

Dated the 4<sup>th</sup> day of April 2003.

**AGREEMENT**

**BETWEEN**

**GOVERNMENT OF GIBRALTAR**

**AND**

**MOTOR INSURERS' BUREAU**

**TRIAY & TRIAY**  
BARRISTERS ~ SOLICITORS

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THIS AGREEMENT is made the 14<sup>th</sup> day of August 2003 between the **GOVERNMENT OF GIBRALTAR** hereinafter referred to as "the Government") and the **MOTOR INSURERS' BUREAU**, whose registered office is at Linford Wood House 6-12 Capital Drive Linford Wood Milton Keynes MK14 6XT (hereinafter referred to as "MIB").

**IT IS HEREBY AGREED AS FOLLOWS:-**

#### INTERPRETATION

##### **General interpretation**

1. (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;

"1996 Agreement" means the Agreement made on 14 June 1996 between the Secretary of State for Transport for England Wales and Scotland and MIB providing for the compensation of victims of untraced drivers;

"2001 Agreement" means the Agreement dated 3<sup>rd</sup> May 2001 made between the Government of Gibraltar and MIB providing for the compensation of victims of uninsured drivers;

"applicant" means the person who has applied in accordance with the provisions of this Agreement for compensation in respect of a death or bodily injury or damage to property (or the person on whose behalf such an application has been made) and "application" means an application made by or on behalf of an applicant;

"award" means the aggregate of the sums which MIB is obliged to pay under this Agreement;

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

"property" means any property whether real, or personal;

"relevant proceedings" means civil proceedings brought by the applicant (whether or not pursuant to a requirement made under this Agreement) against a person other than the unidentified person in respect of an event described in clause 4(1);

"specified excess" means £300 or such other sum as may from time to time be agreed in writing between the Government and MIB;

"unidentified person" means a person who is, or appears to be, wholly or partly liable in respect of the death, injury or damage to property to which an application relates and who cannot be identified.

(2) Save as otherwise herein provided, the Interpretation Act 1978 of England and Wales shall apply to this Agreement notwithstanding that the Interpretation Act 1978 does not apply in Gibraltar.

(3) Where, under 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 the happening of that event.

(4) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or bank holiday or Christmas Day or Good Friday, that day shall be excluded.

(5) 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.

(6) 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 applicant includes a reference to the doing of that act or thing by or the happening of that event in relation to an Advocate or other person acting on his behalf, and
- (b) a requirement to give notice or send documents to MIB shall, where MIB has appointed a solicitor to act on its behalf in relation to the application, be satisfied by the giving of the notice or the sending of the documents, in the manner herein provided for, to that solicitor.

### **Applicants' representatives**

2. Where, under and in accordance with this Agreement—

- (a) any notice or other document is given to or by a solicitor or other person acting on behalf of an applicant,
- (b) any act or thing is done by or in respect of such solicitor or other person,
- (c) any decision is made by or in respect of such solicitor or other person, or
- (d) any payment is made to such solicitor or other person,

then, whatever may be the age or other circumstances affecting the capacity of the applicant, that act, thing, decision or payment shall be treated as if it had been done to or by, or made to or in respect of an applicant of full age and capacity.

## APPLICATION OF AGREEMENT

### **Duration of Agreement**

3. (1) This Agreement shall come into force on 1st April 2003.

(2) This Agreement may be determined by the Government or by MIB giving to the other not less than twelve months notice in writing to that effect.

(3) Notwithstanding the giving of notice of determination under paragraph (2) this Agreement shall continue to operate in respect of any application made in respect of death, bodily injury or damage to property arising from an event occurring before the date of termination specified in the notice.

#### Scope of Agreement

4. (1) Save as provided in clause 5, this Agreement applies where—

- (a) the death of, or bodily injury to, a person or damage to any property of a person has been caused by, or arisen out of, the use of a motor vehicle on a road or other public place in Gibraltar, and
- (b) the event giving rise to the death, bodily injury or damage to property occurred on or after *1<sup>st</sup> April* 2003, and
- (c) the death, bodily injury or damage to property occurred in circumstances giving rise to liability of a kind which is required to be covered by a policy of insurance or a security under the Ordinance, and
- (d) it is not possible for the applicant—
  - (i) to identify the person who is, or appears to be, liable in respect of the death, injury or damage, or
  - (ii) (where more than one person is or appears to be liable) to identify any one or more of those persons, and
- (e) the applicant has made an application in writing to MIB for the payment of an award in respect of such death, bodily injury or damage to property (and in a case where they are applicable the requirements of paragraph (2) are satisfied), and
- (f) the conditions specified in paragraph (3), or such of those conditions as are relevant to the application, are satisfied.

(2) Where an application is signed by a person who is neither the applicant nor a solicitor acting on behalf of the applicant MIB may refuse to accept the application (and shall incur no liability under this Agreement) until it is reasonably satisfied that, having regard to the status of the signatory and his relationship with the applicant, the applicant is fully aware of the content and effect of the application but subject thereto MIB shall not refuse to accept an application by reason only of the fact that it is signed by a person other than the applicant or his solicitor.

(3) The conditions referred to in paragraph (1)(f) are that—

- (a) except in a case to which sub-paragraph (b) applies, the application must have been made not later than --

- (i) three years after the date of the event which is the subject of the application in the case of a claim for compensation for death or bodily injury (whether or not damage to property has also arisen from the same event), or
  - (ii) nine months after the date of that event 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);
- (b) in a case where the applicant could not reasonably have been expected to have become aware of the existence of bodily injury or damage to property, the application must have been made as soon as practicable after he did become (or ought reasonably to have become) aware of it and in any case not later than–
- (i) fifteen years after the date of the event which is the subject of the application in the case of a claim for compensation for death or bodily injury (whether or not damage to property has also arisen from the same event), or
  - (ii) two years after the date of that event 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);
- (c) the applicant, or a person acting on the applicant's behalf, must have reported that event to the police
- (i) in the case of an event from which there has arisen a death or bodily injury alone, not later than 14 days after its occurrence, and
  - (ii) in the case of an event from which there has arisen property damage (whether or not a death or bodily injury has also arisen from it), not later than 5 days after its occurrence,
- but where that is not reasonably possible the event must have been reported as soon as reasonably possible;
- (d) the applicant must produce satisfactory evidence of having made the report required under sub-paragraph (c) in the form of an acknowledgement from the police showing the crime or incident number under which that force has recorded the matter;
- (e) after making, or authorising the making of, a report to the police the applicant must have co-operated with the police in any investigation they have made into the event.

(4) Where both death or bodily injury and damage to property have arisen from a single event nothing contained in this clause shall require an applicant to make an application in respect of the death or bodily injury on the same occasion as an application in respect of the damage to property and where two applications are made in respect of one event the provisions of this Agreement shall apply separately to each of them.

## Exclusions from Agreement

5. (1) This Agreement does not apply in the following cases—
- (a) where the applicant makes no claim for compensation in respect of death or bodily injury and the damage to property in respect of which compensation is claimed has been caused by, or has arisen out of, the use of an unidentified vehicle;
  - (b) where the death, bodily injury or damage to property in respect of which the application is made was caused by or arose out of the use of a motor vehicle which at the time of the event giving rise to such death, injury or damage was owned by or in the possession of the Government or the Ministry of Defence unless at that time some other person had undertaken responsibility for bringing into existence a policy of insurance or security satisfying the requirements of the Law;
  - (c) where, at the time of the event in respect of which the application is made, the applicant (or, if the applicant is claiming in respect of the death of another person, that person) was voluntarily allowing himself to be carried in the responsible vehicle and before the commencement of his journey in the vehicle (or after such commencement if he could reasonably be expected to have alighted from the vehicle) he knew or ought to have known that the vehicle—
    - (i) had been stolen or unlawfully taken, or
    - (ii) was being used without there being in force in relation to its use a contract of insurance or security which complied with the Ordinance; or
    - (iii) was being used in the course or furtherance of crime (other than a crime which is an offence only by virtue of the Ordinance, with the exception of the offence of driving without insurance); or
    - (iv) was being used as a means of escape from or avoidance of lawful apprehension;
  - (d) where the death, bodily injury or damage to property was caused in the course of an act of terrorism;
  - (e) where property damaged as a result of the event giving rise to the application is insured against such damage and the applicant has recovered the full amount of his loss from the insurer on or before the date of the application (but without prejudice to the application of the Agreement in the case of any other claim for compensation made in respect of the same event);
  - (f) where a claim is made for compensation in respect of damage to a motor vehicle (or losses arising therefrom) and, 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 Law, and
- (ii) the applicant (or, if the applicant is claiming in respect of the property of a deceased person, that other person) either knew or ought to have known that was the case

(but without prejudice to the application of the Agreement in the case of any other claim for compensation made in respect of the same event);

- (g) where the application is made neither by a person who has suffered injury or damage to property nor by the personal representative of such a person nor by a dependant claiming in respect of the death of another person but is made in any of the following circumstances, namely:
  - (i) where a cause of action or a judgment has been assigned to the applicant, or
  - (ii) where the applicant is acting pursuant to a right of subrogation or a similar contractual or other right belonging to him.

(2) The burden of proving that the person suffering death injury or damage to property knew or ought to have known of any matter set out in paragraph (1)(c) 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 knowledge of the matter set out in paragraph (1)(c)(ii) -

- (a) that he was the owner or registered keeper of the vehicle or had caused or permitted its use;
- (b) that he 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 he knew that the person driving the vehicle was disqualified for holding or obtaining a driving licence;
- (d) that he 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.

(3) Where-

- (a) the application includes a claim for compensation both in respect of death or bodily injury and also in respect of damage to property, and
- (b) the death or injury and the property damage has been caused by, or has arisen out of, the use of an unidentified vehicle

the Agreement does not apply to the claim for compensation in respect of the damage to property.

(4) For the purposes of paragraph (1)–

- (a) references to a person being carried in a vehicle include references to his being carried in or upon, or entering or getting on to or alighting from the vehicle;
- (b) “responsible vehicle” means the vehicle the use of which caused (or through the use of which there arose) the death, bodily injury or damage to property which is the subject of the application;
- (c) knowledge which a person has or ought to have for the purposes of paragraph (1)(c) 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;
- (d) “terrorism” has the meaning given in section 2 of the Terrorism (United Nations)(Overseas Territories) Order 2001.

#### **Limitation on application of Agreement**

6. (1) This clause applies where an applicant receives compensation or other payment in respect of the death, bodily injury or damage to property otherwise than in the circumstances described in clause 5(1)(e) from any of the following persons–

- (a) an insurer or under an insurance policy (other than a life assurance policy) or arrangement between the applicant or his employers and the insurer, or
  - (b) a person who has given a security pursuant to the requirements of the Ordinance under an agreement between the applicant and the security giver, or
  - (c) any other source other than a person who is an identified person for the purposes of clauses 13 to 15 or an insurer of, or a person who has given a security on behalf of, such a person.
- (2) Where the compensation received is equal to or greater than the amount which MIB would otherwise be liable to pay under the provisions of clauses 8 and 9 MIB shall have no liability under those provisions (to the intent that this Agreement shall immediately cease to apply except to the extent that the applicant is entitled to a contribution to his legal costs under clause 10).
- (3) Where the compensation received is less than the amount which MIB would otherwise be liable to pay under the provisions of clauses 8 and 9 MIB’s liability under those provisions shall be reduced by an amount equal to that compensation.

#### **PRINCIPAL OBLIGATIONS OF MIB AND APPLICANT**

##### **MIB’s obligation to investigate claims and determine amount of award**

7. (1) MIB shall, at its own cost, take all reasonable steps to investigate the claim made in the application and–

- (a) if it is satisfied after conducting a preliminary investigation that the case is not one to which this Agreement applies and the application should be rejected, it shall inform the applicant accordingly and (subject to the following provisions of this Agreement) need take no further action, or
  - (b) in any other case, it shall conduct a full investigation and shall as soon as reasonably practicable having regard to the availability of evidence make a report on the applicant's claim.
- (2) Subject to the following paragraphs of this clause, MIB shall, on the basis of the report and, where applicable, any relevant proceedings—
  - (a) reach a decision as to whether it must make an award to the applicant in respect of the death, bodily injury or damage to property, and
  - (b) where it decides to make an award, determine the amount of that award.
- (3) Where MIB reaches a decision that the Agreement applies and that it is able to calculate the whole amount of the award the report shall be treated as a full report and the award shall (subject to the following provisions of this Agreement) be treated as a full and final award.
- (4) Where MIB reaches a decision that the Agreement applies and that it should make an award but further decides that it is not at that time able to calculate the final amount of the award (or a part thereof), it may designate the report as an interim report and where it does so—
  - (a) it may, as soon as reasonably practicable, make one or more further interim reports, but
  - (b) it must, as soon as reasonably practicable having regard to the availability of evidence, make a final report.
- (5) Where it makes an interim or final report MIB shall, on the basis of that report and, where applicable, any relevant proceedings—
  - (a) in the case of an interim report, determine the amount of any interim award it wishes to make, and
  - (b) in the case of its final report, determine the whole amount of its award which shall (subject to the following provisions of this Agreement) be treated as a full and final award.
- (6) MIB shall be under an obligation to make an award only if it is satisfied, on the balance of probabilities, that the death, bodily injury or damage to property was caused in such circumstances that the unidentified person would, (had he been identified) have been held liable to pay damages to the applicant in respect of it.
- (7) MIB shall determine the amount of its award in accordance with the provisions of clauses 8 to 10 and (in an appropriate case) clauses 12 to 14 but shall not thereby be under a duty to calculate the exact proportion of the award which represents compensation, interest or legal costs.

## Compensation

8. (1) MIB shall include in its award to the applicant, by way of compensation for the death, bodily injury or damage to property, a sum equivalent to the amount which a court applying the law of Gibraltar would have awarded to the applicant if the applicant had brought successful proceedings to enforce a claim for damages against the unidentified person.

(2) In calculating the sum payable under paragraph (1), MIB shall adopt the same method of calculation as the court would adopt in calculating damages but it shall be under no obligation to include in that calculation an amount in respect of loss of earnings suffered by the applicant to the extent that he has been paid wages or salary (or any sum in lieu of them) whether or not such payments were made subject to an undertaking on his part to repay the same in the event of his recovering damages for the loss of those earnings.

(3) Where an application includes a claim in respect of damage to property, MIB's liability in respect of that application shall be limited in accordance with the following rules—

- (a) if the loss incurred by an applicant in respect of any one event giving rise to a claim does not exceed the specified excess, MIB shall incur no liability to that applicant in respect of that event;
- (b) if the aggregate of all losses incurred by both the applicant and other persons in respect of any one event giving rise to a claim (the "total loss") exceeds the specified excess but does not exceed £250,000—
  - (i) MIB's liability to an individual applicant shall be the amount of the claim less the specified excess, and
  - (ii) MIB's total liability to applicants in respect of claims arising from that event shall be the total loss less a sum equal to the specified excess multiplied by the number of applicants who have incurred loss through damage to property;
- (c) if the total loss exceeds £250,000—
  - (i) MIB's liability to an individual applicant shall not exceed the amount of the claim less the specified excess, and
  - (ii) MIB's total liability to applicants in respect of claims arising from that event shall be £250,000 less a sum equal to the specified excess multiplied by the number of applicants who have incurred loss due to property damage.

(4) MIB shall not be liable to pay compensation to the Commissioner of Police or any other appropriate 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 from the owner of that vehicle as contained in the Control of Traffic Regulations or any other Regulations.

In this clause "loss incurred in respect of any one event" means the aggregate of all losses incurred by the applicant and other persons as a result of that event.

### **Interest**

9 (1) MIB shall in an appropriate case also include in the award a sum representing interest on the compensation payable under clause 8 at a rate equal to that which a court applying the law of Gibraltar, in a case where the event giving rise to the death, bodily injury or damage to property occurred in Gibraltar would have awarded to a successful applicant.

(2) MIB is not required by virtue of paragraph (1) above to pay a sum representing interest in respect of the period before the date which is one month after the date on which MIB receives the police report (but, where MIB has failed to seek and obtain that report promptly after the date of the application, interest will run from the date which falls one month after the date on which it would have received it had it acted promptly).

### **Contribution towards legal costs**

10. (1) MIB shall, in a case where it has decided to make a compensation payment under clause 8, also include in the award a sum by way of contribution towards the cost of obtaining legal advice from a Barrister or solicitor in respect of—

- (a) the making of an application under this Agreement;
- (b) the correctness of a decision made by MIB under this Agreement; or
- (c) the adequacy of an award (or a part thereof) offered by MIB under this Agreement

that sum to be determined in accordance with the Schedule to this Agreement.

(2) MIB shall not be under a duty to make a payment under paragraph (1) unless it is satisfied that the applicant did obtain legal advice in respect of any one or more of the matters specified in that paragraph.

### **Conditions precedent to MIB's obligations**

11. (1) the applicant must:

- (a) make his application in such form,
- (b) provide in support of the application such statements and other information (whether in writing or orally at interview), and
- (c) give such further assistance,

as may reasonably be required by MIB or by any person acting on MIB's behalf to enable an investigation to be carried out under clause 7 of this Agreement.

- (2) The applicant must provide MIB with written authority to take all such steps as may be reasonably necessary in order to carry out a proper investigation of the claim.

(3) The applicant must, if MIB reasonably requires him to do so before reaching a decision under clause 7, provide MIB with a statutory declaration, made by him, setting out to the best of his knowledge and belief all the facts and circumstances upon which his application is based or such facts and circumstances in relation to the application as MIB may reasonably specify.

(4) The applicant must, if MIB reasonably requires him to do so before it reaches a decision or determination under clause 7 and subject to the following provisions of this clause—

(a) at MIB's option (and subject to paragraph 5)) either -

(i) bring proceedings against any person or persons who may in addition or alternatively to the unidentified person, be liable to the applicant in respect of the death, bodily injury or damage to property (by virtue of having caused or contributed to that death, injury or damage to property or being vicariously liable in respect of it or having failed to effect third party liability insurance in respect of the vehicle in question) and cooperate with MIB in taking such steps as are reasonable necessary to obtain judgment in those proceedings, or

(ii) authorise MIB to bring such proceedings and take such steps in the applicant's name;

(b) at MIB's expense, provide MIB with a transcript of any official shorthand or recorded note taken in those proceedings of any evidence given or judgment delivered therein, and

(c) assign to MIB or to its nominee the benefit of any judgment obtained by him (whether or not obtained in proceedings brought under sub-paragraph (a) above) in respect of the death, bodily injury or damage to property upon such terms as will secure that MIB or its nominee shall be accountable to the applicant for any amount by which the aggregate of all sums recovered by MIB or its nominee under the judgment (after deducting all reasonable expenses incurred in effecting recovery) exceeds the award made by MIB under this Agreement in respect of that death, injury or damage

(d) undertake to assign to MIB the right to any sum which is or may be due from an insurer, security giver or other person by way of compensation for or benefit in respect of the death, bodily injury or damage to property and which would (if payment had been made before the date of the award) have excluded or limited MIB's liability under the provisions of clause 6.

(5) If, pursuant to paragraph 4(a) MIB requires the applicant to bring proceedings or take steps against any person or persons (or to authorise MIB to bring such proceedings or take such steps in his name) MIB shall indemnify the applicant against all costs and expenses reasonably incurred by him in complying with that requirement.

(6) Where the applicant, without having been required to do so by MIB, has commenced proceedings against any person described in paragraph (4)(a) –

- (a) the applicant shall as soon as reasonably possible notify MIB of such proceedings and provide MIB with such further information about them as MIB may reasonably require, and
- (b) the applicant's obligations in paragraph (4)(a) to (c) shall apply in respect of such proceedings as if they had been brought at MIB's request.

#### JOINT AND SEVERAL LIABILITY

##### **Joint and several liability: interpretation**

12. In clauses 13 to 15–

“identified person” includes an identified employer or principal of a person who is himself unidentified;

“original judgment” means a judgment obtained against an identified person at first instance in relevant proceedings;

“three month period” means the period of three months specified in clause 13(3); and

“unidentified person's liability” means–

- (a) the amount of the contribution which (if not otherwise apparent) would, on the balance of probabilities, be recoverable from the unidentified person in an action brought by an identified person who had been held liable in full in an earlier action brought by the applicant, and
- (b) where a court has awarded the applicant interest or costs in addition to damages, an appropriate proportion of that interest or those costs.

##### **MIB's liability where wrongdoer is identified**

13. (1) This clause applies where the death, bodily injury or damage to property in respect of which the application is made is caused, or appears on the balance of probabilities to have been caused–

- (a) partly by an unidentified person and partly by an identified person, or
- (b) partly by an unidentified person and partly by another unidentified person whose employer or principal is identified,

in circumstances making (or appearing to make) the identified person liable, or vicariously liable, to the applicant in respect of the death, injury or damage.

(2) Where this clause applies, MIB's liability under this Agreement shall not exceed the unidentified person's liability and the following provisions shall apply to determine MIB's liability in specific cases.

(3) Where the applicant has obtained a judgment in relevant proceedings in respect of the death, injury or damage which has not been satisfied in full by or on behalf of the identified

person within the period of three months after the date on which the applicant became entitled to enforce it—

- (a) if that judgment is wholly unsatisfied within the three month period MIB shall make an award equal to the unidentified person's liability;
- (b) if the judgment is satisfied in part only within the three month period, MIB shall make an award equal to—
  - (i) the unsatisfied part, if it does not exceed the unidentified person's liability; and
  - (ii) the unidentified person's liability, if the unsatisfied part exceeds the unidentified person's liability.

(4) A judgment given in any relevant proceedings against an identified person shall be conclusive as to any issue determined in those proceedings which is relevant to the determination of MIB's liability under this Agreement.

(5) Where the applicant has not obtained (or been required by MIB to obtain) a judgment in respect of the death, injury or damage against the identified person but has received an agreed payment from the identified person in respect of the death, bodily injury or damage to property, that payment shall be treated for the purposes of this Agreement as a full settlement of the applicant's claim and MIB shall be under no liability under this Agreement in respect thereof.

(6) Where the applicant has not obtained (or been required by MIB to obtain) a judgement in respect of the death, injury or damage against the identified person nor received any payment by way of compensation in respect thereof from the identified person MIB shall make an award equal to the unidentified person's liability.

#### **Appeals by identified persons**

14. (1) This clause applies where an appeal against, or other proceeding to set aside, the original judgment is commenced within the three month period.

(2) If, as a result of the appeal or other proceeding—

- (a) the applicant ceases to be entitled to receive any payment in respect of the death, bodily injury or damage to property from any identified person, clause 13 shall apply as if he had neither obtained nor been required by MIB to obtain a judgment against that person;
- (b) the applicant becomes entitled to recover an amount different from that which he was entitled to recover under the original judgment the provisions of clause 13(3) shall apply, but as if for each of the references therein to the original judgment there were substituted a reference to the judgment in that appeal or other proceeding;
- (c) the applicant remains entitled to enforce the original judgment the provisions of clause 13(3) shall apply, but as if for each of the references therein to the

three month period there were substituted a reference to the period of three months after the date on which the appeal or other proceeding was disposed of.

Where the judgment in the appeal or other proceeding is itself the subject of a further appeal or similar proceeding the provisions of this clause shall apply in relation to that further appeal or proceeding in the same manner as they apply in relation to the first appeal or proceeding.

### **Compensation recovered under Uninsured Drivers Agreements**

15. (1) Where, in a case to which clause 13 applies, judgment in the relevant proceedings is given against an identified person in circumstances which render MIB liable to satisfy that judgment under any of the Uninsured Drivers Agreements, MIB shall not be under any liability under this Agreement in respect of the event to which the relevant proceedings relate.

(2) In this clause “Uninsured Drivers Agreements” means—

- (a) the Agreement dated 31<sup>st</sup> December 1989 made between the Government and MIB providing for the compensation of victims of uninsured drivers,
- (b) the 2001 Agreement, and
- (c) any agreement made between the Government and MIB (or their respective successors) which supersedes (whether immediately or otherwise) the 2001 Agreement.

### **NOTIFICATION OF DECISION AND PAYMENT OF AWARD**

#### **Notification of decision**

16. MIB shall give the applicant notice of a decision or determination under clause 7 in writing and when so doing shall provide him—

- (a) if the application is rejected because a preliminary investigation has disclosed that it is not one made in a case to which this Agreement applies, with a statement to that effect;
- (b) if the application has been fully investigated, with a statement setting out—
  - (i) all the evidence obtained during the investigation, and
  - (ii) MIB’s findings of fact from that evidence which are relevant to the decision;
- (c) if it has decided to make an interim award on the basis of an interim report under clause 7(4), with a copy of the report and a statement of the amount of the interim award;

- (d) if it has decided to make a full report under clause 7(3) or a final report under clause 7(4)(b), with a copy of the report and a statement of the amount of the full and final award;
- (e) in a case to which clause 13 applies, with a statement setting out the way in which the amount of the award has been computed under the provisions of that clause; and
- (f) in every case, with a statement of its reasons for making the decision or determination.

**Acceptance of decision and payment of award**

17. (1) Subject to the following paragraphs of this clause, if MIB gives notice to the applicant that it has decided to make an award to him, it shall pay him that award—

- (a) in the case of an interim award made pursuant to clause 7(5)(a), as soon as reasonably practicable after the making of the interim report to which the award relates;
- (b) in the case of a full and final award made pursuant to clause 7(3) or (5)(b)—
  - (i) where the applicant notifies MIB in writing that he accepts the offer of the award unconditionally, not later than 14 days after the date on which MIB receives that acceptance, or
  - (ii) where the applicant does not notify MIB of his acceptance in accordance with sub-paragraph (a) but the period during which he may give notice of an appeal under clause 19 has expired without such notice being given, not later than 14 days after the date of expiry of that period,

and that payment shall discharge MIB from all liability under this Agreement in respect of the death, bodily injury or damage to property for which the award is made.

(2) MIB may, upon notifying an applicant of its decision to make an award, offer to pay the award in instalments in accordance with a structure described in the decision letter (the “structured settlement”) and if the applicant notifies MIB in writing of his acceptance of the offer—

- (a) the first instalment of the payment under the structured settlement shall be made not later than 14 days after the date on which MIB receives that acceptance, and
- (b) subsequent payments shall be made in accordance with the agreed structure.

**APPEALS AGAINST MIB’s DECISION**

**Right of appeal**

18. Where an applicant is not willing to accept—

- (a) a decision or determination made by MIB under clause 7 or a part thereof, or
- (b) a proposal for a structured settlement

he may give notice (a “notice of appeal”) that he wishes to submit the matter to arbitration in accordance with the provisions of clauses 19 to 25.

### **Notice of appeal**

19. (1) A notice of appeal shall be given in writing to MIB at any time before the expiration of a period of 6 weeks from—

- (a) the date on which the applicant receives notice of MIB’s decision under clause 16;
- (b) where he disputes a notification given under clause 17(4)(b), the date when such notification is given;
- (c) in any other case, the date on which he is given notification of the decision, determination or requirement.

(2) The notice of appeal—

- (a) shall state the grounds on which the appeal is made,
- (b) shall contain the applicant’s observations on MIB’s decision, and
- (c) may be accompanied by such further evidence in support of the appeal as the applicant thinks fit.
- (d) Shall contain an undertaking to abide by any decision of the arbitrator made under clauses 23 or 24.

### **Procedure following notice of appeal**

20. (1) Not later than 7 days after receiving the notice of appeal MIB shall—

- (a) apply to the Government for the appointment of a single arbitrator, or
- (b) having notified the applicant of its intention to do so, cause an investigation to be made into any further evidence supplied by the applicant and report to the applicant upon that investigation and of any change in its decision which may result from it.

(2) Where the only ground stated in the notice of appeal is that the award is insufficient (including a ground contesting the degree of contributory negligence attributed to the applicant or, as the case may be, the person in respect of whose death the application is made) MIB may give notice to the applicant of its intention, if the appeal proceeds to arbitration, to ask the arbitrator to decide whether its award exceeds what a court would have awarded or whether the case is one in which it would make an award at all and shall in that notice set out such observations on that matter as MIB considers relevant to the arbitrator’s decision.

(3) Where MIB has made a report under paragraph (1)(b) or given to the applicant notice under paragraph (2), the applicant may, not later than 6 weeks after the date on which the report or (as the case may be) the notice was given to him—

- (a) notify MIB that he wishes to withdraw the appeal, or
- (b) notify MIB that he wishes to continue with the appeal and send with that notification—
  - (i) any observations on the report made under paragraph (1)(b) which he wishes to have drawn to the attention of the arbitrator,
  - (ii) any observations on the contents of the notice given under paragraph (2), including any further evidence not previously made available to MIB and relevant to the matter, which he wishes to have drawn to the attention of the arbitrator.

(4) Where the applicant notifies MIB under paragraph (3)(b) of his wish to continue the appeal, or if the applicant fails within the specified period of 6 weeks to give notification of his wish either to withdraw or to continue with the appeal, MIB shall, not later than 7 days after receiving the notification or 7 days after the expiry of the said period (as the case may be)—

- (a) apply to the Government for the appointment of an arbitrator, or
- (b) having notified the applicant of its intention to do so, cause a further investigation to be made into the further evidence sent under paragraph (3)(b)(ii).

(5) Where MIB has caused an investigation to be made into any further evidence supplied by the applicant under paragraph (3)(b)(ii), it shall report to the applicant upon that investigation and of any change in a decision or determination made under clause 7 which may result from it and the applicant may, not later than 6 weeks after the date on which he receives the report—

- (a) notify MIB that he wishes to withdraw the appeal, or
- (b) notify MIB that he wishes to continue with the appeal.

(6) Where the applicant notifies MIB under paragraph (5)(b) of his wish to continue the appeal, or if the applicant fails within the specified period of 6 weeks to give notification of his wish either to withdraw or to continue with the appeal, MIB shall not later than 7 days after receiving the notification or 7 days after the expiry of the said period (as the case may be) apply to the Government for the appointment of an arbitrator.

(7) When applying to the Government for the appointment of an arbitrator MIB may send with the application such written observations as it wishes to make upon the applicant's notice of appeal but must at the same time send a copy of those observations to the applicant.

### **Appointment of arbitrator**

21. (1) In the event of MIB neither applying to the Government for the appointment of an arbitrator in accordance with the provisions of clause 20 nor taking such further steps as it may at its discretion take in accordance with that clause, the applicant may apply to the Government for the appointment of an arbitrator.

(2) For the purposes of the Arbitration Ordinance the arbitral proceedings are to be regarded as commencing on the date of the making of the application by the Government or the applicant (as the case may be).

(3) The Government shall, upon the making of an application for the appointment of an arbitrator to hear the appeal, select the next available arbitrator by rotation from a panel of Queen's Counsel appointed for the purpose of determining appeals under this Agreement by the Principal Secretary of the Ministry with responsibility for Transport and shall forthwith notify the applicant and MIB of the appointment.

### **22. Arbitration procedure**

(1) Upon receiving notification from the Government of the appointment of an arbitrator, MIB shall send to the arbitrator—

- (a) the notice of appeal,
- (b) (if appropriate) its request for a decision as to whether its award exceeds what a court would have awarded or whether the case is one in which it would make an award at all,
- (c) copies of—
- (d) the applicant's application,
- (e) its decision; and
- (f) all statements, declarations, notices, reports, observations and transcripts of evidence made or given under this Agreement by the applicant or MIB.

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

- (a) MIB shall undertake the investigation and send copies of the report to the arbitrator and the applicant,
- (b) the applicant 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.

(3) The arbitrator shall, after considering the written submissions referred to in paragraphs (1) and (2), send to the applicant and MIB a preliminary decision letter setting out the decision he proposes to make under clause 23 and his reasons for doing so.

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

- (a) accept the preliminary decision, or
- (b) submit written observations upon the preliminary decision or the reasons or both, or
- (c) request an oral hearing,

and if either of them should within that period fail to do any of those things (including a failure to provide the other person with a copy of his notification) he or it shall be treated as having accepted the decision.

(5) If the applicant submits new evidence with any written observations under paragraph (4)(b) MIB may, within 28 days or such longer period as the arbitrator may allow, submit its own written observations on that evidence or, if it has not already done so, request an oral hearing and, except where an oral hearing has been requested, the arbitrator shall determine whether, and if so how, such evidence shall be admitted and tested.

(6) If both the applicant and MIB accept the reasoned preliminary decision that decision shall be treated as his final decision for the purposes of clause 23 (so that clause 23(2) shall not then apply) but if either of them submits observations on that decision the arbitrator must take those observations into account before making a final decision.

(7) If the applicant or MIB requests an oral hearing, the arbitrator shall determine the appeal in that manner and in such a case—

- (a) the hearing shall be held in public unless the applicant requests that it (or any part of it) be heard in private;
- (b) the hearing shall take place at a location in Gibraltar or London which in the opinion of the arbitrator (after consultation with each of them) is convenient for both MIB and the applicant as well as for himself;
- (c) a party to the hearing may be represented by a lawyer or other person of that party's choosing;
- (d) a party to the hearing shall be entitled to address the arbitrator, to call witnesses and to put questions to those witnesses and any other person called as a witness.

#### **Arbitrator's decision**

23 (1) The arbitrator, having regard to the subject matter of the proceedings, may in an appropriate case—

- (a) determine whether or not the case is one to which this Agreement applies;

- (b) remit the application to MIB for a full investigation and a decision in accordance with the provisions of this Agreement;
- (c) determine whether MIB should make an award under this Agreement and if so what that award should be;
- (d) determine such other questions as have been referred to him as he thinks fit;
- (e) (subject to the provisions of paragraph (4) and (5)) order that the costs of the proceedings shall be paid by one party or allocated between the parties in such proportions as he thinks fit;

and where the arbitrator makes a determination under sub-paragraph (a) that the case is one to which this Agreement applies, all the provisions of this Agreement shall apply as if the case were one to which clause 7(1)(b) applies.

(2) The arbitrator shall notify MIB and the applicant of his decision in writing.

(3) MIB shall pay to the applicant any amount which the arbitrator has decided shall be awarded to him, and that payment shall discharge MIB from all liability under this Agreement in respect of the death, bodily injury or damage to property in respect of which that decision is given.

(4) Where a party to an oral hearing is legally represented there the amount which an arbitrator may award him in respect of such representation is limited to £500 per half day unless that party satisfies the arbitrator that there is a compelling reason for a more generous award.

(5) Where an oral hearing has taken place at the request of the applicant and the arbitrator is satisfied that it was unnecessary and that the matter could have been decided on the basis of the written submissions referred to in clause 22(1) he shall take that into account in deciding whether to make an order under paragraph (1).

#### **Arbitrator's fee**

24 (1) Subject to paragraph (2), MIB shall upon being notified of the name of the arbitrator pay the arbitrator a fee approved by the Registrar of the Supreme Court after consultation with MIB.

(2) In a case where it appears to the arbitrator that, having regard to all the surrounding circumstances of the case, there were no reasonable grounds for making the appeal or bringing the question before him, the arbitrator may, in his discretion, order—

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

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

(3) Where pursuant to paragraph (2), the arbitrator orders-

(a) the applicant to reimburse MIB, MIB may deduct an amount equal to the fee from any amount which it pays to the applicant to discharge its liability under this Agreement.

(b) an Advocate or other person to reimburse MIB, MIB may deduct an amount equal to the fee from any amount which it pays to that solicitor or other person to discharge its liability to the applicant under this Agreement.

#### **Applicants under a disability**

25. If in any case it appears to MIB that, by reason of the applicant being a minor or of any other circumstance affecting his capacity to manage his affairs, it would be in the applicant's interest that all or some part of the award should be administered for him under a trust, or by the Court MIB may establish for that purpose a trust of the whole or part of the award (such trust to take effect for such period and under such provisions as appears to MIB to be appropriate in the circumstances of the case) or, as the case may be, initiate or cause any other person to initiate the proceedings necessary to have the award administered by that Court and otherwise cause any amount payable under the award to be paid to the administered thereby".

### **ACCELERATED PROCEDURE**

#### **Instigation of accelerated procedure**

26. (1) In any case where, after making a preliminary investigation under clause 7, MIB has decided that-

(a) the case is one to which this Agreement applies, and

(b) it is not one to which clause 13, applies,

MIB may notify the applicant of that decision and, instead of causing a full investigation and report to be made under clause 7, may make to the applicant an offer to settle his claim by payment of an award specified in the offer representing compensation assessed in accordance with clause 8 together, in an appropriate case, with interest thereon assessed in accordance with clause 9 and a contribution towards the cost of obtaining legal advice in respect of the making of the application.

(2) Where an offer is made under paragraph (1), MIB shall send to the applicant a statement setting out-

(a) the relevant evidence it has collected disclosing the circumstances in which the death, bodily injury or damage to property occurred, and

- (b) its reasons for the assessment of the award.

#### **Settlement by accelerated procedure**

27. (1) The applicant shall not later than 6 weeks after he receives an offer under clause 26 notify MIB of his acceptance or rejection thereof.

(2) Where the applicant notifies MIB of his acceptance of the offer—

- (a) MIB shall not later than 14 days after receipt of the acceptance pay to the applicant the amount of the award, and
- (b) MIB shall be discharged from all liability under this Agreement in respect of the death, bodily injury or damage to property for which that payment is made.

(3) In the event of the applicant failing to accept the offer within the specified period, the application shall be treated as one to which clause 7(1)(b) applies.

### MISCELLANEOUS

#### **Referral of disputes to arbitrator**

28. (1) Where an applicant disputes a decision, determination or requirement made by MIB under the terms of this Agreement, other than a dispute relating to MIB's decision for which provision is made by clause 18, the dispute shall be referred to and determined by an arbitrator.

(2) Where an applicant wishes to refer such a dispute to arbitration he shall, not later than 4 weeks after the decision, determination or requirement is communicated to him, give notice to MIB that he wishes the matter to be so resolved.

(3) For the purposes of the Arbitration Ordinance the arbitral proceedings are to be regarded as commencing on the date of such application.

(4) Upon receipt of the applicant's notice MIB shall apply immediately to the Government for the appointment of an arbitrator and in the event of MIB failing to do so the applicant may make the application.

(5) The Government shall, upon receiving the application for the appointment of an arbitrator to hear the appeal, select the next available arbitrator by rotation from a panel of Queen's Counsel appointed for the purpose of determining appeals under this Agreement by the Principal Secretary of such Ministry with responsibility for Transport and shall forthwith notify the applicant and MIB of the appointment.

(6) The applicant and MIB shall, not later than 4 weeks after receiving notification of the appointment of the arbitrator, submit to him a written statement of their respective cases with supporting documentary evidence where available.

(7) Subject to paragraphs (7) to (9), the arbitrator shall decide the appeal on the documents submitted to him under paragraph (5) and no further evidence shall be produced to him.

(8) The applicant may, by notice in writing given to the arbitrator and MIB not later than the date on which he submits the statement of his case, ask the arbitrator to determine the appeal by means of an oral hearing and shall submit to the arbitrator and MIB a written statement, with supporting documentary evidence where appropriate, in support of that request.

(9) The arbitrator shall in such a case seek the view of MIB on the need for an oral hearing and MIB may submit to the arbitrator and the applicant a written statement, with supporting documentary evidence where appropriate, in support of its view.

(10) If, after considering those written submissions, the arbitrator decides that an oral hearing is necessary to determine the dispute—

- (a) the hearing shall be held in public unless the applicant requests that it (or any part of it) be heard in private,
- (b) the hearing shall take place at a location in Gibraltar or London which in the opinion of the arbitrator (after consultation with each of them) is convenient for both MIB and the applicant as well as for himself,
- (c) a party to the hearing may be represented by a lawyer or other person of that party's choosing,
- (d) a party to the hearing shall be entitled to address the arbitrator, to call witnesses and to put questions to those witnesses and any other person called as a witness.

(11) The arbitrator may, having regard to the subject matter of the proceedings and in an appropriate case, order that his fee or the costs of the proceedings (as determined according to clause 10(1)(b) of, and the Schedule to, this Agreement) or both his fee and those costs shall be paid by one party or allocated between the parties in such proportions as he thinks fit.

(12) Unless otherwise agreed the decision determination or requirement in respect of which notice is given under paragraph (2) shall stand unless reversed by the arbitrator.

### **Services of notices, etc, on MIB**

29. Any notice required to be served on or any other notification or document required to be given or sent to MIB under the terms of this Agreement shall be sufficiently served or given if sent by fax 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 fax report produced by the sender's fax machine or an appropriate postal receipt.

### **Agents**

30. MIB may perform any of its obligations under this Agreement by agents.

**Second Motor Insurance Directive**

31. This Agreement is made for the purpose of implementing Article 1(4) of the Second Motor Insurance Directive 84/5/EEC of December 1983 -

**Enforcement against MIB**

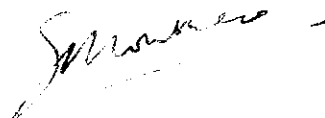

32. If MIB fail to pay the compensation awarded in accordance with the provisions of this Agreement, the applicant is entitled to enforce payment through the courts.

**Transitional Provisions**

33. The 1996 Agreement shall cease to be applied with effect from <sup>4<sup>th</sup> April 2003</sup> 2002 but shall continue in force in relation to any claim arising out of an event occurring before that date.

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


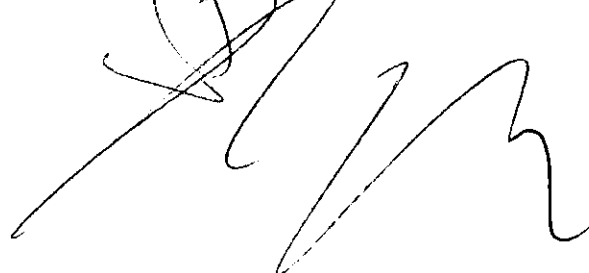
Signed sealed and delivered by Chief Secretary for and on behalf of The Government of Gibraltar

THE COMMON SEAL of the MOTOR INSURERS' BUREAU was hereunto affixed in the presence of:-

Directors of the Board of Management

Secretary

## SCHEDULE

### CONTRIBUTION TO THE COST OF LEGAL ADVICE

1. Subject to paragraph 4, MIB shall, solely in cases where the applicant has been awarded compensation, pay a contribution towards the applicant's costs of obtaining legal advice an amount to be determined in accordance with paragraph 2.
2. The amount of the contribution shall be the aggregate of -
  - (a) the fee specified in column (2) of the table below in relation to the amount of the award specified in column (1) of that table, and
  - (b)
  - (b) reasonable disbursements.

Table

Amount of Award (1)	Specified Fee (2)
Not exceeding £150,000	15% of the amount of the award, subject to a minimum of £500 and a maximum of £3,000
Over £150,000	2% of the amount of the award

Oral hearings - in the event that there is an oral hearing and the applicant secures an award of compensation, then subject to any other order made by the arbitrator, a contribution of £500 per half day will be paid towards the cost of representation by a solicitor, advocate or barrister. No contribution will be made unless the arbitrator so instructs nor where the applicant elects to represent himself.

- 3 For the purpose of paragraph 2-

"amount of the award" means the gross amount of the compensation agreed or awarded by way of compensation and interest under clauses 8 and 9

"reasonable disbursements" means reasonable expenditure on the applicant's behalf and experts' or other reports where disclosed or where otherwise agreed by MIB before it is incurred (MIB's agreement not having been unreasonably withheld). Counsel's fees will only be paid where the applicant is a minor or is under a legal disability.

4. The foregoing provisions of this Schedule are without prejudice to MIB's liability under the provisions of this Agreement to pay the costs of arbitration proceedings or an arbitrator's fee.