



International Mobile Satellite Organization

ASSEMBLY

Twentieth Session

Malta, 29 September to 3 October 2008

Agenda item 7.4

ASSEMBLY/20/7.4/ADD/1

Origin: Director

Date: 16 September 2008

**DRAFT MODEL LRIT SERVICE AGREEMENT
AND STATEMENT OF IMSO GOALS AND OBJECTIVES**

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| <p>Executive Summary: this document contains a draft Model LRIT Service Agreement and a Statement of IMSO Goals and Objectives</p> <p>Action to be taken: to approve the draft Model LRIT Service Agreement and the Statement of IMSO Goals and Objectives</p> <p>Related documents: ASSEMBLY/20/7.4</p> |
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1 BACKGROUND

As indicated in document ASSEMBLY//20/7.4, the Director has developed the draft Model LRIT Service Agreement (Annex I) and Statement of IMSO Goals and Objectives (Annex II). The Model LRIT Service Agreement is intended to become the standard form of LRIT Service Agreement used between IMSO and commercial Data Centre operators or Application Service Providers. The Statement of IMSO Goals and Objectives is intended to be included in any contract IMSO signs with any governmental agency that is based on that government's own standard procurement contract.

2 ACTIONS REQUESTED OF THE ASSEMBLY

The Assembly is requested to consider the proposed texts and decide accordingly.



**DRAFT MODEL
LRIT SERVICE AGREEMENT
BETWEEN
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION
AND
(THE COMPANY)**

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**LRIT SERVICE AGREEMENT
BETWEEN
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION
AND
(THE COMPANY)**

LRIT SERVICE 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 International Maritime Organization (IMO), by adopting Regulation V/19-1 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, has established the International System for the Long Range Identification and Tracking of Ships (LRIT) and has further adopted resolution MSC.863(84) - *Revised Performance Standards and Functional Requirements for the Long Range Identification and Tracking of Ships*;

(B) The International Mobile Satellite Organization (IMSO) has been appointed by the IMO as the LRIT Coordinator by decision of the Maritime Safety Committee (MSC) at its eighty second session;

(C) The IMSO Assembly decided at its Nineteenth (Extraordinary) Session that “the Organization may assume the functions and duties of the LRIT Co-ordinator with effect from 7 March 2007, at no cost to Parties, in accordance with decisions of IMO, where Article 4 of the amended Convention will be applied on a provisional basis”;

and

(D) The Company has been appointed by the Administration of [...name of Flag State ...] to operate an LRIT Data Centre on behalf of that Administration,

THIS AGREEMENT sets out the obligations of the Company in relation to the audit and review of and the rights of the Organization to undertake such audit and review 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;

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;

IMO means the International Maritime Organization;

LRIT Information means the information specified in SOLAS regulation V/19-1.5;

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

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

1.2 **Headings**

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

2 **LRIT SERVICE STANDARDS**

2.1 By accepting and signing contracts for the provision of LRIT Data Centre services for [... Flag State ...], the Company has assumed the obligation to provide those services in accordance with the requirements of:

.1 Regulation V/19-1 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended;

.2 resolution MSC.863(84) - Revised Performance Standards and Functional Requirements for the Long Range Identification and Tracking of Ships (hereafter “the Performance Standards”); and

.3 MSC.1/Circ.1259 - Interim Revised Technical Specifications for the LRIT System, as amended.

2.2 The Performance Standards include the following provisions which, *inter alia*, are acknowledged by the Company to be mandatory:

“7.5 The performance of all LRIT Data Centres should be audited by the LRIT Coordinator.

7.5.1 All LRIT Data Centres should co-operate and make available to the LRIT Coordinator the information required to enable the satisfactory completion of an audit of their performance.

7.5.2 All LRIT Data Centres should settle their financial obligations vis-à-vis the LRIT Coordinator in a timely manner in accordance with the arrangements they have agreed.”

and

“14.3 The LRIT Coordinator should, taking into account the provisions of regulation V/19-1, the present performance standards, the technical specification for the LRIT system and any related decisions of the Committee:

- .1 upon request, of any party concerned or the Committee, undertake the investigation of operational or technical disputes or invoicing difficulties and make recommendations for their settlement to the parties concerned and the Committee, as appropriate;*
- .2 participate, as and when requested by the Committee, in the testing and integration of LRIT Data Centre(s) into the LRIT system and report its finding in this respect for consideration by the Committee; and*
- .3 participate, as and when requested by the Committee, in the testing of new or modified procedures or arrangements for communications between the International LRIT Data Exchange, the LRIT Data Centres and the LRIT Data Distribution Plan server and report its finding in this respect for consideration by the Committee.*

14.4 The LRIT Coordinator should undertake a review of the performance of the LRIT system taking into account the provisions of regulation V/19-1, the present performance standards, the technical specification for the LRIT system and any related decisions of the Committee and should report its findings to the Committee at least annually. In this respect, the LRIT Coordinator should on an annual basis:

- .1 review the performance of ASPs (or CSPs when they act as ASPs) providing services to the International LRIT Data Centre;*
- .2 audit the performance of all LRIT Data Centres based on archived information and their fee structures;*
- .3 audit the performance of the International LRIT Data Exchange and its fee structure, if any; and*
- .4 verify that Contracting Governments and Search and rescue services receive only the LRIT information they have requested and are entitled to receive.*

14.5 *In addition to reporting to the Committee on the performance of the LRIT system including any identified non-conformities, the LRIT Coordinator may make recommendations to the Committee, based on an analysis of its findings, with a view to improving the efficiency, effectiveness and security of the LRIT system.*

14.6 *The LRIT Coordinator should, for the purpose of performing the functions specified in paragraphs 14.2.4 and 14.3 to 14.5:*

- .1 be given the required level of access, by the LRIT Data Centres and the International LRIT Data Exchange, to management, and to charging, technical and operational data;*
- .2 collect and analyse samples of LRIT information provided to LRIT Data Users;*
- .3 collect and analyse statistics compiled by LRIT Data Centres and the International LRIT Data Exchange; and*
- .4 be given access to the current LRIT Data Distribution Plan and to earlier versions of the plan.*

14.7 *The LRIT Coordinator should establish and communicate to the Committee the charges it would be levying in order to recover the expenditure it incurs for providing the services specified in paragraphs 14.2 to 14.5.*

14.8 *The related charges should be paid to the LRIT Coordinator in accordance with agreed arrangements - taking into account the laws of the Contracting Government(s) concerned - as follows:*

...

- .3 when undertaking the investigation of operational or technical disputes or invoicing difficulties (paragraph 14.3.1) by the party requesting the service;*
- .4 when participating in the testing and integration of LRIT Data Centre(s) into the LRIT system (paragraph 14.3.2) by the LRIT Data Centre(s) being tested or integrated;*

- .5 *when participating in the testing of new or modified procedures or arrangements for communications between the International LRIT Data Exchange, the LRIT Data Centres and the LRIT Data Distribution Plan server (paragraph 14.3.3), by the International LRIT Data Exchange and/or the LRIT Data Centre(s);*
- .6 *when reviewing the performance of ASPs (or CSPs when they act as ASPs) providing services to the International LRIT Data Centre (paragraph 14.4.1), by the ASPs concerned;*
- .7 *when auditing the performance and fee structures of LRIT Data Centres (paragraph 14.4.2), by the LRIT Data Centre concerned; ...”*

2.3 The Organization shall perform its LRIT Coordinator functions and duties in a fair and consistent manner.

3 CHARGES

The Organization shall establish and publish charges for the LRIT audit and review services it provides. These charges shall be subject to oversight by the Assembly and shall be reported periodically to the MSC.

4 INFORMATION AND COOPERATION

- 4.1 The Organization shall be entitled to be supplied with all reasonable information pertaining to the Company's ability to provide and provision of LRIT services.
- 4.2 The Organization shall provide IMO with regular reports, at least once yearly, on the performance by the Company of its obligations under Section 2.
- 4.3 The Organization hereby undertakes to keep confidential, and to ensure that its officers, employees, agents and professional and other advisers keep confidential, the LRIT information which the Organization has acquired pursuant to Section 2. and shall not disclose to any third party any such information.

5 CONSULTATION

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

6 COMPLIANCE

6.1 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.

6.2 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 inform the Flag State concerned and include details of the non-compliance in the final Audit Report for the Data Centre, which will be notified, *inter alia*, to IMO.

6.3 Any decision by IMO in relation to such a report 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 ARBITRATION

7.1 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 the regulations, recommendations or decisions of IMO.

7.2 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.

- 7.3 The decision of the Arbitrator shall be binding upon the Organization and the Company.
- 7.4 The Organization and the Company shall immediately implement any decision of the Arbitrator in relation to the provisions of this Agreement.
- 7.5 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.
- 7.6 The Organization and the Company shall each bear their own costs in relation to any arbitration proceedings.
- 7.7 The Organization shall inform the Secretary-General of IMO if any matter related to the provision of LRIT services is sent to arbitration and of any subsequent decision by the Arbitrator.

8 COSTS OF THE ORGANIZATION

- 8.1 The Company shall indemnify the Organization against any and all costs associated with the Company or the Organization submitting to arbitration any dispute arising out of or in relation to the provisions of this Agreement.
- 8.2 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. 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.

9 ASSIGNMENT

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.

10 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.

11 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.

12 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.

13 WARRANTIES AND REPRESENTATIONS

- 13.1 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.
- 13.2 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.

14 NOTICES

- 14.1 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]*

- 14.2 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.
- 14.3 Notices served in accordance with Clause 14.1 shall be deemed to have been served two business days after the facsimile was transmitted to the addressee.

15 AMENDMENTS

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

16 TERMINATION

This Agreement may be terminated at any time by written agreement between the Organization and the Company

17 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.

18 GOVERNING LAW

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

19 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

**GOALS AND OBJECTIVES OF IMSO IN RELATION TO THE AUDIT AND
REVIEW OF LRIT DATA CENTRES AND CERTAIN APPLICATION
SERVICE PROVIDERS**

In undertaking the audit and review of LRIT Data Centres and certain Application Service Providers (ASPs), the International Mobile Satellite Organization (IMSO) seeks to:

1. Fulfil its LRIT functions and provide LRIT Coordinator services in accordance with its mandate under the terms of the IMSO Convention.
 2. Perform the LRIT Coordinator functions in accordance with Section 14 of IMO resolution MSC.263(84): Revised Performance Standards and Functional Requirements for the Long Range Identification and Tracking of Ships.
 3. Perform the LRIT Coordinator functions and duties in a fair and consistent manner.
 4. Recover its costs for the provision of LRIT services in full and at minimum risk both to the Organization and the Member States of IMSO.
 5. Ensure, so far as is possible, a positive cash flow throughout its LRIT Audit and Review business.
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