

**FINAL DRAFT REFERENCE  
PUBLIC SERVICES AGREEMENT  
BETWEEN  
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION  
AND  
(THE COMPANY)**

TABLE OF CONTENTS

	TITLE AND INVOCATION
	INTERPRETATION
2	PUBLIC SERVICE OBLIGATION
3	INTERNATIONAL STANDARDS AND REGULATIONS
4	CHARGING POLICY
5	INFORMATION AND COOPERATION
6	CONSULTATION
7	COMPLIANCE
8	ARBITRATION
9	ENFORCEMENT
10	COSTS OF THE ORGANIZATION
11	ASSIGNMENT
12	VOLUNTARY WINDING UP
13	WAIVER
14	SEVERANCE
15	FORCE MAJEURE
16	WARRANTIES AND REPRESENTATIONS
17	NOTICES
18	AMENDMENTS
19	TERMINATION
20	RIGHTS OF THIRD PARTIES
21	GOVERNING LAW
22	ENTIRE AGREEMENT
ANNEX 1	NOTICE OF RECOGNITION
ANNEX 2	LETTER OF COMPLIANCE
ANNEX 3	IMSO ASSEMBLY DECISION ON BUDGETARY APPROVAL PROCEDURES AND APPORTIONMENT OF COSTS

**PUBLIC SERVICES AGREEMENT  
BETWEEN  
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION  
AND  
(THE COMPANY)**

**PUBLIC SERVICES AGREEMENT** made on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
between:

- (1) **THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION** (“the Organization”), an intergovernmental organization established under the Convention on the International Mobile Satellite Organization which entered into force on 16 July 1979, as amended, with its headquarters at 99 City Road, London, EC1Y 1AX;
- (2) [ ..... ], (“the Company”), a company incorporated under the law of [ .... ], with its registered office at [ .... ],

**WHEREAS:**

- (A) The recognition of maritime mobile satellite systems for use in the GMDSS is based on:
  1. the Convention on the International Mobile Satellite Organization (IMSO) 1979, as amended;
  2. the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended;
  3. IMO Assembly Resolution A.888(21), as amended; and
  - [4. IMO MSC Resolution 1077, as amended; \*]
- (B) The Company has been recognised by the International Mobile Satellite Organization (IMSO) to participate in the GMDSS;

**THIS AGREEMENT** sets out the obligations of the Company in relation to the provision of GMDSS services and the rights of the Organization to oversee and ensure the observance by the Company of those obligations within the legal framework established by IMO.

---

\* may be incorporated into the text of revised Resolution A.888(21)

**IT IS THEREFORE AGREED AS FOLLOWS:**

## 1 INTERPRETATION

1.1 **Definitions**

In this Agreement the following terms shall have the following meanings:

**Advisory Committee** means the Advisory Committee elected by the Assembly;

**Assembly** means the Assembly of Parties referred to in the Convention;

**Board** means the Board of Directors the Company;

**Convention** means the Convention on the International Mobile Satellite Organization which entered into force on 16 July 1979, as amended;

**Distress and safety communications** means ship-to-shore, shore-to-ship and ship-to-ship distress alerts, search and rescue coordinating communications, and maritime safety information and other distress and safety related communications;

**Force Majeure** means any act, event, condition or other case of a compelling nature which is not reasonably within the control of the Company or the Organization;

**General radiocommunications** means operational and public correspondence traffic, other than distress, urgency and safety messages, conducted by radio, as defined in IMO MSC/Circ.1038;

**GMDSS** means the Global Maritime Distress and Safety System as established by the International Maritime Organization;

**GMDSS Service** means a specific communication service, provided by the Company and recognised by IMSO as meeting one or more of the functional requirements of Chapter IV Regulation 4 of the SOLAS Convention;

**IMO** means the International Maritime Organization;

**ITU** means the International Telecommunication Union;

**Maritime safety information** means navigational and meteorological warnings, meteorological forecasts and other urgent safety related messages broadcast to ships;

**Public Service Obligations** means the obligations of the Company set out in Clause 2;

**Party** means a State for which the Convention has entered into force;

**Satellites** means any or all of the Satellites owned, leased or operated by the Company;

**SOLAS Convention** means the International Convention for the Safety of Life at Sea, 1974, as amended;

**Space Segment** means the Satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of the Satellites.

## 1.2 **Headings**

Headings are inserted for convenience only and shall not affect the interpretation of this Agreement.

## 2 **PUBLIC SERVICE OBLIGATION**

### 2.1 **Provision of GMDSS Services**

2.1.1 Without prejudice to Clause 3, the Company assumes the obligation to provide and ensure the continuity of maritime satellite distress and safety communications services which it provides for the GMDSS in accordance with:

- IMO Resolution A.888(21), as amended,
- the Notice of Recognition issued by IMSO and dated [ *date* ] (Annex 1); and
- this Agreement.

2.1.2 To this end, on the basis of an evaluation of the services by an independent Group of Experts appointed by IMSO, the Organization shall issue to the Company a Letter of Compliance (Annex 2) in respect of those services which the Organization has recognized in the Notice of Recognition.

2.1.3 The Company shall continue to provide services or systems to enable the maritime distress, safety and general radiocommunications services and systems recognised by IMSO and included in the Notice of Recognition, to be available to ships at all times.

2.1.4 The Company may only discontinue provision of an approved GMDSS service with the prior written agreement of the Organization. The Organization shall **normally** require not less than **five** years notice of intention to terminate the provision of any recognised GMDSS service.

2.2 The Organization shall conduct oversight of the GMDSS services on a continuing basis.

### **3 INTERNATIONAL STANDARDS AND REGULATIONS**

The Company shall observe the relevant mandatory international instruments, and take into account those recommendations, resolutions and procedures of IMO and ITU which are of a recommendatory nature, insofar as they relate to the provision of GMDSS services.

### **4 CHARGING POLICY**

4.1 The Company shall abide by the charging policy established by IMO in Resolution A.707(17), as amended, for distress and safety messages, and shall observe relevant ITU regulations and IMO recommendations and resolutions in existence on the date of this Agreement.

4.2 The Organization shall consult with the Company regarding any proposed changes to the charging policy.

### **5 INFORMATION AND COOPERATION**

5.1 The Organization shall be entitled to be supplied with all reasonable information pertaining to the Company's ability to provide and provision of GMDSS services, including engineering and related advice, assistance and studies, in such form and with such frequency as is required to enable the Organization to review the performance by the Company of the Public Service Obligations

5.2 The Organization shall provide IMO with regular reports, at least once yearly, on the performance by the Company of its obligations under Clause 2.1.

- 5.3 The Organization and the Company hereby undertake to keep confidential, and to ensure that their officers, employees, agents and professional and other advisers keep confidential, any information which the Organization has acquired pursuant to Clause 5.1 and which is designated by the Company as being confidential, or which the Company has acquired pursuant to Clause 10, or otherwise, and shall not disclose to any third party any such information. If the Organization distributes any such confidential information to Parties, it shall obtain the prior consent of the Company and require the Parties to take appropriate measures to safeguard the confidentiality of such information, subject to national laws and regulations.

## **6 CONSULTATION**

- 6.1 The Organization and the Company shall consult and cooperate regularly, or at the request of any of them at any time, with respect to the implementation of this Agreement. For that purpose, a Public Services Committee shall be established jointly by the Organization and the Company composed of the Director of the Organization, a responsible Director of the Company personally nominated by the Chief Executive Officer of the Company and one other non-executive Director of the Company. The Director and the Company shall agree upon written procedures for functioning of the Committee.
- 6.2 The Company shall consult the Organization, as necessary, with respect to the implementation of any amendments or modifications made to the SOLAS Convention relating to the standards, services and systems referred to in Clause 2.1.
- 6.3 The Company shall consult the Organization, as appropriate, with respect to any proposed change by the Company in the specification of standards, services and systems that relates to the Company's provisions of the capabilities specified in Clause 2.1, before the implementation of the proposed change, and shall observe any recommendation or decision made by the Organization. The consultations shall also relate to any changes that may be needed to the technical and operational requirements of any of those standards, services and systems to ensure that the Company can comply fully with its obligations under Clause 2.1.
- 6.4 Nothing in this Agreement shall prevent the Organization or the Company from also consulting with any other relevant body regarding such changes.

- 6.5 Unless otherwise decided by the Assembly or its subsidiary body, the Company shall have the right to attend as an Observer and make representations to the Assembly and its subsidiary body, as appropriate, on issues pertaining to this Agreement.

## **7 COMPLIANCE**

- 7.1 Notwithstanding the provisions of Clause 6.1, the Organization and the Company agree each to use reasonable efforts to resolve informally and expeditiously any disagreement or dispute about the Company's compliance with its obligations under this Agreement.
- 7.2 If the Organization determines that the Company is or is likely to be in default in complying with any such obligation, and is unable to resolve the matter to its satisfaction through the consultation referred to in Clause 6.1 or through the informal means referred to in Clause 7.1, the Organization shall issue the Company with a Provisional Letter of Non-compliance.
- 7.3 The Provisional Letter of Non-compliance shall, *inter alia*, state the exact nature of the potential non-compliance, what action the Company can take to remedy the matter and the time within which the Organization requires the matter to be resolved. The time allowed for resolution may depend on the nature of the non-compliance and will take into account any discussions which have taken place with the Company on the issue.
- 7.4 The Provisional Letter of Non-compliance is confidential between the Organization and the Company.
- 7.5 After issuing a Provisional Letter of Non-compliance, the Organization may:
- (a) notify the Company, in writing, that it wishes to meet with management representatives of the Company to discuss the potential non-compliance, in which case the Company shall agree to such a meeting, at the mutual convenience of the parties, within a reasonable time under the circumstances, not to exceed two (2) weeks from the date of the notice; or
  - (b) notify the Company, in writing, that it wishes to meet with the Board to discuss the potential non-compliance, in which case the Company shall agree to such a meeting at the mutual convenience of the parties, within a reasonable time under the circumstances, not to exceed four (4) weeks from the date of notice.

- 7.6 If the issue has not been resolved to the satisfaction of the Organization after a period of time appropriate to the nature of the potential non-compliance, the Organization shall issue the Company with a Letter of Non-compliance.
- 7.7 The Letter of Non-compliance shall, *inter alia*, state the exact nature of the non-compliance, what action the Company can take to remedy the matter and the time within which the Organization requires the matter to be resolved. The time allowed for resolution may depend on the nature of the non-compliance and will take into account any discussions which have taken place with the Company on the issue.
- 7.8 The Letter of Non-compliance may include an instruction that the Company rectifies the acts or omissions which have caused the non-compliance to occur.
- 7.9 If the Company does not rectify the non-compliance to the satisfaction of the Organization within the time allowed by the Letter of Non-compliance, the Organization will decide whether recognition of the Company's GMDSS services should be made conditional, suspended or withdrawn.**
- 7.10 The Company may, at any time following the issue of a Letter of Non-compliance, refer the matter to the Assembly for resolution. The Director may convene an Extraordinary Session of the Assembly for this purpose as soon as possible and in any case not later than three months after the request by the Company.**
- 7.11 Any decision by the Assembly in this respect shall be final and binding on both the Organization and the Company, as appropriate. The Organization and the Company shall implement the decision of the Assembly without delay.**
- 7.12 If the Company does not implement the decision of the Assembly to the satisfaction of the Organization, the Organization shall withdraw recognition of the Company's GMDSS services.**
- 7.13 If the Company takes sufficient action during this process to rectify the non-compliance, the Organization may withdraw the Provisional Letter of Non-compliance or Letter of Non-compliance at any time.**
- 7.14 The Organization will inform the Secretary-General of IMO of any decision to make conditional, suspend or withdraw recognition of any GMDSS satellite services.**

**8 ARBITRATION**

- 8.1 The Organization and the Company may submit to arbitration any dispute arising out of or in relation to the provisions of this Agreement.
- 8.2 Unless otherwise agreed in writing between the Organization and the Company, any such dispute shall be finally settled by arbitration under the Rules of the United Nations Commission on International Trade Law (UNCITRAL) as in force at the time. The appointing authority shall be the London Court of International Arbitration (LCIA). The number of arbitrators will be one unless otherwise agreed by the Organization and the Company. The place of arbitration shall be London, England, and the language of the arbitration shall be English.
- 8.3 The decision of the Arbitrator shall be binding upon the Organization and the Company.
- 8.4 The Organization and the Company shall immediately implement any decision of the Arbitrator in relation to the provisions of this Agreement.
- 8.5 Any failure by the Company to immediately implement the decisions of the Arbitrator, either in whole or in part, shall constitute a gross breach of this Agreement and shall result in immediate withdrawal of recognition of the GMDSS services provided by the Company.
- 8.6 The Organization and the Company shall each bear their own costs in relation to any arbitration proceedings.
- 8.7 The Organization shall inform the Secretary-General of IMO if any matter related to the provision of GMDSS services is sent to arbitration and of any subsequent decision by the Arbitrator.

**9 ENFORCEMENT**

Any failure to rectify a non-compliance to the satisfaction of the Organization within the time allowed by the Letter of Non-compliance, or any failure by the Company to immediately implement the decisions of the Arbitrator, either in whole or in part shall immediately result in the Letter of Compliance referred to in Clause 2.1.2 being amended or withdrawn accordingly.

**10 COSTS OF THE ORGANIZATION**

- 10.1 The Company shall contribute to the costs of the Organization.
- 10.2 The Company shall pay to the Organization annually in pounds sterling, a proportion of the total budget of the Organization. The budget will be agreed and approved by the Assembly. The approved budget will be apportioned between all Companies with which the Organization has concluded a Public Services Agreement, in accordance with the formula adopted by the Assembly (Annex 3).
- 10.3 The Organization will conduct informal consultations with the Company when preparing its budget.
- 10.4 The Company shall indemnify the Organization against any and all costs associated with:**
- .1 the Company referring any issue to the Assembly for resolution under the terms of paragraph 7.10 of the PSA; or**
  - .2 the Company or the Organization submitting to arbitration any dispute arising out of or in relation to the provisions of the PSA.**
- 10.5 **The Company may provide such indemnity through a suitable Legal Insurance policy, or through a legally binding instrument of indemnity provided by a government, or by any other means accepted by the Organization. The acceptance of a particular indemnity offered by any Company shall be subject to the agreement of the Organization as to its suitability and sufficiency.**

**11 ASSIGNMENT**

- 11.1 Otherwise than in the case of a reconstruction of the Company, or assignment to a subsidiary or to its holding company or to a subsidiary of that holding company, as those expressions are used in the UK Companies Act 1985, as amended, the Company may not assign any of its rights or obligations under this Agreement in whole or in part without the prior approval in writing of the Organization.
- 11.2 The Company shall not assign to any other entity any right to wind up the Company under any circumstances unless:
- .1 that other entity has entered into a binding agreement with the Organization that secures the continuity of GMDSS services, to the satisfaction of the Organization; and

.2 the Company has received the consent in writing of the Organization.

11.3 The Company warrants that all existing contracts or other commitments that assign the right to wind up the Company, or which could be construed as assigning such rights, ~~or which might in any other way affect the ability of the Company to continue to fulfil its obligations under this Agreement in relation to the continuity of GMDSS services,~~ have been disclosed to the Organization.

## 12 VOLUNTARY WINDING UP

In order to secure the continuity of the GMDSS services provided by the Company, any decision to voluntarily wind up the Company shall take effect only with the consent in writing of the Organization which shall not be withheld or delayed unless the GMDSS services are jeopardised.

## 13 WAIVER

No waiver by the Organization, or the Company or failure to perform any provision of this Agreement shall operate or be construed as a waiver with respect to any other or further failure whether of a like or different character.

## 14 SEVERANCE

If any provision of this Agreement is finally determined to be, or becomes, invalid, illegal or unenforceable, then such provision shall, so far as invalid or unenforceable, be given no effect and shall be deemed not to be included in this Agreement, but without affecting or invalidating the remaining provisions of this Agreement.

## 15 FORCE MAJEURE

No delay or failure by the Organization or the Company in performing any of their obligations referred to in this Agreement shall constitute a breach of this Agreement nor give rise to any claim or action against either of them to the extent that such delay or failure is caused by an event of *force majeure*. If either the Organization or the Company is unable to carry out any of such obligations by reason of an event of *force majeure*, it shall promptly advise the other thereof in writing and shall use its best endeavours to resume the performance of its obligations so affected.

**16 WARRANTIES AND REPRESENTATIONS**

- 16.1 Each party represents and warrants to the others that it has full power and authority to enter into, undertake and perform its obligations set out in this Agreement.
- 16.2 The Organization undertakes that it will be consistent and non-discriminatory in the Terms and Conditions it agrees from time to time with other parties in relation to general provisions, common principles and appropriate obligations.

**17 NOTICES**

- 17.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be sent to the party concerned by facsimile transmission as follows:

For the International Mobile Satellite Organization:

To: The Director  
International Mobile Satellite Organization

...

Facsimile number: +44 207 728 1172

For the Company: *[insert name, address and facsimile number]*

- 17.2 Any party to this Agreement may change the address or the name of the person for whose attention notices are to be addressed by serving a notice on the others in accordance with this clause.
- 17.3 Notices served in accordance with Clause 17.1 shall be deemed to have been served two business days after the facsimile was transmitted to the addressee.

**18 AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by duly authorized representatives of the Organization and the Company.

**19 TERMINATION**

This Agreement may be terminated:

- (a) by written agreement between the Organization and the Company;  
or
- (b) by written notice given by the Organization to the Company; or
- (c) by written notice of not less than **five** years given by the Company to the Organization.

**20 RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right of a party to this Agreement to enforce any term of the Agreement for and on behalf of such third party where applicable.

**21 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law.

**22 ENTIRE AGREEMENT**

The entire agreement and understanding between the Organization, and the Company with respect to the subject matter hereof, is set out in this Agreement.

**AS WITNESS** this Agreement has been executed the day and year first before written.

**Signed on behalf of:**

**THE INTERNATIONAL MOBILE  
SATELLITE ORGANIZATION**

\_\_\_\_\_  
Director

**Signed on behalf of:**

**(THE COMPANY)**

\_\_\_\_\_  
Chief Executive Officer

**Annex 1****D R A F T****NOTICE OF RECOGNITION****Recognition of maritime mobile-satellite services provided by****[the Company]****in the Global Maritime Distress and Safety System (GMDSS)****Whereas:**

The recognition of maritime mobile satellite systems for use in the GMDSS is based on:

1. the Convention on the International Mobile Satellite Organization (IMSO) 1979, as amended;
2. the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended;
3. IMO Assembly Resolution A.888(21), as amended; and
4. IMO MSC Resolution 1077, as amended;

The Government of [ *name of country* ] has made an application to the International Maritime Organization (IMO) in respect of certain maritime mobile satellite communication services (the services); and

The Maritime Safety Committee of IMO, at its [ *number in words* ] session, has decided that there are no over-arching policy issues that might affect a decision to include the services in the Global Maritime Distress and Safety System (GMDSS) and invited the International Mobile Satellite Organization (IMSO) to consider the services with a view to their inclusion in the GMDSS.

The International Mobile Satellite Organization has evaluated and verified the services provided by [ *Name of Company* ], of [ *Address of Company* ], registered in [ *Location* ] with registered number [ *number* ] in relation to the relevant mandatory international instruments, and the recommendations, resolutions and procedures of IMO and the International Telecommunications Union (ITU) which are of a recommendatory nature, insofar as they relate to the provision of GMDSS services; and

**HEREBY RECOGNIZES** the Company identified in this Notice as meeting the requirements of IMISO for the provision of maritime mobile satellite services for the GMDSS.

Subject to the terms of a valid Public Services Agreement between IMSO and the Company, IMSO may issue a Letter of Compliance for those services which, from time to time, meet the relevant mandatory international instruments, and the recommendations, resolutions and procedures of IMO and the International Telecommunications Union (ITU) which are of a recommendatory nature, insofar as they relate to the provision of GMDSS services.

Signed

DIRECTOR

Annex 2

**D R A F T**

**LETTER OF COMPLIANCE**

**Maritime mobile-satellite services provided by**

**[the Company]**

**in the Global Maritime Distress and Safety System (GMDSS)**

**Whereas** the International Mobile Satellite Organization (IMSO) has evaluated and verified the services provided by [ *Name of Company* ], of [ *Address of Company* ], registered in [ *Location* ] with registered number [ *number* ] and has issued the Company with a Notice of Recognition dated [ *date* ] and concluded a Public Services Agreement between the Organization and the Company dated [ *date* ];

in accordance with Clause 2.1.2 of that Public Services Agreement IMSO hereby confirms that the services listed in the annex to this letter comply with the technical and operational requirements for participation in the GMDSS set out in IMO Assembly resolution A.888(21), as amended.

The services are subject to continuing oversight by IMSO in accordance with the Rules and Arrangements set out in the Public Services Agreement (PSA) concluded between IMSO and the Company (Clause 2.4 of Resolution A.888(21), as amended, refers). In particular, the scope and validity of this Letter of Compliance is subject to the provisions of Section 7 of the PSA relating to Compliance.

Signed

DIRECTOR

Annex 2

Attachment

**SERVICES COMPLYING WITH THE TECHNICAL AND OPERATIONAL REQUIREMENTS OF IMO ASSEMBLY RESOLUTION A.888(21), AS AMENDED**

Provider:

Name: .....

Address:.....

.....

.....

.....

Registration Number:.....

Sponsoring Government:.....

Name or identification of Service	Functional Requirement(s) (SOLAS Chapter IV regulation 4)

On behalf of the International Mobile Satellite Organization (IMSO)

Signature: .....

Name: .....

Date: .....

**D R A F T**

Annex 3

**DECISION OF THE IMSO ASSEMBLY**

*adopted on [date]*

**BUDGETARY APPROVAL PROCEDURES AND APPORTIONMENT OF COSTS**

*The text of this resolution shall, inter alia:*

1. *Incorporate the existing procedures for approving the Annual Budget of the Organization, modified as may be necessary to take account of the text of the amended Convention (when so amended)*
2. *Include statements concerning the Organization's policies on separation of the costs of GMDSS oversight from the costs of any other approved functions that may be undertaken by the Organization or Directorate, the avoidance of cross-subsidisation between programmes, and apportionment of Headquarters and staff costs between programmes.*
3. *Set out clearly the principles and method adopted by the Assembly for apportioning costs between multiple providers of GMDSS services.*

*to be inserted when approved by the Assembly*

## ARRANGEMENTS FOR THE DEVELOPMENT, AGREEMENT AND APPORTIONMENT OF THE ORGANIZATION'S BUDGET

### 1 General Principles

1.1 Article 11 of the Convention on the International Mobile Satellite Organization, as amended, provides that:

*“(1) ... the costs associated with the following shall be paid by the Providers:*

*(a) the operation of the Directorate;*

*(b) the holding of Assembly sessions and meetings of its subsidiary bodies; and*

*(c) the implementation of measures taken by the Organization in accordance with Article 4 to ensure that the Provider carries out its obligation of providing maritime mobile satellite communications services for the GMDSS.*

*(2) The costs defined in paragraph (1) shall be apportioned between all Providers according to rules set up by the Assembly.”*

1.2 The Reference Public Services Agreement, which is to be signed by every Provider, implements the provisions of the Convention as follows:

*“10.1 The Company shall contribute to the costs of the Organization.*

*10.2 The Company shall pay to the Organization annually in pounds sterling, a proportion of the total budget of the Organization. The budget will be agreed and approved by the Assembly. The approved budget will be apportioned between all Companies with which the Organization has concluded a Public Services Agreement, in accordance with the formula adopted by the Assembly.*

*10.3 The Organization will conduct informal consultations with the Company when preparing its budget.”*

1.3 The budget should be developed by the Director and agreed annually by the Advisory Committee, on behalf of the Assembly.

1.4 The budget should be developed on a three-year rolling basis. The budget for year one should be as accurate as possible and agreed by the Advisory Committee for implementation by the Director. The budget for year two should be sufficiently accurate to provide a clear indication of the level of costs that may be expected in year two. The budget for year three should be indicative.

1.5 The costs of the Organization shall be recovered from the Provider(s) in the form of a Fixed Annual Fee, payable in advance. The level of this Fee shall be proposed by the Director and agreed by the Advisory Committee on an annual basis.

1.6 The Fixed Annual Fee shall be set at a sufficient level for recovery of the Organization's costs in relation to GMDSS oversight plus any prudent need for contingencies. The Fixed Annual Fee charged to Providers of satellite services for the GMDSS shall not take account of the costs of any other business the Organization might undertake.

1.7 If, in future, the Organization undertakes the oversight of any other non-GMDSS services, at the request of IMO or otherwise, the costs of such other oversight services shall be separately identified in the Organization's budget and charged only to Providers of the services concerned. In that case, Headquarters, Staff and other fixed costs shall be apportioned between all the various lines of business.

1.8 The costs of verification and evaluation, within the context of IMO resolution A.888(21), of the technical capabilities and implementation of GMDSS services by potential new providers, shall not form part of the regular budget of the Organization. The full cost of such verification and evaluation, including the cost of any Group of Experts convened to advise the Director in respect of an application, shall be paid by the applicant in the form of a fixed fee, payable in advance. The level of the Fixed Verification and Evaluation Fee shall be proposed by the Director and approved by the Advisory Committee from time to time.

## **2 Budget Development**

2.1 The Director should ensure that the proposed budget properly identifies and separates the costs of GMDSS oversight from those of any other business the Organization may undertake.

2.2 The Director should develop detailed budget proposals for the next financial year (year one), plus indicative budgets for the following two years (years two and three), during the third quarter of each calendar year. The indicative budget for year two should be sufficiently accurate to allow for realistic financial planning by the Organization and the Providers. The budget for year three should be indicative only.

2.3 In preparing the budget, the Director should consult individually and informally with each Provider, generally during the month of September.

### **3 Budget Agreement**

3.1 The Director should present the proposed budget for the following year to the Advisory Committee for agreement, plus the indicative budgets for the following two years for information, at a meeting of the Advisory Committee to be held during October of each year.

### **4 Apportionment**

4.1 The costs shall be apportioned between all Providers that are subject to oversight by the Organization and for whom a Public Services Agreement is in force at the beginning of the financial year.

4.2 Each Provider shall pay:

- .1 an equal share of the operational budget for the type of oversight being provided;
- .2 an equal share of the cross functional overheads; and
- .3 an equal share of the contingency requirement.

### **5 Fixed Annual Fees**

5.1 Each year, following agreement of the budget, the Director will propose, for approval at the same session of the Advisory Committee, the level of Fixed Annual Fee to be paid by each provider subject to oversight by the Organization in year one, and the indicative level of Fixed Annual Fee expected to be levied in year two.

5.2 The level of Fixed Annual Fee shall be kept as low as is reasonable. It shall be sufficient to ensure that the financial needs of the Organization are always met, taking account of the agreed budget for the next year.

5.3 The level of Fixed Annual Fee should be proposed by the Director and approved by the Advisory Committee, taking account of the agreed budget for the year, any prudent need for contingencies, and the number of Providers for which signed Public Services Agreements are in force.

5.4 The Fixed Annual Fee shall be payable in advance by each recognised provider. The Organization shall require payment in full within 30 days of the date of invoice. Invoices shall not be sent out more than 60 days before the first day of the period to which the invoice relates. The Director may, at his discretion, permit any provider to pay quarterly in advance on the same terms, except that the whole outstanding Fixed Annual Fee shall become payable immediately if a provider does not pay any invoiced amount within the 30 day period allowed. The Organization may charge interest at a rate of 2 per cent above the Bank of England Base Rate, in accordance with normal commercial practice, on any invoiced sums outstanding beyond the 30 days allowed.

## **6 Contingency Fund**

6.1 The annual budget shall include an allowance for contingencies. The allowance for contingencies shall normally be 1% of the total non-contingency budget for the year, which shall be added to the total financial requirements of the Organization annually. The percentage should be proposed by the Director and agreed by the Advisory Committee as part of the budget setting exercise each year, taking account of the remaining balance in the Fund and the history of the Fund's use.

6.2 The Contingency Fund should accumulate in a separate account. Any amount remaining unspent should be retained by the Organization and not be returned to the providers at the end of the year.

6.3 The Director should report and expenditure from the Contingency Fund to the Advisory Committee at its next regular session.

## **7 Legal Costs**

7.1 Each provider, at the time of signing a Public Services Agreement and as a condition of receiving a Letter of Compliance from the Organization, shall provide the Organization with an indemnity against any and all costs incurred by the Organization associated with:

.1 the Company referring any issue to the Assembly for resolution under the terms of paragraph 7.10 of the PSA; or

.2 the Company or the Organization submitting to arbitration any dispute arising out of or in relation to the provisions of the PSA.

7.2 The Company may provide such indemnity through a suitable Legal Insurance policy, or through a legally binding instrument of indemnity provided by a government, or by any other means accepted by the Organization.

7.3 The acceptance of a particular indemnity offered by any Provider shall be subject to the agreement of the Organization as to its suitability and sufficiency.

7.4 The Assembly shall decide and keep under review the amount of the indemnity required. In deciding the amount of the indemnity the Assembly should take into account the full prevailing cost to the Organization of either:

.1 a 2 day Extraordinary Session of the Assembly, including interpretation, held at or near the Headquarters of the Organization in London; or

.2 a 10 day arbitration proceeding under the terms of section 8 of the Public Services Agreement,

whichever is the greater.

## **8 New Providers**

8.1 The costs of verification and evaluation, within the context of IMO resolution A.888(21), of the technical and operational capabilities of, and implementation of GMDSS services by potential new providers shall not form part of the regular budget of the Organization. Such costs, including the cost of any Group of Experts convened to advise the Director in respect of an application, shall be charged to the applicant Provider concerned, in the form of a fixed fee. The level of the Verification and Evaluation Fee shall be proposed by the Director and approved by the Advisory Committee from time to time.

8.2 The one-time Verification and Evaluation Fee shall be received by the Organization before the process of verification and evaluation is begun.

8.2 When a new Provider signs a Public Services Agreement with the Organization, the Fixed Annual Fee paid by that provider, during that year only, shall be reduced in proportion to the number of days in that financial year that have already passed.

## **9 Budgetary Reporting**

9.1 During the first quarter of each calendar year the Director shall report to the Advisory Committee on actual expenditure compared with the agreed budget for the previous year.

9.2 The Director shall report on the budget to each regular two-yearly session of the Assembly.

9.3 The Director may report on expenditure versus budget to the Advisory Committee at any time. The Budget shall be a permanent item on the agenda of the Advisory Committee.

9.4 The Organization's financial accounts shall be subject to independent audit each year and the Auditors Reports shall be provided to the Advisory Committee and the Assembly. The Auditors shall be appointed by the Assembly.

---

**INDEPENDENT GROUP OF EXPERTS**  
**TERMS OF REFERENCE, VERIFICATION AND EVALUATION PROCEDURES**

**1 Purpose**

At the invitation of the Director of IMSO, to verify and evaluate information provided concerning a specific maritime mobile satellite system offered for use in the GMDSS, in relation to the relevant requirements and recommendations of IMO, ITU and IMSO, and advise the Director of IMSO accordingly.

**2 Composition**

2.1 The Group of Experts shall normally consist of no more than three independent experts, chosen on a case-by-case basis from a list of named experts nominated by IMSO Member States.

2.2 Nominations of named experts may be submitted by Member States, supported by a brief *Curriculum Vitae*, and reviewed by the Advisory Committee for suitability before their names are added to the list of approved experts.

2.3 The Director shall maintain a list of experts nominated by IMSO Member States. Experts should have:

considerable practical operational and technical experience of maritime mobile satellite systems and the GMDSS; and  
knowledge and understanding of IMO, ITU and IMSO procedures, standards and recommendations.

2.4 The Director will normally appoint a different Group of Experts for each verification and evaluation exercise, choosing particularly those who demonstrably have no interest in the applicant Company or the specific application they will be considering.

2.5 When selecting a Group of Experts for a particular evaluation exercise, the Director will take into consideration the need for each expert to come from a different country or region, and seek to ensure that members of the Group have no conflicting interests and, in particular, do not have any connection with either the applicant company or the sponsoring government.

2.6 The IMO Secretariat and the Member Government sponsoring the application shall have the right to join the Group as Observers and make representations to the Assembly and its subsidiary body, as appropriate, on matters relating to the verification and evaluation exercise.

2.7 The Director will organise the work of the Group and provide secretariat services.

### **3 Method of Work**

3.1 The Group of Experts will be convened, when required, by the Director and will normally work by correspondence, preferably by e-mail.

3.2 Once convened, a particular Group of Experts will continue in existence until the Organization has issued the applicant Company with a Notice of Recognition and Letter of Compliance and a Public Services Agreement is in force for the services concerned. That particular Group will then be disbanded.

3.3 The Group may elect a Co-ordinator from among its members.

3.4 The Group will be provided with information by the Member Government which is sponsoring the application. The package of information should be sufficient to enable the Group to evaluate and verify that the services proposed for inclusion in the GMDSS comply fully with the relevant requirements and recommendations of IMO, ITU and IMSO, as appropriate. Requests for further information or explanation should be sent to the Director, who will normally invite the sponsoring Government to provide the data requested.

3.5 The Group should deliver a Report to the Director, which may include at least the following elements:

- Overview of the applicant Company, including: full identity and location details and any other comments on the Company's business status so far as it may affect the Company's continuing ability to offer GMDSS services;
- General overview of the Company's satellite constellation, ground infrastructure, and full range of communication services;
- Verification of the information provided in relation to the services offered for the GMDSS;
- Evaluation of the services offered for the GMDSS and their degree of compliance with the relevant requirements;
- Conclusions and Recommendations.

3.6 Experts will not normally be required to travel during their term of duty, except that the whole Group, or its elected Co-ordinator, and its Observers may be invited to attend the session of the Advisory Committee that will review its report.

#### **4 Confidentiality**

4.1 When the Director convenes a Group of Experts for a particular evaluation and verification exercise, every expert appointed to that Group will be required to guarantee the protection of any confidential information the Group may be required to review, and sign a non-disclosure agreement to that effect.

#### **5 Remuneration and Costs**

5.1 Each expert shall be entitled to receive a daily fee, based on the appropriate level of current IMO daily fees for consultancy, for a fixed number of days, plus appropriate expenses as approved by the Organization. No other costs shall be chargeable to the Organization.

5.2 The Organization will recover the full cost of recognizing and approving new satellite services for the GMDSS from the applicant Company concerned through a fixed fee, payable in advance. The fee will be set at a level agreed by the Advisory Committee on the basis of a recommendation by the Director.

---