

Lisbon,

Ref: C.3.3/SSB/2008/XXX

CONDITIONS OF USE

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

The European Maritime Safety Agency (EMSA), represented by Willem de Ruiters, 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 EU Member State], which is represented by [name of Administration and responsible person's name in full and function],

of the other part.

WHEREAS the International Maritime Organization (IMO) adopted on 19 May 2006 Resolutions of the Marine Safety Committee MSC 202 (81) and MSC 211 (81), which introduces amendments to the International Convention for the Safety of Life At Sea, 1974 (SOLAS) and provide for the establishment of the Long-Range Identification and Tracking system (LRIT).

HAVING REGARD TO the European Council Resolution of 2 October 2007 to establish a European LRIT Data Centre (EU LRIT DC). The objective of the EU LRIT DC is the identification and tracking of EU flagged ships. The data generated will be integrated in the wider International LRIT system. All Member States can share a LRIT information repository, a common interface to the International Data Exchange (IDE) for requesting LRIT information on ships flying non-EU flags.

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 more particularly in charge of the technical development, operation and maintenance of the EU LRIT DC.

UNDERLINING that the EU LRIT 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 the objective of the EU LRIT DC which should include maritime security, Search and Rescue (SAR), maritime safety and the protection of the marine environment.

CONFIRMING that the EU LRIT DC is set-up in accordance with all relevant IMO LRIT performance standards and requirements. The EU LRIT system is technically compliant with the IMO Maritime Safety Committee Resolution MSC 263(84) adopted in May 2008 - Revised performance Standards and functional requirements for the LRIT of ships (revoking MSC 210(81) and MSC 254(83)). It also complies with MSC.1/Circular 1257 on the Guidance on the survey and certification of compliance of ships with the requirement to transmit LRIT information and any other relevant IMO requirements.

Article 1. Definitions

Unless expressly provided otherwise:

1. *LRIT* means Long Range Identification and Tracking
2. *LRIT NCA* means the National Competent Authority (NCA) or the government ministry/administration which is entitled to receive LRIT information and is responsible to create, coordinate and channel the requests of all potential national users of the data centre and their access rights through the web interface of the system.
3. *LRIT DC User* means any user of the EU LRIT system which is entitled 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 LRIT information from vessels flying the flag of EU Member States and their designated territories.
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 National Competent Authority (NCA) to transmit LRIT position reports to the EU LRIT Data Centre.
6. *EU MS* means European Union Member States which for the purposes of this document also includes Norway and Iceland.
7. *EMSA* means the European Maritime Safety Agency who is operating the EU LRIT Data Centre on behalf of the participating Flag States.
8. *Contracting Government* means a government that is a Contracting Party to the SOLAS Convention (International Convention of Safety of Life At Sea, 1974).
9. *DDP* means the LRIT Data Distribution Plan which is managed by the International Maritime Organization.
10. *NA* means National Administration
11. *SAR* means Search and Rescue
12. *SSN* means SafeSeaNet which is a Community ship traffic monitoring and information system based on Directive 2002/59/EC.
13. *STIRES* means the SafeSeaNet Tracking Information Relay and Exchange System (STIRES) and is a module of SafeSeaNet.
14. *ASP* means Application Service Provider
15. *European 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 Data Exchange
18. Terms not otherwise defined should have the same meaning as the meaning attributed to them in the SOLAS Convention (International Convention of Safety of Life At Sea, 1974).

Article 2. Purpose and Objectives

2.1 For the purposes of these Conditions of Use, the signing party mentioned above nominates the following LRIT National Competent Authority (LRIT NCA) contact point which is the government ministry/administration which is entitled to receive LRIT information and is responsible to create, coordinate, and channel the requests of all potential LRIT DC users in his/her country of the data centre and their access rights through the web interface of the system.

LRIT NCA Contact Point	
Name	
Job Title	
Contact Details including tel/email:	

2.2 The purpose of these Conditions of Use is to define the roles and responsibilities of the LRIT NCA and EMSA which is developing and operating the EU LRIT Data Centre.

Article 3. Intellectual property rights

3.1 Information on ships falling under the obligation to report to the EU LRIT DC flying the flag of the LRIT NCA and all LRIT data obtained during the set-up, implementation and operation of the EU LRIT DC for those ships, is owned solely by the State of the flag under which the ship is flying.

Article 4. Data use and distribution

4.1 The LRIT NCA grants EMSA the right to use, assign, store or transfer the data as needed for the purposes of the EU LRIT system. These rights are non-transferable and non-exclusive. The LRIT NCA grants EMSA the right to use and charge for the data when providing data to other LRIT Data Centres in accordance with the DDP (Data

Distribution Plan). The LRIT NCA grants EMSA the right to enquire, request and obtain the relevant ship and owner/operator data information which may be needed for the operation of the EU LRIT system.

4.2 The EU LRIT system allows for the possibility of internal routing (reference Article 7.3 of MSC 263 ((84)) of LRIT information transmitted by ships flying the flag of the EU MS and especially to distribute the data via the STIRES module of SafeSeaNet (SSN) where LRIT data is combined with AIS data and further forwarded between EU MS.

4.3 EMSA shall not be liable for any damage caused should an LRIT NCA decide to share, redistribute or recirculate LRIT data with a third party either within or outside that country.

Article 5. Role and rights of EMSA

General

5.1 EMSA is responsible for the setting-up, implementation, testing, commissioning, operating and maintenance of the EU LRIT Data Centre (EU LRIT DC) in accordance with IMO requirements (complying with the provisions of MSC 263 (84), MSC 202 (81), and MSC 211 (81) and any other relevant IMO requirements). For these purposes EMSA acts as the EU LRIT DC Administrator towards the International Maritime Organization (IMO), the International Mobile Satellite Organisation (IMSO), the International Data Exchange (IDE), the Communication Service Provider (CSP)/Application Service Provider (ASP) and other LRIT Data Centres without prejudice to the competences of the Member State.

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 IMSO. EMSA is the administrator of the system.

5.3 EMSA acts as the controlling entity for all components comprising the service. The aim of the 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 delivered to the EU LRIT DC users. Recurrent problems with ships flying the flag of the LRIT NCA will be communicated to the LRIT NCA as representative of the responsible Flag State or any other appointed national contact point for this purpose.

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 these situations.

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

5.7 EMSA distributes LRIT information of the LRIT NCA based on its submitted input as Contracting Government of IMO to the Data Distribution Plan (DDP).

5.8 EMSA provides journals to the LRIT NCA reflecting all LRIT reports and requests related to ships flying the flag of the EU LRIT User. 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 (reference Article 7.3 of MSC 263 (84)). These journals will be transmitted to the IDE at regular intervals.

EU LRIT Ship Database

5.9 EMSA is responsible for the development, operation, hosting and administration of the EU LRIT Ship Database (EU LRIT Ship DB) which is an element of the EU LRIT System. The EU LRIT Ship Database is a system used for storing, maintaining and distributing the list of ships instructed by National Competent Authorities (NCA) to transmit LRIT position reports to the EU LRIT Data Centre. 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 mandatory¹ information for each individual ship¹:

- IMO number
- MMSI Number
- Ship Name
- Call Sign
- Compliance Certificate number, date and ASP that performed the Conformance test

As well as additional data if available

- Shipborne communication identifiers
- Contact point/person
- Telephone number
- Fax number
- Text field for further information

5.11 EMSA ensures that any changes and updates in 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 LRIT DC Application Service Provider (ASP) as necessary to provide LRIT reports.

5.12 EMSA provides the user with a web interface access to the ship database and a user manual.

¹ According to IMO resolution 887(21)

EU LRIT Data Centre

5.13 EMSA provides, in conjunction with SafeSeaNet, a 24/7 help desk (with 24/7 operators), to process troubleshoots or respond to service calls from EU LRIT 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 certificates of compliance.

5.16 EMSA will provide the user with a web interface access to the EU LRIT DC and a relevant user manual.

5.17 EMSA will ensure that the EU LRIT DC provides journals reflecting all user activities for future reference and auditing purposes.

5.18 The EU LRIT DC will be subject to audits by IMSO and also by European recognised auditing bodies or 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 is responsible for managing its own national “*LRIT DC Users*” of the EU LRIT data centre and their access rights through the web interface of the system. These LRIT DC Users can represent a Flag State, Port State, Coastal State, or Search and Rescue (SAR) service and are authorised to request/receive/read LRIT information.

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

6.3 The LRIT NCA ensures that the DDP is updated on a regular basis with the IMO Secretariat.

6.4 The LRIT NCA has access to the following ship tracking services according to Article 8.1 of MSC 202 (81) and are summarised below:

- Flag State ship tracking – Flag State users are able to obtain the position data of ships flying their flag irrespective of where the ship may be located;
- Port State ship tracking – Port State users are able to obtain the position data of any ship, irrespective of the flag, having notified their intention to enter one of its ports or a place under their jurisdiction;
- Coastal State ship tracking – Coastal State users shall be able to obtain the position data of any ship, irrespective of the flag, navigating within a maximum distance of 1000 Nm off its coastline;
- SAR ship tracking – Search and Rescue (SAR) Authorities shall be able to obtain the position data of any ship, irrespective of the flag.

EU LRIT Ship Database

6.5 Each LRIT NCA nominates the following ship data manager for the Ship database in order to coordinate with EMSA with regard to the development and operation of the database and to upload and update its list of ships subject to IMO LRIT requirements and their relevant information according to Article 5.10 of this document.

Ship Data Manager	
Name	
Job Title	
Contact Details including tel/email:	

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

6.6 Each LRIT NCA is responsible via its ship data manager for the updating of its list of ships subject to LRIT requirements and their associated information (i.e. whenever a change occurs) including changes of flag as soon as possible to ensure accuracy of the EU LRIT Ship Database. The LRIT NCA shall ensure that any follow up with noncompliant ships is pursued by the relevant authorities.

6.7 The LRIT NCA shall ensure that the ship data manager only lists vessels in the EU LRIT Ship DB which have type approved shipborne equipment by inserting the number and date of the LRIT shipborne equipment compliance certificate as well as the ASP that conducted the conformance tests into the additional fields of the Ship DB. The LRIT NCA is responsible for issuing the compliance certificates for the LRIT shipborne equipment on board the ships flying its flag.

6.8 Each LRIT NCA only has access to the information regarding ships flying its flag.

EU LRIT Data Centre

6.9 The LRIT NCA should recognise the EU LRIT Data Centre Application Service Provider as the Recognised EU ASP and 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.

6.10 The LRIT NCA agrees that any of the EU LRIT DC users, as decided in cooperation with EMSA, can provide IMO with the requested information related to the ASP providing services to the EU LRIT DC. This would be done acting on behalf of all EU LRIT DC users and fulfil the requirement in paragraph 5.1.2 of MSC 263(84) as well as the provisions of paragraph 5.3.2 in MSC.1/Circ. 1256.

6.11 The EU ASP, being recognised by the EU LRIT User, is able to perform conformance tests at the request of shipowners. EMSA shall provide prices from the contracted ASP such that these uniform/standard prices may be circulated to shipowners. Each Flag State is however free to choose its own ASP's to conduct conformance tests on a national level.

6.12 The LRIT NCA and its designated users of the system 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 EU LRIT users to exchange messages with the EU LRIT Data Centre.
- 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 EU LRIT Users with regards to the system performance and quality of data.

[6.13 It is envisaged that EMSA will develop an XML interface to the system by 2010. The LRIT NCA will need to develop a national XML interface to be able to access the system.]

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

24/7 Operational Contact Point	
Name	
Job Title	

Contact Details	Address
Tel/email during working hours:	
Tel outside working hours.	

Article 7. Liability

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. 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 defending each of both against potential claims brought by third parties in relation to the operation of the system.

Article 8. Security of data / system

8.1 EMSA considers that LRIT reports fall under the scope of Regulation (EC) No 45/2001 covering 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. Data will only be accessible by the LRIT Co-ordinator who is empowered by IMO for the sole purpose of auditing the LRIT system.

8.2 Documentation related to the EU LRIT Data Centre will be dealt with in accordance with Resolution 1049/2001 regarding public access to documents.

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

Article 9. Financial Provisions

General

9.1 EMSA covers the costs associated to the mandatory messages delivered to the EU LRIT User. Up to four daily LRIT reports (every 6 hours) per EU flagged ship are covered by the EMSA budget.

9.2 EMSA further provides the LRIT NCA LRIT information/data free of charge for SAR purposes.

9.3 The LRIT NCA is responsible for the payment of LRIT messages requested by any of its national users, in accordance with the provisions indicated in this article and for messages transmitted by ships under its flag beyond the 4 daily mandatory reports.

9.4 The national financial contact point for LRIT is:

Financial Contact Point	
Name & Job Title	
Contact Details including tel/email:	
Invoices to be made out to:	
Invoice reference to be used:	

Invoicing and Billing System

9.5 The LRIT NCA accepts and agrees to the EU LRIT DC payment scheme which EMSA has established for the EU LRIT DC which is a pre-paid system in accordance with Article 59 of the Framework Financial Regulation for the bodies referred to in Art. 185 of Council Regulation No 1605/2002². This pre-paid system provides that a fixed amount equalling [amount in Euros] is paid by each Member State in advance. Paying this fixed amount up front allows the LRIT NCA access to the EU LRIT Data Centre and therefore allows the MS to request LRIT messages in addition to the the basic 4 which are covered by the EMSA budget.

9.6 The LRIT NCA will be invoiced for this pre-paid fixed amount and the LRIT NCA will pay all outstanding balances within a maximum period of 45 days.

² 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)

9.6 Each time an LRIT message is requested by the LRIT NCA (which will include ship position requests and ship position reports (LRIT messages type 1-6), these messages will be recorded such that the costs are deducted from the fixed amount which is paid up front to EMSA. The financial contact point will therefore receive a monthly statement indicating the current balance A request for payment of a new fixed amount to be paid shall be issued if this is necessary.

9.7 The LRIT NCA agrees to be charged for messages according to the applicable price lists calculated 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 the price lists which will have previously been available on the LRIT NCA interface in the EU LRIT Data Centre. These price lists shall be calculated in Special Drawing Right (SDR) and in Euros.

9.8 EMSA will ensure that each LRIT NCA and/or the Financial Contact Point will have access to the web based User/Client Invoicing and Billing interface allowing users to check their account/credit status (receivable & payable items) with EMSA.

9.9 EMSA will warn the national Financial Contact Point when credit levels are below 80% of the fixed amount and will issue an invoice to balance the original fixed amount.

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.

10.2 If either party is faced with force majeure, it shall notify the other party without delay by registered letter 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 on the date of its signature by the last party.

11.2 The agreement remains valid unless the LRIT NCA or EMSA requests it to end in writing 6 months before the expiry date.

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 EU LRIT User,

[*Insitution*
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