



**International Mobile Satellite Organization**

**ASSEMBLY**

Twentieth Session

**Malta**, 29 September to 3 October 2008

**Agenda item 6.2**

ASSEMBLY/20/6.2

Origin: Director

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**GLOBAL MARITIME DISTRESS AND SAFETY SYSTEM (GMDSS)**

**DRAFT REFERENCE PUBLIC SERVICES AGREEMENT**

<b><i>Executive Summary:</i></b>	this document provides the text of the draft Reference Public Services Agreement (PSA) amended to take account of IMO Resolution A.1001(25), as agreed by the Advisory Committee
<b><i>Action to be taken:</i></b>	1. to agree the Reference Public Services Agreement; and 2. to authorize the Director to negotiate and sign on behalf of IMSO PSAs with GMDSS providers recognized by IMO
<b><i>Related documents:</i></b>	ASSEMBLY/20/6.1, ASSEMBLY/20.8.1

**1 BACKGROUND**

1.1 At its Seventeenth Session, in approving the amendments to the IMSO Convention developed at that Session, the Assembly noted that further work was necessary on other supportive instruments, such as the Reference Public Services Agreement. The Assembly requested the Advisory Committee to work with the Director in developing a draft Reference Public Services Agreement and to assist the Director with any matters pertaining to the introduction of new Providers.

1.2 The Advisory Committee continued discussions regarding the PSA at its Twelfth to Sixteenth Sessions and the following documents were submitted to the Eighteenth Session of the Assembly held in September 2006:

- (a) ASSEMBLY/18/5 and Addendum 1 and 2 “Draft Reference Public Services Agreement”, containing the text which was agreed at the Thirteenth Session of the Committee;
- (b) ASSEMBLY/18/5/ADD/3 “Draft Reference Public Services Agreement: Assignment Clause”, containing the text of the Assignment Clause which had been agreed at the Sixteenth Session; and
- (c) ASSEMBLY/18/5/ADD/4 “Draft Reference Public Services Agreement: IMO Evaluation and Approval: Alternative Text”, containing an alternative draft text of the Reference Public Services Agreement which could be used if IMO decides to undertake evaluation and approval of new satellite operators itself.

1.3 The Assembly noted these documents and decided *“that the Director will work in consultation with the Advisory Committee to develop the draft Reference Public Services Agreement to take account of any decisions which may be taken by IMO in respect of evaluation and recognition, for approval by the Assembly.”*

## 2 **REVISED TEXT OF THE DRAFT REFERENCE PUBLIC SERVICES AGREEMENT**

2.1 Following the adoption by the IMO Assembly of Resolution A.1001(25) *“Criteria for the provision of Mobile Satellite Communication Systems in the Global Maritime Distress and Safety System (GMDSS)”*, which revoked previous Resolution A.888(21) and MSC/Circ.1077, the Director reviewed the text of the Draft Reference Public Services Agreement (Draft Reference PSA) and proposed amendments to the Advisory Committee.

2.2 At its Twenty-First Session, the Advisory Committee agreed the text of the Draft Reference PSA. The revised text is attached. The above mentioned consequential changes are shown in grey shaded text.

**3 ACTION REQUIRED**

The Assembly is invited to approve the text of the draft Reference Public Services Committee, and to authorize the Director to negotiate and sign on behalf of the Organization Public Services Agreements with GMDSS providers recognized by the International Maritime Organization.

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**DRAFT REFERENCE  
PUBLIC SERVICES AGREEMENT  
BETWEEN  
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION  
AND  
(THE COMPANY)  
(as agreed by the IMSO Advisory Committee  
for submission to the IMSO Assembly for approval)**

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**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.1001(25).
- (B) The Company has been recognised by the International Maritime Organization (IMO) 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.

**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 IMO 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;

**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.1001(25);
- IMO Maritime Safety Committee resolution [number] dated [ *date* ]: *Statement of Recognition of Maritime Mobile Satellite Services provided by [Company Name]*, detailing the specific services provided by the Company which have been recognized by IMO (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 IMO has recognized in the Statement 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 IMO and included in the Statement 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, following endorsement of the proposed discontinuation by IMO. 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 immediately recommend to IMO 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 IMO for resolution.

- 7.11 Any decision by IMO 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 IMO without delay.
- 7.12 If the Company does not implement the decision of IMO to the satisfaction of the Organization, the Organization shall withdraw the Company's Letter of Compliance and recommend to the Secretary-General of IMO immediate withdrawal of 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.

## **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, other than those arising from decisions taken by IMO.
- 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 termination of this agreement.
- 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 2).

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.

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 merger, acquisition or 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, other than to banks or other lending institutions in the normal course of financing transactions, any right to voluntarily 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. Prior to exercising such consent, the Organisation will consult with the Company to take into account the surrounding circumstances including the urgency of the request.
- 11.3 The Company warrants that all existing contracts or other commitments that assign the right to voluntarily wind up the Company and which would have required consent under Clause 11.2. above have been disclosed to the Organization.
- 11.4 The Company agrees that if a bank or lending institution, as referred to in Clause 11.2, seeks to voluntarily wind up the Company, the Company will endeavour to obtain assurances from such bank or lending institution regarding the continued provision of GMDSS services, stressing the continuing public obligations in relation to global maritime safety and commercial significance thereof.

## **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:**

**Signed on behalf of:**

**THE INTERNATIONAL MOBILE  
SATELLITE ORGANIZATION**

**(THE COMPANY)**

\_\_\_\_\_  
Director

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

## ANNEX 1

### LETTER OF COMPLIANCE

#### Maritime mobile-satellite services provided by

#### [the Company]

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

#### Whereas:

1 the International Maritime Organization (IMO) 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 Statement of Recognition in the form of Maritime Safety Committee resolution [ number ] dated [ *date* ]; and

2 the International Mobile Satellite Organization (IMSO) has concluded a Public Services Agreement between the Organization and the Company dated [ *date* ]; and

3 in accordance with Clause 2.1.2 of that Public Services Agreement IMSO hereby confirms that the services listed in the attachment to this letter comply with the technical and operational requirements for participation in the GMDSS set out in IMO Assembly resolution A.1001(25).

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.1001(25) 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 1**

**Attachment**

**SERVICES COMPLYING WITH THE TECHNICAL AND OPERATIONAL  
REQUIREMENTS OF IMO ASSEMBLY RESOLUTION A.1001(25)**

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: .....

## **ANNEX 2**

### **DECISION OF THE IMSO ASSEMBLY**

*adopted on [date]*

#### **BUDGETARY APPROVAL PROCEDURES AND APPORTIONMENT OF COSTS**

*The text of this annex 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]*