

**MEMORANDUM OF AGREEMENT** made on the  
day of July Two thousand and seven and entered into

16<sup>TH</sup>

**BETWEEN**

DR. THE HON. EWART FREDERICK BROWN, J.P., M.P., in his capacity as The Minister of Transport of the Government of Bermuda ("the Minister") of the One Part, and  
THE MOTOR INSURERS' FUND, a company duly incorporated as a company limited by guarantee in and under the laws of Bermuda and having its registered office at Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda ("the Fund") of the Other Part.

WHEREAS the Minister and those insurers authorized to undertake insurance business in Bermuda ("the Insurers") under the Motor Car Insurance (Third Party Risks) Act, 1943 ("the Act") made and entered into a certain undertaking as a result of which the Fund has been incorporated under the Companies Act 1981 and the parties agreed to enter into an agreement to provide a limited indemnity to persons injured either by the driving of an uninsured vehicle or where the driver of a motor vehicle is untraceable.

AND WHEREAS this Agreement has from time to time been amended.

NOW THIS AGREEMENT WITNESSETH as follows:

1. The effective date of this Agreement shall be the 16<sup>th</sup> day of July 2007. This Agreement supersedes all previous agreements between the Minister and the Fund.
2. If final judgment in respect of liability in respect of the death of, or bodily injury to, any third party which liability is required to be covered by a policy of insurance under the Act, is obtained against any person or persons at first instance in a court of competent jurisdiction in Bermuda (or on appeal therefrom either to a superior court of record in Bermuda or to the Judicial Committee of the Privy Council) and either
  - (i) at the time of the accident giving rise to such liability there is not in force a policy of insurance as required by the Act, or

- (ii) the policy of insurance required by the Act is, for the purposes of the Act, of no effect for any reason (other than inability of the Insurer to make payment), or
- (iii) the claimant either knew or ought to have known of the circumstances prevailing in (i) and (ii), and
- (iv) any such judgment is not satisfied in full or to the limits of the policy within twenty-eight days from the date upon which the person or persons in whose favour such judgment was given became entitled to enforce it

then the Fund will, subject to the provisions of this Agreement, pay or cause to be paid to the person or persons ("the Plaintiff") in whose favour such judgment was given such sum set out in the judgment for:-

- (a) General Damages;
- (b) Special Damages, but excluding any amount payable in respect of property damage;
- (c) An amount for interest, having regard to any delays by the Plaintiff in bringing and/or prosecuting the claim, as of the date of the judgment;
- (d) Costs, either taxed or in an amount agreed between the Plaintiff and the Fund, in such proportion as relates to the extent of the liability of the Fund.

3. In order to provide the necessary moneys for the Fund to meet its obligations in respect of those claims and expenses falling directly upon the Fund, provision will be made for a separate surcharge to be applied to the premium paid in respect of any motor insurance, such surcharge to be subject to future review and adjustment upwards or downwards as may be necessary to maintain the level of monies required by the Fund to meet its obligations. Premium surcharges are at all times the property of the Fund and not of any individual Insurer. They shall not be subject to any commission, discount or other deduction whatsoever by an Insurer.

4. (1) This Agreement may be terminated by the Minister or by the Fund by either of them giving to the other not less than one year's notice in writing, without prejudice to the continued operation of this Agreement in respect of accidents occurring before the date of termination. Should the Minister give notice of termination of this Agreement the Government of Bermuda undertakes to refund to members of the Fund any moneys advanced to cover any deficiencies in the Fund in relation to accidents occurring before the date of termination and the members of the Fund shall thereafter have no liability whatsoever in respect of the Fund.

(2) For the avoidance of doubt, the Fund does not consider any claims for property damage.

5. This Agreement shall not apply if the event giving rise to the claim resulted from an accident which occurred before the effective date of this Agreement.

6. Nothing in this Agreement shall prevent the Insurers (or any of them) from providing by conditions in their contracts of insurance or by collateral agreements that all sums paid by them on behalf of the Fund or by the Fund by virtue of this Agreement in or towards the discharge of the liability of their policyholder or any other person shall be recoverable by them or by the Fund from the policyholder or from any other person.

7. The following shall be conditions precedent to the liability of the Fund namely:

(a) that written notice of the commencement of proceedings and the MIF Claim Form duly completed (in the form annexed to this Agreement) is received by recorded delivery at least seven days before the commencement of such proceedings by:

(i) the Insurer in any case in which there was in force at the time the accident occurred a policy of insurance purporting to cover the use of the vehicle the existence of which policy is known before the commencement of proceedings to the Plaintiff; and

- (ii) the Fund, in any event;
- (b) that a copy of all pleadings, including a copy of any writ, summons, statement of claim and any application for judgment and a copy of correspondence relevant to the issue of liability or the question of insurance have been supplied to the Insurer and the Fund, as the case may be, and that the Plaintiff has not sought to obtain judgment before the expiry of thirty days from the date on which the copy of such writ, summons, statement of claim or any application for judgment has been supplied to the Insurer or the Fund, unless within the said period of thirty days the person against whom the Plaintiff has taken proceedings issues any process which could lead to the dismissal of such proceedings;
- (c) that if so required by the Fund and subject to an indemnity as to taxed costs from the Fund the Plaintiff shall take all reasonable steps to obtain judgment against any person against whom he may have a remedy in respect of or arising out of the injury or death giving rise to the aforesaid proceedings, and the Fund shall be entitled in its discretion to take over and have the full conduct of any claim or proceeding taken in respect thereof;
- (d) that the Plaintiff shall comply with all reasonable requirements of the Fund in relation to any matter which might give rise to a claim against the Fund in terms of this Agreement;
- (e) that the judgment or judgments (including such judgments as may be obtained under paragraph (c) of this clause) shall be ceded to the Fund or its nominee;
- (f) that the Plaintiff shall give credit to the Fund for any amount paid to him by or on behalf of the person against whom the Plaintiff has taken proceedings in respect of liability for injury to or death of any person, arising out of the event which occasioned the claim against the Fund. In the event that such amount includes a sum in respect of loss of or damage to property, the amount of which is not specified, then the amount of the credit to the Fund shall be only such portion of that amount which can be fairly allocated to the injury or death.

8. When notice of proceedings has been given under clause 7 it shall be competent for the Fund at any time before the date set down for the hearing of the action to offer the Plaintiff, in full satisfaction of the obligation of the Fund, such sum as it considers sufficient in respect of any claim made, together with the equivalent of the taxed costs to the date of such offer. If such offer is not accepted and in any ensuing action the Plaintiff is awarded in respect of his claim for injury to or death of any person not more than the sum offered under this clause (exclusive of the sum for costs), then in satisfaction of its undertaking under this Agreement the Fund shall not be required to pay more than the total amount awarded in respect of General Damages, Special Damages (as defined in clause 2(b) herein) and interest, together with the sum offered in respect of costs, and shall be entitled to set off any costs incurred by it after the date of the offer against any amount awarded to the Plaintiff.

9. (1) Payment of ex-gratia compensation in respect of the death or bodily injury to any person caused by or arising out of the use of a motor vehicle on a road in Bermuda may be made out of moneys set aside by the Fund for the payment of compensation to victims of traffic accidents, if the following conditions occur:

(a) the applicant for payment is unable to trace any person responsible for the death or injury; and

(b) the application is in respect of a person who has sustained death or serious and permanent injury; and

(c) the death or injury was caused in such circumstances that on the balance of probabilities the untraced person would be liable under Bermuda Law to pay damages to the applicant in respect of the death or injury; and

(d) the liability of the untraced person to pay damages to the applicant is one which is required to be covered by insurance under the Act, it being assumed for this purpose, in the absence of evidence to the contrary, that the vehicle was being used in the circumstances in which the user was required by the Act to be insured

against third party risks; and

(e) the death or injury was not caused by the use of the vehicle by the untraced person as a weapon, that is to say, in a deliberate attempt to run down the deceased or injured person; and

(f) the application for compensation is made in writing within one year from the date of happening of the event giving rise to the death or injury.

(2) Where an application for compensation is made under this Agreement, the ex-gratia payment that may be made by the Fund as aforesaid shall not exceed the amount which a court in Bermuda applying Bermuda law would assess as General Damages and Special Damages as defined in clause 2(b) herein which the applicant would have been entitled to recover from the untraced person in respect of that death or injury if proceedings for damages had been brought by the applicant against the untraced person. The amount so payable shall be assessed by and be at the absolute discretion of the Fund.

(3) No payment or other distribution under this Agreement shall be made unless -

(a) the applicant has given all such assistance as may reasonably be required by or on behalf of the Fund to enable any investigation to be carried out;

(b) the applicant has taken all such steps, including legal proceedings, as he may have been required to take by or on behalf of the Fund for the purpose of ascertaining the liability of any person or persons in respect of the death or injury as having caused or contributed thereto or as being the master or principal of any such person or persons;

(c) the applicant or his estate representative has assigned to the Fund any right to any payment in respect of the death or injury to which his application relates including those given by the Workmen's Compensation Act, 1965 or the Criminal Injuries (Compensation) Act 1973.

10. Notwithstanding any requirements of the Act and any clauses of this Agreement:
- (a) the limit of the liability of the Fund in respect of the death or injury to any one person shall be \$250,000 and, in respect of any one accident shall be \$500,000 (both limits exclusive of any taxed costs);
  - (b) the Fund will not be liable for claims payable under the Criminal Injuries (Compensation) Act, 1973;
  - (c) the Fund will not be liable for any amounts by which a judgment exceeds the limit of any policy;
  - (d) the Fund will not be liable for medical or disability expenses otherwise recoverable under any insurance policy or by any indemnity from any other party;
  - (e) The Fund shall have the absolute discretion to waive any time limits set out in this Agreement and such waiver shall be made on a claim by claim basis.
11. (1) The acceptance of liability by the Fund under clause 2 of this Agreement in respect of any vehicle the use of which is required to be covered by a policy of insurance under the Act shall extend to the use of a vehicle which is not required to be covered by a policy of insurance under the Act only so long as there is in force a policy of insurance purporting to cover such use of the vehicle.
- (2) For the purposes of this clause such a vehicle, which has been unlawfully removed from the possession of the person legally entitled to possession for the time being, shall be taken to continue in that possession whilst it is so removed.
12. (1) The Schedule hereto sets forth the names of those Insurers authorised to undertake insurance business under the Act at the effective date. The Minister undertakes to ensure that every person authorised as an Insurer under the Act will undertake to

become a member of the Fund and to comply with the terms of membership of the Fund.

(2) In the event that any Insurer ceases to be a member of the Fund or ceases to comply with the terms of membership of the Fund, the Minister shall, after due notice to the said Insurer, cause authorisation under the Act to be revoked.

13. In this Agreement, "judgment" means only a judgment in favour of the person who suffered bodily injury, his dependants or legal estate representatives and the only amounts the Fund is obliged to pay in respect of such judgment are those set out in clause 2 herein.

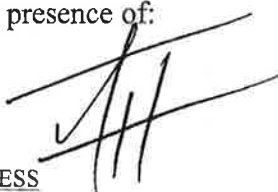
14. In the event of any dispute between a claimant and the Fund arising out of terms of this Agreement then such dispute shall be referred to a sole arbitrator appointed by the Appointments Committee of the Chartered Institute of Arbitrators Bermuda Branch. The place of the arbitration shall be Bermuda.

I N W I T N E S S W H E R E O F the Minister of Transport of the Government of Bermuda and The Motor Insurers' Fund have caused this Agreement to be executed the day of July Two thousand and seven.

**SIGNED** by Dr. The Honourable )  
Ewart Frederick Brown, JP, MP )  
in his capacity as )  
The Minister of Transport )  
in the presence of: )



WITNESS





SIGNED by )  
for and on behalf of )  
THE MOTOR INSURERS' FUND )  
in the presence of: )

A handwritten signature in black ink, appearing to be a stylized name with a large initial letter.

WITNESS

*Brian C. E. Jeter.*

cdpdoc54060

## SCHEDULE

1. BF&M General Insurance Company Limited,
2. Colonial Insurance Company Limited
3. Argus Insurance Company Limited
- 4.. Kitson Insurance Company Limited

---

---

Dated 16<sup>th</sup> July, 20 07

---

---

THE MINISTER OF TRANSPORT  
of  
THE GOVERNMENT OF BERMUDA

- AND -

THE MOTOR INSURERS' FUND

---

---

**MEMORANDUM OF AGREEMENT**

---

---

**CONYERS DILL & PEARMAN,  
BARRISTERS & ATTORNEYS  
HAMILTON, BERMUDA.**

---

---

JPE:cg:litdoc54060

# MOTOR INSURERS' FUND

---

## ADDENDUM

---

WHEREAS the Minister of Transport for the Government of Bermuda ("the Minister") entered into an Agreement with the Motor Insurers' Fund ("the Fund") on the 21<sup>st</sup> June, 1990 ("the Agreement") AND WHEREAS the Agreement, the effective date of which was the 1<sup>st</sup> July, 1990, provided that the Fund would be liable in certain instances to make payments for the death or bodily injury to any third party AND WHEREAS under clause 10 of the Agreement, amended by Addendum dated the 1<sup>st</sup> April, 1996, it was provided that the limit of the liability of the Fund in respect of the death or injury to any one person would be \$125,000.00 and in respect of any one accident would be \$250,000.00, exclusive of any taxed costs AND WHEREAS those limits were increased on the 1<sup>st</sup> July, 1999 from \$125,000.00 to \$250,000.00 in respect of the death or injury to any one person and, in respect of any accident from \$250,000.00 to \$500,000.00 AND WHEREAS the parties hereto now desire to further increase the limits set out in clause 10 of the Agreement.

**NOW THIS ADDENDUM** records the agreement of the Minister and the Fund that as and from the 1<sup>st</sup> day of April, 2009 (a) the limit of the liability of the Fund in respect of the death or injury to any one person shall be \$375,000.00 and in respect of any one accident shall be \$750,000.00, both limits exclusive of any taxed costs ("the new limits") and shall replace the old limits of \$250,000.00 and \$500,000.00 respectively and clause 10(a) of the Memorandum of Agreement of the 1<sup>st</sup> May, 2002 shall be read as

incorporating the new limits of liability of the Fund and any accident occurring on or after the 1<sup>st</sup> April, 2009 will be compensated in accordance with the new limits.

**IN WITNESS WHEREOF** the Minister of Transport for the Government of Bermuda and the Motor Insurers' Fund have caused this Agreement to be executed the 31<sup>st</sup> day of JANUARY, Two thousand and eleven.

**SIGNED** by The Honourable )  
Terry E. Lister, J.P., M.P. in his )  
capacity as the Minister of Transport )  
in the presence of:- )



**Witness** ELLEN-KATE HORTON )  


**SIGNED** by Robert Blakesley for )  
and on behalf of the Motor Insurers' )  
Fund in the presence of:- )



**Witness** I. MAC INTYRE )  


Between:

The Minister of Transport

and

The Motor Insurers= Fund

---

**ADDENDUM**

---