

IMSO MODEL FINANCIAL CONTRACT FOR USE BETWEEN LRIT DATA CENTRES¹

BETWEEN

(1), with its headquarters.....
....., which is represented for the purposes of the signature of this contract
by....., hereinafter referred to as " XXX", of the one part,

AND

(2)....., with its headquarters.....
....., which is represented for the purposes of the signature of this contract
by....., hereinafter referred to as "YYY", of the other part,

together hereinafter referred to as “the Parties”.

WHEREAS:

(A) The International Maritime Organization (IMO), by adopting Regulation V/19-1 of the International Convention for the Safety of Life at Sea, 1974 as amended, has established the international system for the Long Range Identification and Tracking of Ships (LRIT) and has further adopted resolution MSC. 263(84) - *Revised Performance Standards and Functional Requirements for the Long-Range Identification and Tracking of Ships*;

(B) XXX has been established byand ensures at all times that LRIT data users are only provided with the LRIT Information they are entitled to receive as specified in SOLAS Regulation² ;

(C) YYY has been established byand ensures at all times that LRIT data users are only provided with the LRIT Information they are entitled to receive as specified in SOLAS Regulation³ ;

(D) The IMO LRIT performance standards and requirements state that all LRIT data centres should obtain from and make available LRIT Information to other LRIT data centres through the International LRIT Data Exchange (IDE);

(E) Each LRIT data centre should settle its financial obligations vis-à-vis the other LRIT data centres which provide to it LRIT Information in a timely manner in accordance with the contracts they have agreed⁴;

¹ This draft contract is between two data centres, which could be national, regional, cooperative or international data centres or between commercial entities.

² If a data centre provides services to a Contracting Government(s) other than that establishing the centre, the paragraph can be completed as follows: “The Contracting Governments to whom XXX provides services have granted XXX the right to charge for the data when providing data to other LRIT data centres in accordance with the data distribution plan”.

³ Refer to footnote 2

⁴ Resolution MSC. 263 (84)- *Revised Performance Standards and Functional Requirements for the Long Range Identification and Tracking of Ships*.

And

(F) Search and Rescue Services of Contracting Governments establishing or participating in a data centre shall be entitled to receive LRIT Information in relation to the search and rescue of ships in distress at sea free of charge.

IT IS THEREFORE AGREED AS FOLLOWS:

THIS CONTRACT sets out the financial obligations of the Parties resulting from the exchange of LRIT Information between two data centres⁵.

1 DEFINITIONS AND HEADINGS

1.1 **Definitions**

Unless expressly provided otherwise:

1. *Contracting Government* means a government that is a Contracting Party to the International Convention of Safety of Life At Sea, 1974, as amended.
2. *LRIT Information* means the information specified in SOLAS Regulation.
3. *SOLAS Regulation* means regulation V/19-1 of the International Convention of Safety of Life At Sea, 1974, as amended.
4. *SDR* means Special Drawing Rights.
5. *Force Majeure* means any act, event, condition or other case of a compelling nature which is unavoidable, unpredictable and beyond the reasonable control of one party or both Parties.

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

1.2 **Headings**

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

2. FINANCIAL MODALITIES

2.1 The charges for providing LRIT transactions are based on the price lists in Annex I or the price lists published on the IDE in real time whichever is lower.

The following are the billable items:

- Periodic change rate
- Poll
- Position report

⁵ Or between two commercial entities or between one data center and one commercial entity

- Archive information (includes most recent position)
 - Requests responded with Receipt Message and receipt code 0
 - [Requests responded with Receipt Message and receipt code 5 or 6.]
- 2.2 Both Parties will log all LRIT transactions pursuant to this contract by logging information in their data centre files/records.
- 2.3 At the end of [every month]⁶, each party will produce an invoice of all LRIT transactions, as referred to in 2.1, provided to the other party during the previous period, provided that the debit balance is above the threshold indicated in 2.8.
- 2.4 As long as the debit balance is below the threshold indicated in 2.8, no invoice will be generated.
- 2.5 All debts are to be cleared [by a date to be decided by the Parties].
- 2.6 Each party will communicate the invoice to the financial contact of the other party together with a copy of the associated data centre files. If a party disputes an invoice, that party must inform the financial contact of the other party in accordance with provision 9.1 as soon as possible and not later than [two weeks]⁷ after receipt of the invoice.
- 2.7 LRIT transactions and/or monetary debts that are subject to a dispute will be retrieved from the invoice and put on a special account until a settlement is agreed between the Parties.
- 2.8 For XXX, the maximum debit threshold⁸ is [1000]⁹ in [SDR]¹⁰. For YYY, the maximum debit threshold is [1000] in [SDR].
- 2.9 The debiting party will pay the invoice to the bank account pursuant to provision 9.1 within [45 days]¹¹ after receipt of the invoice. The debiting party will pay all the bank transfer charges.
- 2.10 On expiry of the time limits laid down in 2.9, the crediting party may demand interest in accordance with the following provisions:
- (a) the interest rate shall be [%];
 - (b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment.
- By way of exception, when the interest calculated in accordance with this provision is lower than or equal to [xxx SDR], it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment.
- 2.11 If a party
- fails to make a payment within [3 months] or
 - is unable to pay its debts as they fall due or is bankrupt, as defined under any bankruptcy or insolvency law applicable to such party or

⁶ Or other time period as agreed between the Parties

⁷ Or other time period as agreed between the Parties

⁸ The threshold may depend on the financial regulations of each party and may vary from one party to the other.

⁹ Indicative figure

¹⁰ Daily conversion rates for SDR can be found on the International Monetary Fund website (www.imf.org).

¹¹ Or within other time period as agreed between the Parties

- is dissolved or any procedure is commenced seeking dissolution or removal of registration of such party,

then the other party may terminate the present contract within [one month]¹².

The termination will automatically result in the production of a final invoice showing the final balance which will become immediately enforceable.

3 INFORMATION AND CONFIDENTIALITY

- 3.1 All LRIT information is to be handled in accordance with the requirements in Resolution MSC 263 (84). Each party hereby undertakes to keep confidential, and to ensure that its officers, employees, agents and professionals and other advisers keep confidential the LRIT Information acquired in accordance with the requirements in SOLAS Regulation and shall not disclose to any third party any such information unless otherwise explicitly agreed by the other party¹³.

4 DISPUTE SETTLEMENT

- 4.1 The Parties agree to use reasonable efforts to resolve amicably and expeditiously any disagreement or dispute that may arise during the performance of this contract. The parties may request the LRIT Coordinator to investigate and make recommendations on the particular issue of disagreement¹⁴.
- 4.2 Each party may submit to arbitration any dispute arising out of or in relation to the provisions of this contract, other than those arising from IMO regulations, recommendations or decisions. Each party shall bear its own arbitration costs.
- 4.3 Any dispute affecting or which may have an impact on the application of this contract shall be settled under the rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The language of arbitration shall be English.
- 4.4 The Parties shall immediately implement any decision reached by arbitration in relation to the provisions of this contract.
- 4.5 Failure by either party to immediately implement the decisions reached by arbitration, either in whole or in part, shall constitute a gross breach of this contract and may result in termination pursuant to provision 12.

5 WAIVER

¹² Or within other time period as agreed between the Parties

¹³ Resolution MSC. 263 (84)- *Revised Performance Standards and Functional Requirements for the Long Range Identification and Tracking of Ships.*

¹⁴ Resolution MSC. 263 (84)- *Revised Performance Standards and Functional Requirements for the Long Range Identification and Tracking of Ships.*

No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the contract, nor shall any waiver by either party of any breach of contract operate as waiver of any subsequent or continuing breach of contract.

6 SEVERANCE

If any provision of this contract 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 contract, but without affecting or invalidating the remaining provisions of this contract.

7 FORCE MAJEURE

No delay or failure by either party in performing any of their obligations referred to in this contract shall constitute a breach of this contract 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 one party 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 pursuant to provision 9 and shall use its best endeavours to resume the performance of its obligations so affected.

8 WARRANTIES AND REPRESENTATIONS

8.1 Each party represents and warrants to the other that it has full power and authority to enter into, undertake and perform its obligations set out in this contract.

8.2 Each party undertakes that it will be consistent and non-discriminatory in its application of the terms and conditions of this contract.

9 NOTICES

9.1 Unless otherwise stipulated, any notice, statement or other communication to be given under this contract shall be in writing and shall be sent by fax to the relevant contact as designated by each party as follows:

For XXX:

- General contact: name/job title/contact details
- Financial contact: name/job title/contact details/bank account details

For YYY:

- General contact: name/job title/contact details
- Financial contact: name/job title/contact details/bank account details

9.2 Any party to this contract may change the name/job title or contact and bank account details by sending a written notice by fax to the other.

9.3 Notices served in accordance with 9.1 shall be deemed to have been served on the next business day after receiving proof that the fax has been sent successfully.

10 AMENDMENTS

This contract may be amended only in writing signed by duly authorized representatives of each party.

11 TERM

Either

The contract shall enter in force for a period of one (1) year from the effective date and shall then automatically be renewed on an annual basis unless terminated by either party pursuant to section 12,

Or

The contract shall enter in force for a period of one (1) year from the effective date and shall then automatically be terminated unless otherwise agreed by the Parties¹⁵.

12 TERMINATION

12.1 Notwithstanding termination under 2.11, either party may terminate this contract at any time by providing written notice to the other party at least [six months] in advance.

12.2 Such termination will automatically result in the production of a final invoice showing the final balance which will become immediately enforceable.

13 GOVERNING LAW

This contract shall be governed by the national substantive law of [country]¹⁶.

14 ENTIRE AGREEMENT

The entire agreement between the Parties with respect to the subject matter hereof is set out in this contract.

This contract is made in two originals, each party receiving one original.

This contract becomes effective as of the date that the latter signing party signs the contract.

¹⁵ Delete the option not applicable

¹⁶ To be decided by the Parties and may depend on whether the Parties are buying or selling LRIT data.

Signed on behalf of:

Signed on behalf of:

Annex

Billable Item	Type of service provided
Periodic change rate	Resetting the shipborne terminal to a specific rate on receipt of a Position Request Message (Message type 4) with request type* 2 - 6, 10 or 11
Poll	Sending a poll command to shipborne terminal on receipt of a position request message (Message type 4) with request type* 1 and providing either a polled position report (Message Type 2) or request message (Message Type 7) with appropriate code to the requestor
	<ul style="list-style-type: none"> • If polled position report (Message Type 2) is provided to requestor
	<ul style="list-style-type: none"> • If receipt message (Message Type 7) with receipt code** 0 is provided to requestor
Position Report	<ul style="list-style-type: none"> • Providing position report (Messages type 1) as a result of CG's standing order polygons in the DDP
	<ul style="list-style-type: none"> • After receiving a Position Request Message (Message type 4) with request type* 2 - 6, 10 or 11, providing position report (Messages type 1) (This item does not include the cost of periodic change rate)
	<ul style="list-style-type: none"> • After receiving a Position Request Message (Message type 4) with request type* 2 - 6, 10 or 11, providing receipt message (Message Type 7) with receipt code** 0
Archived Information	Providing position report (Messages Type 1) on receipt of a position request (Message Type 4) with request type 7 or 9

* - Possible values for Request Type:

- 1 - One time poll of ship
- 2 - 15 minute periodic rate
- 3 - 30 minute periodic rate
- 4 - 1 hour periodic rate
- 5 - 3 hour periodic rate
- 6 - 6 hour periodic rate
- 10 - 12 h periodic rate
- 11 - 24 h periodic rate

** - Possible values for *Receipt Code*

- 0 - Not entitled to data
- 5 - Ship not responding
- 6 - Ship not available