



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

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AS APPROVED BY THE IMSO ASSEMBLY

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**REFERENCE 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; and
- (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; and
 3. IMO Assembly Resolution A.1001(25).
- (B) The Company has been recognized 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:

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; and
- this Agreement.

2.1.2 To this end, the Organization shall issue to the Company a Letter of Compliance (Annex 1) 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 General 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 General 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 this Agreement; or
 - .2 the Company or the Organization submitting to arbitration any dispute arising out of or in relation to the provisions of this Agreement.

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 General
International Mobile Satellite Organization
99 City Road
London EC1Y 1AX
United Kingdom

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**

Signed on behalf of:

(THE COMPANY)

Director General

Chief Executive Officer

ANNEX 1 TO THE PUBLIC SERVICES AGREEMENT

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*], in relation to the technical and operational requirements for participation in the GMDSS set out in IMO Assembly Resolution A.1001(25), 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*],

The services listed in the Statement of Recognition 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 IMO Assembly 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 General
International Mobile Satellite Organization

ANNEX 2 TO THE PUBLIC SERVICES AGREEMENT

ARRANGEMENTS FOR THE DEVELOPMENT, ENDORSEMENT AND AGREEMENT OF IMSO'S BUDGET

As adopted by the Twentieth Session of the IMSO Assembly

The Assembly of the International Mobile Satellite Organization (IMSO) has decided, at its Twentieth Session, that the arrangements for development, endorsement and apportionment of the Organization's budget shall be as follows:

1 General Budget Development Principles

1.1 The Organization's overall budget should be developed by the Director General, agreed annually by the Advisory Committee, and endorsed biannually by the Assembly.

1.2 The budget should be developed on a three-year rolling basis:

.1 The budget for year one should be as accurate as possible.

.2 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.

1.3 The Director General should develop detailed budget proposals during the third quarter of each calendar year.

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

1.5 The Director General 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 normally during October or November of each year.

1.6 The Director General should ensure that the proposed budget properly identifies and separates the costs of GMDSS oversight from the costs of the LRIT Coordinator role.

1.7 Headquarters, staff and other fixed costs shall be apportioned fairly between all the various lines of business, taking account of the relative levels of resource and effort expended on each service.

GMDSS Budget

2 General

2.1 The costs of the Organization for the provision of GMDSS oversight shall be recovered from the Provider(s) of GMDSS Satellite Services in the form of a Fixed Annual Fee.

2.2 The Fixed Annual Fee shall be set at a sufficient level for recovery of the Organization's costs in relation to GMDSS oversight plus the relevant share of the Contingency Fund (see Section 10 below). The Fixed Annual Fee charged to Providers of satellite services for the GMDSS shall include the relevant proportion of the Organization's Headquarters, staff and other fixed costs but shall not take account of the costs of any other business the Organization might undertake.

2.3 The level of this Fee shall be proposed by the Director General and agreed by the Advisory Committee on an annual basis.

3 Apportionment

3.1 The costs shall be apportioned between all Providers of satellite services for the GMDSS that are subject to oversight by the Organization and for which a Public Services Agreement is in force.

[3.2 Each Provider shall pay:

- .1 an equal share of the operational GMDSS budget;
- .2 an equal share of the cross functional overheads; and
- .3 an equal share of the contingency requirement.

3.3 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.]

4 Fixed Annual Fees

4.1 Each year, following agreement of the budget, the Director General 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.

4.2 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.

4.3 The level of Fixed Annual Fee should be proposed by the Director General 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 Terms of Business - GMDSS

5.1 Unless otherwise agreed between the Organization and the Provider concerned, the Fee shall become payable at the beginning of the year to which it applies.

5.2 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 or less than 30 days before the first day of the period to which the invoice relates.

5.3 The Director General 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.

5.4 The Organization may charge interest at a rate of 2 per cent above the prevailing Bank of England Base Rate, in accordance with normal commercial practice, on any invoiced sums outstanding beyond the 30 days allowed.

5.5 The Director General will take into account any surplus made in one year when deciding the level of fee to be charged in the following year, so that any surplus does not accumulate to an unacceptable extent;

LRIT Budget

General

6.1 IMO Resolution MSC.263(84) - the Performance Standard, paragraph 14.8 sets out in detail those services for which the LRIT Coordinator is expected to charge. Charges for the eight different cases listed in the Performance Standard can conveniently be grouped into two types of charge:

- .1 charges for "one off" services, such as evaluation of proposals, participation in testing and/or integration of new or revised LRIT entities or procedures, and investigation of operational or technical disputes etc. (IMO resolution MSC.263(84) paragraphs 14.8.1 to 14.8.5); and

- .2 charges for the annual review and audit of LRIT Data Centres, certain ASPs or the International Data Exchange (IMO resolution MSC.263(84) paragraphs 14.8.6 to 14.8.8).

6.2 "One off" services will be charged for on a "per diem" (daily rate) basis, whilst annual review and audit services will be charged for on a fixed annual fee basis.

6.3 In each case it is the Data Centre, ASP or IDE concerned that will be directly charged by IMSO and not the Contracting Governments to SOLAS or the Member States of IMSO in those capacities.

6.4 The actual values of the LRIT Audit/Review Fee and the Daily (Per Diem) Fee for each year will be decided by the Director General, in consultation with the Advisory Committee, in the fourth quarter of the preceding calendar year, as part of the overall budget development, review and agreement process.

6.5 Because of the expectation that IMSO's predictable LRIT-related income will be derived almost entirely from Audit/Review Fees, the level of LRIT Audit/Review Fee for each year must be set to ensure that the Organization cannot make a loss, but at no higher level than is required to achieve this (the so-called "not-for-profit" basis). Any "one-off" fees (of the type normally charged at a daily rate) may lead to the accumulation of a small surplus for the trading year. It is anticipated, therefore, that the Director General will take into account any surplus made in one year when deciding the level of fee to be charged in the following year, so that any surplus does not accumulate to an unacceptable extent.

7 **Daily "Per Diem" Fees for "one off" contracts**

The level of "Per Diem" or Daily Fee to be charged for "one off" contracts should be set to reflect the full cost to the Organization of one day's LRIT work, that is, in a full year:

$$\frac{\text{Total LRIT Budget for the Year}}{260 \text{ working days}} = \text{Daily Cost}$$

This Daily Cost should then be rounded up and an allowance made for bad debt and contingencies, if required, to establish the actual Daily Fee to be charged by the Organization during that year.

8 **Fees for Annual Review and Audit**

8.1 The Fee for annual audit and review is established and apportioned according to the formula:

$$\text{Fee} = \text{total IMSO auditing costs} / \text{total number of units};$$

8.2 The number of units payable by any data centre will be in accordance with the following rule:

1. if flags < X and vessels < Y => DC fee = 1x unit
2. if flags < X and vessels > Y => DC fee = 1x unit
3. if flags > X and vessels < Y => DC fee = 1x unit
4. if flags > X and vessels > Y => DC fee = 5x unit

where:

X = number of flags per DC

Y = number of vessels per DC

8.3 For the time being, the value of X is set at 10 flags and the value of Y at 1000 ships.

Note: The Assembly, at its Twentieth Session, decided that this would be an interim decision in order to provide clarity to MSC 85 and to remain in use until the next regular session of the Assembly, when the number of data centres, participating ships and volumes of traffic are known more accurately, and the quantity of effort required from IMSO can also be known more accurately.

8.4 Application Service Providers (ASPs) providing services to the International Data Centre (IDC) should be counted and charged in the same way as Data Centres. They are likely to be few in number, and can be added to the formula when and if an IDC is established.

8.5 The interim International Data Exchange is provided free of charge to the LRIT system by the government of the United States. It is not a commercial operation and will not accumulate funds. It is difficult to know what time and resource will be needed to provide IMO with the assurances it seeks in relation to the operation of the IDE. For the time being, the audit and review procedures for the IDE will thus be a matter for discussion and agreement between IMSO and the IDE Operator. It is therefore intended that the Audit/Review Fee shall be based on a daily "Per Diem" fee basis for the interim IDE. A further decision, taking account of the degree of commercial enterprise in the permanent IDE will be taken when the permanent IDE is established.

9 Terms of Business – LRIT

9.1 Daily Fees for "one off" contracts should be invoiced when the final report for the contract is dispatched from IMSO. The invoice should include all known expenses in addition to the Fees payable for the contract. A further invoice may be raised at a later date to cover any further expenses that come to hand after the initial invoice has been submitted.

9.2 Data centres and those ASPs subject to audit become liable to pay the appropriate Fee for annual review and audit on the day that the audit or review process begins. However, the fees will be invoiced and become payable after the audit or review is complete but before the final report has been dispatched to the client and IMO.

9.3 The Organization shall require payment in full within 30 days of the date of invoice.

9.4 The Organization may charge interest at a rate of two (2) percent above the prevailing Bank of England Base Rate, in accordance with normal commercial practice, on any invoiced sums outstanding beyond the 30 days allowed.

10 Contingency Fund

10.1 The annual budget shall include an allowance for contingencies. The allowance for contingencies shall normally be one (1) percent 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 General 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.

10.2 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 or LRIT entities at the end of the year.

10.3 The Director General should report any expenditure from the Contingency Fund to the Advisory Committee at its next regular session.

11 Budgetary Reporting

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

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

11.3 The Director General 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.

11.4 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.

11.5 The Director General should report agreed levels of LRIT fees to IMO MSC annually, in accordance with paragraph 14.7 of the Performance Standard.
