 2005 Agreement and any Agreement which supersedes this Agreement.
- (3) This Agreement
- (a) is intended to confer a benefit on a Claimant but on no other person, and
 - (b) to confer such benefit subject to the terms and conditions set out herein.

Enforcement against MIB

26. If MIB fails to pay compensation in accordance with an award or the final decision of an arbitrator pursuant to the provisions of this Agreement, the claimant is entitled to enforce payment through the courts.



This Agreement may be executed in two counterparts with the same effect as if both parties execute a single document.

IN WITNESS whereof, the parties have signed this contract on the day and year first above written

Signed for and on behalf of **The Government of Jersey** (acting through the Minister for Infrastructure)

Signature:

Name:

Role

Date:

Signed for and on behalf of **the Motor**

Insurers Bureau

Signature:

Name:

Role

Date: