

## CONDITIONS OF USE<sup>1</sup>

### FOR USING THE EUROPEAN UNION LONG RANGE IDENTIFICATION AND TRACKING DATA CENTRE (EU LRIT DC)

The European Maritime Safety Agency (EMSA), represented by Willem de Rooter, Executive Director, herein after referred to as "EMSA", of the one part,

and

[official name in full]

[official legal form]

[official address in full]

*[name of Participating State]*, which is represented by *[name of Administration and responsible person's name in full and function]*,

herein after referred to as "the Participating State", of the other part.

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<sup>1</sup> As referred to in the Council Resolution on the EU LRIT DC of 9 December 2008

WHEREAS the International Maritime Organization (IMO) adopted on 19 May 2006 Resolutions of the Marine Safety Committee MSC 202 (81), which introduces amendments to SOLAS Regulation V/19-1 and provides for the establishment of the Long-Range Identification and Tracking system (LRIT) (Regulation V/19-1 of the International Convention for the Safety of Life at Sea, 1974, as amended).

HAVING REGARD TO the Council Resolution of 2 October 2007 to establish a European LRIT Data Centre (EU LRIT DC). The main objective of the EU LRIT DC is the identification and tracking of ships flying the flag of Participating States. The data generated will be integrated in the wider International LRIT system. All Participating States can share a LRIT information repository and one interface to the International Data Exchange (IDE) for requesting LRIT information on ships registered with other data centres.

ACKNOWLEDGING paragraph 1 of the said Council Resolution: the European Commission is in charge of managing the EU LRIT DC, in cooperation with Member States, through the European Maritime Safety Agency (EMSA). The Agency is in charge of the development, operation and maintenance of the EU LRIT DC.

NOTING that the IMO Maritime Safety Committee at its 85<sup>th</sup> session agreed on a set of transitional arrangements allowing LRIT Data Centres to be ready by 30 June 2009.

UNDERLINING the importance of this date as stated in the Council Resolution of 9 December 2008 concerning the EU LRIT DC, the Council "INVITES the Commission to continue taking appropriate action in order to ensure that all the necessary infrastructure is in place, and the Member States to submit information concerning ships flying their flag as early as possible to the EU LRIT Data Centre, in view of a timely establishment of the latter in accordance with the implementation plan along with the transitional arrangements agreed at IMO for the completion of the establishment of the LRIT System during the period between 31 December 2008 and 30 June 2009" and "ENCOURAGES progress in defining, in cooperation between the participating Member States and the European Maritime Safety Agency, the Condition of Use of the LRIT system, in particular the financial modalities."

UNDERLINING that the EU LRIT DC Users have the right to receive LRIT information pursuant to the provisions of SOLAS regulation V/19-1 specifically, based on:

- a) Flag State entitlements;
- b) Port State entitlements;
- c) Coastal State entitlements;
- d) SAR user entitlements.

REITERATING that the purpose of the LRIT system is for maritime security, Search and Rescue (SAR), maritime safety and the protection of the marine environment.

CONFIRMING that the EU LRIT DC shall be in accordance with all relevant IMO LRIT performance standards and requirements.

## **Article 1. Definitions**

Unless expressly provided otherwise:

1. *LRIT* means Long Range Identification and Tracking of ships.
2. *LRIT NCA* means the National Competent Authority (NCA) appointed by the Participating State which is entitled to receive LRIT information directly from the EU LRIT DC and is responsible to create and coordinate national LRIT DC Users of the data centre and their access rights.
3. *LRIT DC User* means any user of the EU LRIT system which is entitled by the LRIT NCA in accordance with SOLAS regulation V/19-1 to receive LRIT information through the EU LRIT Data Centre.
4. *EU LRIT DC* means the EU LRIT Data Centre which is set-up for processing LRIT information from vessels flying the flag of Participating States and for requesting and delivering LRIT information on ships registered with other data centres.
5. *EU LRIT Ship DB* means the EU LRIT Ship Database which is a system used for storing, maintaining and distributing the list of ships instructed by the LRIT NCA to transmit LRIT information to the EU LRIT DC.
6. *Participating States* means European Union Member States as well as the EEA countries Norway and Iceland.
7. *EMSA* means the European Maritime Safety Agency established under Regulation 1406/2002/EC.
8. *Contracting Government* means a government that is a Contracting Party to SOLAS.
9. *DDP* means the LRIT Data Distribution Plan which is managed by the International Maritime Organization.
10. *EU LRIT System* means the system comprising of the EU LRIT DC, EU LRIT Ship DB, ASP application, and the EU LRIT Invoicing & Billing component.
11. *SAR* means Search and Rescue
12. *SOLAS* means regulation V/19-1 of the International Convention of Safety of Life At Sea, 1974, as amended.

13. *SSN* means SafeSeaNet which is a Community ship traffic monitoring and information system regulated by Directive 2002/59/EC as amended.
14. *ASP* means Application Service Provider
15. *EU ASP* means the recognized ASP which is contracted by EMSA to provide services to the EU LRIT Data Centre.
16. *CSP* means Communications Service Provider
17. *IDE* means International LRIT Data Exchange.
18. *IMO* means International Maritime Organization.
19. *LRIT Coordinator* is appointed by the IMO Maritime Safety Committee and will assist in the establishment of the IDE and should undertake a review of the performance of the LRIT system including ASP's, all LRIT Data Centres, the IDE, etc.

Terms not otherwise defined should have the same meaning as the meaning attributed to them in SOLAS.

## Article 2. Purpose and Objectives

2.1 For the purposes of these Conditions of Use, the Participating State mentioned above nominates the following LRIT NCA contact point which is the government body responsible to create and coordinate LRIT DC Users of the data centre in his/her country and their access rights.

LRIT NCA Contact Point	
<b>Name of contact or Entity /Administration</b>	
<b>Job Title</b>	
<b>Contact Details including tel/email:</b>	

2.2 The purpose of these Conditions of Use is to define the roles and responsibilities of the Participating State and EMSA.

### **Article 3. Intellectual property rights**

3.1 LRIT Information for all ships to which SOLAS regulation V/19-1 applies obtained during the set-up, implementation and operation of the EU LRIT DC, is owned solely by the Participating State of the flag which the ship is flying.

### **Article 4. Data use and distribution**

4.1 The LRIT NCA grants EMSA the right to receive, store, retrieve and exchange LRIT information as needed for the purposes of the EU LRIT DC. These rights are non-transferable (EMSA can not transfer these rights to anybody else) and non-exclusive (the LRIT NCA can grant similar rights to another body). The LRIT NCA also grants EMSA the right to charge for the data when providing data to other LRIT Data Centres in accordance with the DDP. The LRIT NCA also grants EMSA the right to enquire, request and obtain the relevant ship information and if available, owner/operator information needed for the operation of the EU LRIT DC.

4.2 The EU LRIT System allows for the possibility of internal routing of LRIT information transmitted by ships flying the flag of Participating States (in accordance with IMO LRIT Performance Standards as revised) and especially to distribute the data via SSN.

4.3 EMSA shall not be liable for any damage caused by the LRIT NCA deciding to share, redistribute or recirculate LRIT data with a third party either within or outside its country.

### **Article 5. Role and rights of EMSA**

#### **General**

5.1 EMSA is responsible, on behalf of the Commission and Member States, for the setting-up, implementation, testing, commissioning, operating and maintenance of the EU LRIT DC in accordance with IMO requirements. For these purposes EMSA acts as the EU LRIT DC Administrator towards the IMO, the LRIT Coordinator, the IDE, the CSP/ASP and other LRIT Data Centres without prejudice to the competences of the Participating State as a Contracting Government to SOLAS.

5.2 EMSA ensures the daily operation and maintenance of the system in accordance with the IMO availability and performance criteria, including the annual review and auditing by the LRIT Coordinator. EMSA is the administrator of the EU LRIT DC.

5.3 EMSA has the right to manage all components of the EU LRIT System. The aim of the management control process is to keep track of the activities performed in the system and to control the quality of service and the quality of data (all data related to the ship/equipment/network/systems identification are correct) delivered to the LRIT DC Users. Problems not solved at the EU LRIT DC level with ships flying the flag of the Participating State will be communicated to the LRIT NCA.

5.4 EMSA ensures that the EU LRIT DC is able to operate as a fault tolerant system, which means that the system is able to recover from errors and restore to normal operation.

5.5 EMSA will ensure prompt notification of the LRIT NCA any time there is a technical problem leading to the non-availability of the system and will ensure a prompt and accurate handling of such situations.

5.6 EMSA ensures that the hosting of the EU LRIT DC respects the availability requirements and follows the IMO guidance on system security.

5.7 EMSA distributes LRIT information for [name of signing Participating State] based on its submitted DDP as Contracting Government to IMO.

5.8 EMSA provides journals to the LRIT NCA reflecting all LRIT information related to reports of ships flying the flag of the Participating State and all requests of its LRIT DC Users. EMSA will also provide a journal for all of the internally routed LRIT information which will only contain message header information which will be used for audit and invoicing purposes (according to LRIT Performance Standards).

### **EU LRIT Ship Database**

5.9 EMSA is responsible for the development, operation, hosting and administration of the EU LRIT Ship DB which is an element of the EU LRIT System. The EU LRIT Ship DB is a system used for storing, maintaining and distributing the list of ships instructed to transmit LRIT information to the EU LRIT DC. The EU LRIT System will only process LRIT reports of ships if they are listed in the EU LRIT Ship DB.

5.10 The EU Ship DB contains the following mandatory information for each individual ship:

- IMO number
- MMSI Number
- Ship Name
- Call Sign
  
- If the equipment has been type approved or not (Yes/No) and if it has then the type approval reference number, or
- If it has undergone a Conformance test, then the test report date and the ASP that performed the Conformance test

The following additional data if available would also be very helpful to ensure that the EU ASP is able to find any missing information which may be needed during vessel integration or equipment failures/errors:

- Shipborne system (radio installation)(i.e. Inmarsat C, Iridium, etc.)
- Shipborne Identifier (i.e. IMN number & serial number for Inmarsat C, IMN and ISN for Inmarsat mini C, terminal ID for Iridium etc.)
- Emergency Contact point/name
- Address
- Telephone number
- Fax number
- Comments/text field for further information

5.11 EMSA ensures that any changes and updates received for the list of ships will be included automatically into the EU LRIT System operations on a daily basis. The information in the EU LRIT Ship DB will be downloaded by the EU ASP as necessary to provide LRIT reports.

5.12 EMSA provides a web interface access to the EU LRIT Ship DB and a user manual.

### **EU LRIT Data Centre**

5.13 EMSA provides, through the Maritime Support Services, a 24/7 help desk, to process troubleshoots or respond to service calls from LRIT DC Users with regards to the system performance and quality of data.

5.14 EMSA is responsible to perform an evaluation of service performance, data quality, etc. in order to continuously improve the EU LRIT DC service.

5.15 EMSA recognises all nationally type approved shipborne equipment and conformance test reports.

5.16 EMSA provides the LRIT DC Users with a web interface access to the EU LRIT DC and a relevant user manual. EMSA envisages to also develop an XML interface to the EU LRIT DC by 2010.

5.17 EMSA ensures that the EU LRIT DC provides journals reflecting all LRIT DC User activities for future reference and auditing purposes.

5.18 The EU LRIT DC is subject to audits by the LRIT Coordinator and also by European recognised auditing bodies such as the European Court of Auditors and the Internal Audit service of the European Commission.

## Article 6. Role and rights of the LRIT NCA

### General

6.1 The LRIT NCA has access to the LRIT information as defined in SOLAS regulation V/19-1.8.1. The LRIT NCA is responsible for managing its own national “*LRIT DC Users*” and their access rights. These LRIT DC Users can represent a Flag State, Port State, Coastal State, or Search and Rescue (SAR) service and are authorised by the LRIT NCA to request/receive/read LRIT information.

6.2 The LRIT DC Users have the possibility to receive and request LRIT information, manage standing orders, request SAR SURPICS and consult ship positions, subject to access rights granted by the LRIT NCA.

### EU LRIT Ship Database

6.3 The LRIT NCA appointed pursuant to Article 2.1, nominates the following ship data manager (or Entity or Administration) in order to coordinate with EMSA with regard to the development and operation of the EU LRIT Ship DB and to upload and update its list of ships, subject to SOLAS regulation V/19-1 amended for LRIT requirements, and its relevant information according to Article 5.10 of this document.

Ship Data Manager	
<b>Name of contact or Entity/Administration</b>	
<b>Contact Details including tel/email:</b>	

Should there be a change in this contact point, this should be communicated to EMSA in writing as soon as possible.

6.4 The LRIT NCA is responsible via its Ship Data Manager for the updating of its list of ships subject to LRIT requirements (i.e. whenever a change occurs) including changes of flag as soon as possible to ensure accuracy of the EU LRIT Ship DB.

6.5 The LRIT NCA shall ensure that the Ship Data Manager only lists vessels in the EU LRIT Ship DB which are obliged to send LRIT information according to SOLAS regulation V/19-1 as amended. Of these ships, only those that have equipment which have been type approved or conformance tested should be inserted in the database.

6.6 The Ship Data Manager only has access to the information in the EU LRIT Ship DB regarding ships flying its flag.

### **EU LRIT Data Centre**

6.7 The Participating State should recognise the EU ASP as the Recognised EU ASP. The Participating State should make this approval applicable on a national level to all ships flying its flag in order to allow the EU ASP access to relevant information related to the ship and the shipborne LRIT equipment.

6.8 EMSA has provided prices for the conformance testing of shipborne equipment from the EU ASP such that these uniform/standard prices may be circulated to shipowners. The Participating State has the right to choose its own ASP's to conduct conformance tests on a national level.

6.9 The Participating State gives permission to EMSA to request Inmarsat to give the EU ASP access to the Inmarsat Ship Databases and Directory.

6.10 The LRIT NCA and its LRIT DC Users have access to:

- a communication user interface to enable them to communicate with the system. A default browser-based web interface is set-up enabling the LRIT DC Users to exchange messages with the EU LRIT DC.
- training which is provided on the use of the EU LRIT DC web user interface and the tools to access it.
- a 24/7 help desk to process troubleshoots or respond to service calls from LRIT DC Users with regards to the system performance and quality of data.

6.11 EMSA envisages developing an XML interface to the EU LRIT DC by 2010. Specific security requirements will be taken into account.

6.12 The LRIT NCA appoints an operational contact point for LRIT (24/7 if available) to be the permanent point of contact with the EMSA 24/7 help desk in case of an operational emergency (system performance, ship reporting, etc).

<b>Operational Contact Point</b>	
<b>Name of contact or Entity/Administration</b>	
<b>Job title</b>	
<b>Contact Details</b>	Address
<b>Tel/email during working hours:</b>	
<b>Tel outside working hours.</b>	

## **Article 7. Liability**

7.1 EMSA shall not be liable for any damage, direct or indirect, caused by a temporary or partial failure or malfunction of the system, or a termination of service caused by factors outside the control of EMSA.

7.2 EMSA and the LRIT NCA shall cooperate to minimise potential negative consequences of such failure, malfunction or termination. EMSA and the LRIT NCA shall cooperate with a view to helping each other against potential claims brought by third parties in relation to the operation of the system.

## **Article 8. Security of data / system**

8.1 Documentation related to the EU LRIT DC will be dealt with in accordance with Regulation (EC) No 1049/2001<sup>2</sup> regarding public access to documents.

8.2 EMSA and the Participating States consider LRIT information falls under the scope of Regulation (EC) No 45/2001<sup>3</sup> covering protection of individuals with regard to

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<sup>2</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

the processing of personal data by the Community institutions and bodies and on the free movement of such data. Data will only be accessible by the LRIT Coordinator who is empowered by IMO for the sole purpose of auditing the LRIT system.

8.3 EMSA ensures that the EU LRIT System is accessible in a secure way by LRIT DC Users and that the EU LRIT System security requirements are compliant with all IMO requirements.

## Article 9. Financial Provisions

### General

9.1 EMSA covers all costs associated to the four daily mandatory LRIT reports (every six hours) delivered to the LRIT DC User. Up to four daily LRIT reports (every six hours) per EU flagged ship are covered by the EMSA budget.

9.2 EMSA further provides the LRIT NCA or its national LRIT DC Users with LRIT information/data free of charge for SAR purposes in accordance with the Council Resolution of 9 December 2008 concerning the EU LRIT DC.

9.3 The LRIT NCA is responsible for the payment of LRIT messages requested by any of its LRIT DC Users.

9.4 The LRIT NCA is responsible for the payment of all costs which may be generated by over-reporting of the shipborne equipment of ships under its flag.

9.5 Prices of the EU ASP are the result of a public procurement procedure and a price list will be issued for the EU LRIT DC.

9.6 The Participating State's financial contact point for LRIT is:

Financial Contact Point	
<b>Name &amp; Job Title</b>	
<b>Contact Details including tel/email:</b>	

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<sup>3</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

<b>Invoices to be made out to:</b>	
<b>Invoice reference to be used:</b>	

## **Invoicing and Billing System**

9.7 In order to request and receive LRIT reports as per article 9.3, the LRIT NCA accepts and agrees to the EU LRIT DC payment scheme which EMSA has established for the EU LRIT DC and is in accordance with Article 59 of the Framework Financial Regulation for the bodies referred to in Art. 185 of Council Regulation No 1605/2002<sup>4</sup>. This scheme provides that a one time fixed amount equalling 3,000 euros for Coastal States or 1,000 euros for land-locked States is paid. Paying this one off membership/entrance fee allows the LRIT NCA access to the EU LRIT DC.

9.8 The LRIT NCA will be invoiced for this membership/entrance fee and the LRIT NCA will pay all outstanding balances within a maximum period of 45 days.

9.9 The financial contact point will receive monthly invoices if the outstanding amount is more than 100 euros and otherwise will receive an invoice annually.

9.10 The LRIT NCA agrees to be charged for messages according to the applicable EU LRIT DC price list (in Special Drawing Rights–SDR and Euros), as annexed, which is based on the type of user/requestor, type of message and satellite network in use. Furthermore, the LRIT NCA agrees to pay the messages requested through other Data Centres according to their price lists (in SDR and their local currencies) which will have previously been made available by the EU LRIT DC.

9.11 EMSA will ensure that the LRIT NCA and/or the Financial Contact Point will have access to the web based /Client Invoicing and Billing interface allowing them to check his/her account status (payable items) with EMSA.

## **Article 10. Force Majeure**

10.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the parties which prevents either of them from performing any of their obligations under this agreement, was not due to error or negligence on their part and could not have been avoided by the exercise of due diligence.

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<sup>4</sup> Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72) as last amended by Commission Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.7.2008, p. 23)

10.2 If either party is faced with force majeure, it shall notify the other party without delay by electronic mail confirmed by a fax message with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

10.3 Neither party shall be considered in breach of its obligations under this agreement if it has been prevented from performing them by force majeure.

10.4 The parties to this agreement shall take the necessary measures to reduce damage to a minimum.

## Article 11. Entry into Force, Amendments and Duration

11.1 This agreement shall enter into force once the EU LRIT DC becomes operational subject to the signature by both parties.

11.2 The agreement remains valid unless the Participating State or EMSA requests it to end in writing 6 months before they would like it to end.

11.3 Any amendment to these Conditions of Use shall be the subject to a written agreement concluded by the parties. An oral agreement shall not be binding on both parties.

## SIGNATURES

For the Participating State,

[Institution  
name/forename/surname/function]

For EMSA,

Willem de Rooter  
Executive Director

signature[s]: \_\_\_\_\_

signature: \_\_\_\_\_

Done at [place], [date]

Done at Lisbon [date]

In duplicate in English

Annex: EU LRIT DC Price List