

THIS AGREEMENT is made the 3<sup>rd</sup> day of May in the year Two Thousand and One between the GOVERNMENT OF GIBRALTAR (hereinafter referred to as "the Government") and the MOTOR INSURERS' BUREAU, whose registered office is at Linford Wood House, 9-2 Capital Drive, Linford Wood, Milton Keynes MK14 6XT, England (hereinafter referred to as "MIB") and replaces the Agreement made on the 5th October 1989, and operates in respect of accidents occurring after

## IT IS HEREBY AGREED AS FOLLOWS:

### INTERPRETATION

#### General definitions

1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"The Ordinance" means the Insurance (Motor Vehicles)(Third Party Risks) Ordinance 1986, as amended by the Insurance (Motor Vehicles) (Third Party Risks) Amendment Ordinance 1988 and the Insurance (Motor Vehicles) (Third Party Risks) Amendment Ordinance 1997;

"1989 Agreement" means the Agreement made on 5th October 1989 between the Government and MIB;

"Bank Holiday" means a day which is, or is to be observed as, a Bank Holiday under the Banking and Financial Dealings Ordinance;

"Claimant" means a person who has commenced or who proposes to commence Relevant Proceedings and has made an application under this Agreement in respect thereof;

"Contract of Insurance" means a policy of insurance or a security covering a Relevant Liability;

"Insurer" includes the giver of a security;

"MIB's Agents" means Solrac and Co. Limited of 21 Tuckey's Lane, Gibraltar or Prescott Limited of Imossi House, 1/5 Irish Town, Gibraltar or such other Agent as MIB may notify to the Government from time to time;

"MIB's Obligation" means the obligation contained in clause 5; "Property" means any Property whether real or personal;

"Relevant Liability" means a liability in respect of which a Contract of Insurance must be in force to comply with the Ordinance;

"Relevant Proceedings" means proceedings in respect of a Relevant Liability (and "commencement", in relation to such proceedings means, in Gibraltar, the date on which a Claim Form or other originating process is issued by a Court);

"Relevant Sum" means a sum payable or remaining payable under an Unsatisfied Judgment, including —

- (a) an amount payable or remaining payable in respect of interest on that sum, and
- (b) either the whole of the costs (whether taxed or not) awarded by the Court as part of that judgment or, where the judgment includes an award in respect of a liability which is not a Relevant Liability, such proportion of those costs as the Relevant Liability bears to the total sum awarded under the judgment;

"Specified Excess" means £300 or such other sum as may from time to time be agreed in

writing between the Government and MIB;

“Unsatisfied Judgment” means a judgment or order (by whatever name called) in respect of a Relevant Liability which has not been satisfied in full within seven days from the date upon which the Claimant became entitled to enforce it.

### **Meaning of references**

2. (1) Save as otherwise herein provided the Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament applying to England and Wales notwithstanding that the Interpretation Act 1978 does not apply to Gibraltar.
- (2) Where, under this Agreement, something is required to be done:
  - (a) within a specified period after or from the happening of a particular event, the period begins on the day after the happening of that event;
  - (b) within or not less than a specified period before a particular event, the period ends on the day immediately before the happening of that event.
- (3) Where, apart from this paragraph, the period in question, being a period of seven days or less, would include a Saturday, Sunday or Bank Holiday or Christmas Day or Good Friday, that day shall be excluded.
- (4) Save where expressly otherwise provided, a reference in this Agreement to a numbered clause is a reference to the clause bearing that number in this Agreement and a reference to a numbered paragraph is a reference to a paragraph bearing that number in the clause in which the reference occurs.
- (5) In this Agreement:
  - (a) a reference (however framed) to the doing of any act or thing by or the happening of any event in relation to the Claimant includes a reference to the doing of that act or thing by or the happening of that event in relation to a Solicitor or other person acting on his behalf, and
  - (b) a requirement to give notice to, or to serve documents upon, MIB or an insurer mentioned in clause 9(1)(a) shall be satisfied by the giving of the notice to, or the service of the documents upon, a Solicitor acting on its behalf in the manner provided for.

### **Claimants not of full age or capacity**

3. Where, under and in accordance with this Agreement:
  - (a) any act or thing is done to or by a Solicitor or other person acting on behalf of a Claimant,
  - (b) any decision is made by or in respect of a Solicitor or other person acting on behalf of a Claimant, or
  - (c) any sum is paid to a Solicitor or other person acting on behalf of a Claimant, then, whatever may be the age or other circumstances affecting the capacity of the Claimant, that act, thing, decision or sum shall be treated as if it had been done to or by, or made in respect of or paid to a Claimant of full age and capacity.

## **Duration of Agreement**

4. (1) This Agreement shall come into force on the 25th July 2001 in relation to accidents occurring on or after that date and, save as provided by clause 23, the 1989 Agreement shall cease and determine immediately before that date.
- (2) This Agreement may be determined 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.

## **MIB's obligations to satisfy compensation claims**

5. (1) Subject to clauses 6 to 17, if a Claimant has obtained against any person in a Court in Gibraltar a judgment which is an Unsatisfied Judgment then MIB will pay the Relevant Sum to, or to the satisfaction of, the Claimant or will cause the same to be so paid.
- (2) Paragraph (1) applies whether or not the person liable to satisfy the judgment is in fact covered by a Contract of Insurance and whatever may be the cause of his failure to satisfy the judgment.

## **EXCEPTIONS TO AGREEMENT**

6. (1) Clause 5 does not apply in the case of an application made in respect of a claim of any of the following descriptions (and, where part only of a claim satisfies such a description, clause 5 does not apply to that part)
  - (a) a claim arising out of a Relevant Liability incurred by the user of a vehicle owned by or in the possession of the Government or the Ministry of Defence, unless:
    - (i) responsibility for the existence of a Contract of Insurance under the Ordinance in relation to that vehicle had been undertaken by some other person (whether or not the person liable was in fact covered by a Contract of Insurance), or
    - (ii) the Relevant Liability was in fact covered by a Contract of Insurance;
  - (b) 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 section 3(4) of the Ordinance or Rules made under Section 21 of the Ordinance, unless the use is in fact covered by such a contract;
  - (c) a claim by, or for the benefit of, a person ("the beneficiary") other than the person suffering death, injury or other damage which is made either
    - (i) in respect of a cause of action or a judgment which has been assigned to the beneficiary, or
    - (ii) pursuant to a right of subrogation or contractual or other right belonging to the beneficiary;
  - (d) 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
    - (i) there was not in force in relation to the use of that vehicle such a Contract of Insurance as is required by the Ordinance, and

- (ii) the Claimant either knew or ought to have known that that was the case;
- (e) a claim which is made in respect of a Relevant Liability described in paragraph (2) by a Claimant who, at the time of the use giving rise to the Relevant Liability was voluntarily allowing himself to be carried in the vehicle and, either before the commencement of his journey in the vehicle or after such commencement if he could reasonably be expected to have alighted from it, knew or ought to have known that
  - (i) the vehicle had been stolen or unlawfully taken,
  - (ii) the vehicle was being used without there being in force in relation to its use such a Contract of Insurance as would comply with the Ordinance,
  - (iii) the vehicle was being used in the course or furtherance of a crime, or
  - (iv) the vehicle was being used as a means of escape from, or avoidance of, lawful apprehension.
- (2) The Relevant Liability referred to in paragraph (1) (e) is a liability incurred by the owner or registered keeper or a person using the vehicle in which the Claimant was being carried.
- (3) The burden of proving that the Claimant knew or ought to have known of any matter set out in paragraph (1)(e) shall be on MIB but, in the absence of evidence to the contrary, proof by MIB of any of the following matters shall be taken as proof of the Claimant's knowledge of the matter set out in paragraph (1)(e)(ii)
  - (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;
  - (c) that the Claimant knew that the person driving the vehicle was disqualified from holding or obtaining a driving licence;
  - (d) that the Claimant knew that the user of the vehicle was neither its owner nor registered keeper nor an employee of the owner or registered keeper nor the owner or registered keeper of any other vehicle.
- (4) Knowledge which the Claimant has or ought to have for the purposes of paragraph (1)(e) includes knowledge of matters which he could reasonably be expected to have been aware of had he not been under the self induced influence of drink or drugs.
- (5) For the purposes of this clause
  - (a) a vehicle which has been unlawfully removed from the possession of the Government or Ministry of Defence shall be taken to continue in that possession whilst it is kept so removed,
  - (b) references to a person being carried in a vehicle include references to his being carried upon, entering, getting on to and alighting from the vehicle, and
  - (c) "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.

## **CONDITIONS PRECEDENT TO MIB'S OBLIGATION**

### **Form of application**

7. (1) MIB shall incur no liability under MIB's Obligation unless an application is made to the person specified in clause 9(1)
- (b) giving such information about the Relevant Proceedings and other matters relevant to this Agreement, and
- (c) accompanied by such documents as MIB may reasonably require
- (2) Where an application is signed by a person who is neither the Claimant nor a Solicitor acting on his behalf MIB may refuse to accept the application (and shall incur no liability under MIB's obligation) until it is reasonably satisfied that, having regard to the status of the signatory and his relationship to the Claimant, the Claimant is fully aware of the contents and effect of the application but subject thereto MIB shall not refuse to accept such an application by reason only that it is signed by a person other than the Claimant or his Solicitor.

### **Service of notice etc.**

8. Any notice required to be given or documents to be supplied to MIB pursuant to clauses 9 to 12 of this Agreement shall be sufficiently given or supplied if sent by facsimile transmission or by Registered or Recorded Delivery post to MIB's Agent for the time being and delivery shall be proved by the production of a facsimile transmission report produced by the sender's facsimile machine or an appropriate postal receipt.

### **Notice of Relevant Proceedings**

9. (1) MIB shall incur no liability under MIB's Obligation unless proper notice of the bringing of the Relevant Proceedings has been given by the Claimant not later than fourteen days after the commencement of those proceedings
- (a) in the case of proceedings in respect of a Relevant Liability which is covered by a Contract of Insurance with an insurer whose identity can be ascertained, to that insurer;
- (2) In this clause "proper notice" means, except in so far as any part of such information or any copy document or other thing has already been supplied under clause 7
- (a) notice in writing that proceedings have been commenced by Claim Form, Writ, or other means,
- (b) a copy of the sealed Claim Form Writ or other official document providing evidence of the commencement of the proceedings;
- (c) a copy or details of any insurance policy providing benefits in the case of the death, bodily injury or damage to Property to which the proceedings relate where the Claimant is the insured party and the benefits are available to him,
- (d) copies of all correspondence in the possession of the Claimant or (as the case may

be) his Solicitor or agent to or from the Defendant or (as the case may be) his Solicitor, Insurers or agent which is relevant to

- (i) the death, bodily injury or damage for which the Defendant is alleged to be responsible, or
  - (ii) any Contract of Insurance which covers, or which may or has been alleged to cover, liability for such death, injury or damage the benefit of which is, or is claimed to be, available to the Defendant,
- (e) subject to paragraph (3) a copy of the Particulars of Claim whether or not endorsed on the Claim Form, Writ or other originating process, and whether or not served on any Defendant, and
- (f) a copy of all other documents which are required under the appropriate rules of procedure to be served on a Defendant with the Claim Form, Writ or other originating process or with the Particulars of Claim,
- (g) such other information about the Relevant Proceedings as MIB may reasonably specify.
- (3) If the Particulars of Claim (including any document required to be served therewith) has not yet been served with the Claim Form or other originating process paragraph (2)(e) shall be sufficiently complied with if a copy thereof is served on MIB not later than seven days after it is served on the Defendant.

#### **Notice of service of proceedings**

10. (1) MIB shall incur no liability under MIB's Obligation unless the Claimant has, not later than the appropriate date, given notice in writing to the person specified in clause 9(1) of the date of service of the Claim Form or other originating process in the Relevant Proceedings.
- (2) In this clause, "the appropriate date" means the day falling
- (a) seven days after
    - (i) the date when the Claimant receives notification from the Court that service of the Claim Form or other original process has occurred,
    - (ii) the date when the Claimant receives notification from the Defendant that service of the Claim Form or other originating process has occurred, or
    - (iii) the date of personal service, or
  - (b) fourteen days after the date when service is deemed to have occurred in accordance with the Civil Procedure Rules, whichever of those days occurs first.

#### **Further information**

11. (1) MIB shall incur no liability under MIB's Obligation unless the Claimant has, not later than seven days after the occurrence of any of the following events, namely
- (a) the filing of a defence in the Relevant Proceedings,
  - (b) any amendment to the Particulars of Claim or any amendment of or addition to any schedule or other document required to be served therewith, and

- (c) where the Court gives notice to the Claimant of a decision to hold a pre-trial review, the date when that notice is received
- (d) either
  - (i) the setting down of the case for trial, or
  - (ii) where the court gives notice to the Claimant of the trial date, the date when that notice is received,

given notice in writing of the date of that event to the person specified in clause 9(1) and has, in the case of the filing of a defence or an amendment of the Particulars of Claim or any amendment of or addition to any schedule or other document required to be served therewith, supplied a copy thereof to that person.

- (2) MIB shall incur no liability under MIB's Obligation unless the Claimant furnishes to the person specified in clause 9(1) within a reasonable time after being required to do so such further information and documents in support of his claim as MIB may reasonably require notwithstanding that the Claimant may have complied with clause 7(1)

#### **Notice of intention to apply for judgement**

- 12. (1) MIB shall incur no liability under MIB's Obligation unless the Claimant has, after commencement of the Relevant Proceedings and not less than thirty five days before the Appropriate Date, given notice in writing to the person specified in clause 9(1) of his intention to apply for or to sign judgment in the Relevant Proceedings
- (2) In this clause, "the Appropriate Date" means the date when the application for judgment is made or, as the case may be, the signing of judgment occurs

#### **Section 15 of the Ordinance:**

- 13. MIB shall incur no liability under MIB's Obligation unless the Claimant has as soon as reasonably practicable
  - (a) demanded the information and, where appropriate, the particulars specified in section 15(1) of the Ordinance, and
  - (b) if the person of whom the demand is made fails to comply with the provisions of that subsection
    - (i) made a formal complaint to a police officer in respect of such failure, and
    - (ii) used all reasonable endeavours to obtain the name and address of the registered owner of the vehicle.

or, if so required by MIB, has authorised MIB to take such steps on his behalf.

#### **Prosecution of proceedings**

- 14. MIB shall incur no liability under MIB's Obligation
  - (a) unless the Claimant has, if so required by MIB and having been granted a full indemnity by MIB as to costs, taken 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 injury or death or damage to Property, or

- (b) if the Claimant, upon being requested to do so by MIB, refuses to consent to MIB being joined as a party to the Relevant Proceedings.

### **Assignment of judgment and undertakings**

15. MIB shall incur no liability under MIB's Obligation unless the Claimant has
- (a) assigned to MIB or its nominee the Unsatisfied Judgment, whether or not that judgment includes an amount in respect of a liability other than a Relevant Liability, and any order for costs made in the Relevant Proceedings, and
  - (b) undertaken to repay to MIB any sum paid to him
    - (i) by MIB in discharge of MIB's Obligation if the judgment is subsequently set aside either as a whole or in respect of the part of the Relevant Liability to which that sum relates;
    - (ii) by any other person by way of compensation or benefit for the death, bodily injury or other damage to which the Relevant Proceedings relate, including a sum which would have been deductible under the provisions of clause 17 if it had been received before MIB was obliged to satisfy MIB's Obligation.

### **LIMITATIONS ON MIB'S LIABILITY**

#### **Compensation for damage to Property**

16. (1) Where a claim under this Agreement includes a claim in respect of damage to Property, MIB's Obligation in respect of that part of the Relevant Sum which is awarded for such damage and any losses arising therefrom (referred to in this clause as "the Property damage compensation") is limited in accordance with the following paragraphs.
- (2) Where the Property damage compensation does not exceed the Specified Excess, MIB shall incur no liability.
  - (3) Where the Property damage compensation in respect of any one accident exceeds the Specified Excess but does not exceed £250,000, MIB shall incur liability only in respect of the Property damage compensation less the Specified Excess.
  - (4) Where the Property damage compensation in respect of any one accident exceeds £250,000, MIB shall incur liability only in respect of the sum of £250,000 less the Specified Excess.

#### **Compensation received from other sources**

17. Where a Claimant has received compensation from
- (a) the Policyholders Protection Board under the Policyholders Protection Act 1975 of the United Kingdom, or
  - (b) any insurer under an insurance agreement or arrangement, or
  - (c) any other source,

in respect of the death, bodily injury or other damage to which the Relevant Proceedings relate and such compensation has not been taken into account in the calculation of the Relevant Sum MIB may deduct from the Relevant Sum, in addition to any sum deductible under clause 16, an amount equal to that compensation.



## MISCELLANEOUS

### Notifications of decisions by MIB

18. Where a Claimant
- (a) has made an application in accordance with clause 7, and
  - (b) has given to the person specified in clause 9(1) proper notice of the Relevant Proceedings in accordance with clause 9(2),

MIB shall

- (i) give a reasoned reply to any request made by the Claimant relating to the payment of compensation in pursuance of MIB's Obligation, and
  - (ii) as soon as reasonably practicable notify the Claimant in writing of its decision regarding the payment of the Relevant Sum, together with the reasons for that decision.
19. (1) In the event of any dispute as to the reasonableness of a requirement made by MIB for the supply of information or documentation or for the taking of any step by the Claimant before any legal proceedings are issued, it may be referred by the Claimant or MIB to the Government whose decision shall be final.
- (2) Any referral of a dispute to Government should be addressed to the Principal Secretary at the Ministry of Transport, by post, fax or by hand delivery and the referral shall be taken to come to the attention of Government one day after hand delivery or receipt by facsimile or four days after posting as the case may be.
- (3) Where a dispute is referred to the Government
- (a) MIB shall supply the Government and, if it has not already done so, the Claimant with notice in writing of the requirement from which the dispute arises, together with the reasons for that requirement and such further information as MIB considers relevant, and
  - (b) where the dispute is referred by the Claimant, the Claimant shall supply the Government and, if he has not already done so, MIB with notice in writing of the grounds on which he disputes the reasonableness of the requirement.
  - (c) The Government shall reach a decision within 28 days of it being provided with the information required in paragraph (a) or (b) above.

### Recoveries

20. Nothing in this Agreement shall prevent an insurer from providing by conditions in a Contract of Insurance that all sums paid by the insurer or by MIB by virtue of this Agreement in or towards the discharge of the liability of the insured shall be recovered by them or by MIB from the insured or from any other person.

### Apportionment of damages, etc.

21. (1) Where an Unsatisfied Judgment which includes an amount in respect of a liability other than a Relevant Liability has been assigned to MIB or its nominee in pursuance of clause 15 MIB shall

- (a) apportion any sum it receives in satisfaction or partial satisfaction of the judgment according to the proportion which the damages awarded in respect of the Relevant Liability bear to the damages awarded in respect of the other liability, and
  - (b) account to the Claimant in respect of the moneys received properly apportionable to the other liability.
- (2) Where the sum received includes an amount in respect of interest or an amount awarded under an order for costs, the interest or the amount received in pursuance of the order shall be dealt with in the manner provided in paragraph (1).

### **Agents**

22. MIB may perform any of its obligations under this Agreement by agents and hereby appoints MIB's Agents as its Agents for the time being.

### **Transitional provisions**

23. (1) The 1989 Agreement shall continue in force in relation to claims arising out of accidents occurring before the 25<sup>th</sup> July 2001 with the modifications contained in paragraph (2).
- (2) In relation to any claim made under the 1989 Agreement after this Agreement has come into force, the 1989 Agreement shall apply as if there were inserted after Clause 6 thereof

"6A. Where any person in whose favour a judgment in respect of a Relevant Liability has been made has

- (a) made a claim under this Agreement, and
- (b) satisfied the requirements specified in clause 5 hereof,

MIB shall, if requested to do so, give him a reasoned reply regarding the satisfaction of that claim".

**IN WITNESS** whereof Richard Armstrong, Acting Chief Secretary for and on behalf of the Government of Gibraltar has set his hand and seal and the Motor Insurers' Bureau have caused its Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED AND  
DELIVERED BY RICHARD  
ARMSTRONG, Acting Chief  
Secretary for and on behalf of

The Government of Gibraltar

affixed in the presence of:



Director the Board



THE COMMON  
MOTOR  
BUREAU was  
SEAL of the INSURERS'  
hereunto  
ctors of  
of

Management

Secretary