

Contract of Response Operation for HNS Tanker Incident  
(For the ship owners)  
Terms and Notes

Warning: Please note that this is translation of the original Contract and notes thereon in Japanese language, only for your reference. Only the Japanese texts are deemed valid, and any and all parts of this translation shall not affect any interpretation or construction of the original Japanese text.

(Re: Article 42-14, Item 2. of the Law Relating to Prevention of Maritime Pollution and Maritime Disasters)

Revised in September 2017

This Contract is made between \_\_\_\_\_ (hereinafter "Ship Owners") and the Maritime Disaster Prevention Center (hereinafter, the "Center") as a General Incorporated Foundation, with respect to implementation of pollution prevention and control operation and fire fighting operation (hereinafter, the "Operation") responding to an incident or a threat thereof occurred with respect to [name of ship], on [date of incident], in [place of incident] involving "large amount of oil(excluding specific oils prescribed in the Law Relating to the Prevention of Maritime Pollution and Maritime Disasters (Law No. 136 of 1970 as revised)) and hazardous noxious substance" (hereinafter, "HNS etc.")

In this Contract, the following terms shall have the following respective meanings.

- (i) 'HNS' Non-specific oils and noxious liquid substances as set forth in Section 39-5 of the Law.
- (ii) Non-specific oils: oils prescribed in Number 2, Section 3 of the Law, excluding specific oils as provide in the Article 29 of the Regulation.
- (iii) Noxious liquid substances: noxious liquid substances prescribed in Number 3, Section 3 of the Law, excluding those that are not liquid at ordinary temperature, such as liquefied petroleum gas, and those prescribed in Section 1 of the Order of the Implementation of the Law.

Notes:

(1) This Contract is for the Center's services of the Operation to respond to an incident or a threat thereof which involves accident caused by fuel oil loaded on HNS tanker and noxious liquid substance/ non-persistent oil (other than the specified oil) onboard as cargo. These services have been made by the Center as the "item 2 operation" (Article 42-14, item 2 of the Law Relating to the Prevention of Maritime Pollution and Maritime Disasters (hereinafter, the "Law")), for the specified oil, but is revised for the use in HNS incident.

(2) This Contract provides for the Center's services of the "item 2 operation" in case such operation is made successively after the Center's emergency response operation made under the Contract for "HNS Response Resource Deployment and Emergency Response".

(3) In this Contract, hazardous and noxious substances ('HNS') means non-persistent oil (to be explained in (a) to (c) below) and noxious liquid substance [to be explained in (d)].

(a) Oil is divided into two categories under the laws of Japan: specific oil and non-specific oil.

(b) Specific oil means any persistent hydrocarbon oil including crude oil, heavy oil and lubricating oil.

(c) Non-specific oil means volatile hydrocarbon oil including gasoline, kerosene and light oil.

(d) Noxious liquid substance means any noxious substance under the Law and the Regulation, specified from the viewpoint of preservation of marine environment, out of liquid substances other than oil. It most of all corresponds to MARPOL73/78 Annex II (Regulations for the control of pollution by noxious liquid substance in bulk) Regulation 1(6).

Therefore:

(e) 'HNS' does not include LNG (liquefied natural gas) or LPG (liquefied petroleum gas) and other substances, which are not in liquefied in ordinary atmospheric conditions.

(f) 'HNS' tanker means a vessel that is able to carry 'HNS' cargo in bulk.

(Consignment)

Article 1

The Ship Owners shall consign the Center to implement pollution prevention and control operation and fire fighting operation, and the Center shall pursue the Operation with due care.

NOTES:

(1) The scope of the Center's Operation is specified in Article 2.

(2) In light of the Center's objective under the Law which is "the prevention of occurrence and expansion of disaster at sea, the Center's Operation is principally made at sea" (up to the highest high water level).

(3) Taking account of the provisions on contract of consignment in the Civil Code, it is provided that the Center is provided as pursuing the work with due care.

(Scope of the Operation)

Article 2

1. The scope of the Center's Operation in case of an incident involving HNS etc is any or all of the followings: -

(1) Assessing and verifying the situations of pollution by HNS etc by gas detection etc., and keep it under surveillance at the scene.

(2) Set up of oil boom and other measures to prevent spill of HNS etc.

(3) Speeding up evaporation by spraying water on spilled HNS etc, or control of evaporation by gel foam etc.

(4) Promoting decomposition of spilled HNS etc.

(5) Recovery of spilled HNS etc.

(6) In case of fire, fire at sea, fighting and prevention against fire and its expansion.

(7) Keeping, transporting and disposing recovered HNS etc.

(8) Any other measures incidental to the pollution prevention and the fire fighting work described in the above

2. The scope of the Center's Operation in case there is a threat of incident involving HNS etc is any or all of the followings: -

(1) Mobilization of personnel, equipment and materials and its preparation.

(2) Assessing and verifying the situations of pollution by HNS etc by gas detection etc., and keep it under surveillance at the scene.

(3) Set up of oil boom and other measures to prevent spill of HNS etc

(4) Preparation for speed up of evaporation by spraying water on spilled HNS etc, or control of evaporation by gel foam etc.

(5) Prevention of fire at sea

(6) Other measures incidental to any of the above

NOTES:

(1) The measures to be taken by the Ship Owners when there is a spill incident are prescribed in Article 32 of the Regulation for Implementation of the Law. Also, in the event of fire, the Commandant of the Japan Coast Guard has the authority to mandate the Ship Owner to take necessary actions in order to extinguish the fire or prevent expansion of the fire pursuant to Article 42- 3, para 3 of the Law.

(2) This Article, para 2 lists up possible countermeasures if there is a threat of spill incident. Also, the Commandant of the Japan Coast Guard may order the Ship Owners to take countermeasures if he or she acknowledges the need to take immediate actions to prevent the spill pursuant to Article 39, para 5 of the Law. In addition, in case there is a threat of fire caused by hazardous materials, the Commandant of the Japan Coast Guard may issue an order for countermeasures based on Article 42-2, para 4.

(3) The Ship Owners by themselves may possibly conduct a part of the operation in case of HNS incident. Thus, this Article limits the scope of the Center's operation as all or in part, which scope shall be agreed between the parties.

(4) The Center is expected to conduct the Operation pursuant to this Agreement. However, the Center considers that the Center's engagement in pollution prevention and cleanup or fire fighting operation would not affect P&I and the other insurance coverage in any manner.

(Implementation of the Operation)

Article 3

1. In the event that the Operation is requested pursuant to the preceding section, the Center shall collect necessary information in connection with the 'HNS' from the Ship Owners and the other relevant parties such as the charterers, shipper, consignee and 'HNS' manufacturer, to determine the appropriate Operation. In response to the Center's request, the Ship Owners shall provide the Center with the necessary information it possesses, and shall make its best efforts to let the HNS-relevant Parties to provide the Center with necessary information. The Ship Owners shall provide the Center with a summary of the incident, 'HNS' characteristics, the Ship's condition, weather and sea conditions and other information necessary or helpful for the Center's Operation.

2. The Center shall inform the Ship Owners of the Operation plan immediately after details are determined. If the Ship Owners disagree with the Center's Operation, the Ship

Owners shall immediately communicate the disagreement to the Center.

3. The Operation shall be taken by the Center or a disaster response contractor with whom the Center has concluded a contract in advance for the Operation (hereinafter, the "Disaster Response Contractor"). The action taken by the Disaster Response Contractor shall be deemed as taken by the Center.

NOTES:

(1) The Center will collect relevant information from the Ship Owners to immediately set up an appropriate Operation plan and take actions specified in the preceding section 2(1).

(2) The Center does not necessarily have full information about the 'HNS' tanker involved in the incident. The Ship Owners shall immediately inform the Center of the type and quantity of on-board 'HNS', and telephone numbers and other contact details of the relevant parties, such as cargo owners, when the Ship Owners request the Operation.

The Center might not be able to conduct the Operation if the Ship Owners fail to properly provide information on 'HNS' (second half of Section 6(1)).

(3) Under the regulation on consignment in the Japanese Civil Law, re-consignment requires prior approval of a Ship Owners. Therefore, the Center clearly states services are contracted out in this article, and this Contract allows the Center to do so. Also, the Center will consign the job to the Disaster Response Contractor in almost all spill incident cases and clearly states for the Ship Owners in this article; the Center will assume responsibility for the Disaster Response Contractor's conduct.

(4) The Center, conforming to the regulation on consignment in the Japanese Civil Law, will carry out the Operation in accordance with the Ship Owners' instructions. However, in reality, the operation will be conducted smoothly after the discussion at the incident response meeting organized chiefly by the Japan Coast Guard involving various agencies (including the Ship Owners).

(5) In carrying out the pollution prevention/cleanup and fire fighting operation, if the Center receives suggestion or recommendation from the Japan Coast Guard of a more effective method of operation than the method the Center and the Ship Owners have developed, the Center shall notify the Ship Owners of it and carry out such operation.

(6) The Ship Owners is not prevented from using other experts at the same time on their own notwithstanding this Contract. In addition, even when the Ship Owners agreed with the Center to do the operation, if the Ship Owners wish to use a specific Disaster Response

Contractor, the Center will follow this intention as much as possible.

(Reporting)

Article 4

The Center shall provide the Ship Owners with progress reports during the Operation from time to time or upon having the Ship Owner's request, as well as the final report describing details and results after the completion of the Operation without delay.

NOTES:

The Center should maintain a close communication with the Ship Owners during the Operation, by reporting progress of the Operation. Also, the Center is expected to send the final report after the completion of the Center's operation to let the Ship Owners to confirm the performance.

(Billing and Payment)

Article 5

1. The Center shall charge the Ship Owners for the following cost and fees:
  - (i) Costs and fees of the Disaster Response Contractor for the Operation
  - (ii) Costs for the vessels, materials and equipment owned by the Center and used for the Operation
  - (iii) Administrative cost of the Center for the Operation
  - (iv) Any other costs for the Operation, which are separately agreed between the Ship Owners and the Center.
2. Costs described in the preceding paragraph and the way of payment shall be discussed between the Ship Owners and the Center. With regard to the materials used for the Operation such as chemicals, payment can be made by supply of such materials under consultation between both parties.
3. In case of using the Disaster Response Contractor, the Center shall comply with the Subcontract Act, and for which the Ship Owners shall make the utmost efforts.
4. If, with respect to the cost and fees of this Section 1 (1), the Disaster Response Contractor is deemed to be subcontractor under the Subcontract Act, the Center shall charge the monthly costs described in the paragraph 2 of this Section by the 15<sup>th</sup> of next month to the

Ship Owners, and the Ships Owners shall pay the cost within 60 days from the invoice date. In case where the Operation complete within one month, the Center shall charge the costs described in the paragraph 2 of this Section within 15 days from the operation's completion date, and the Ships Owners shall pay the cost within 60 days from the invoice date. In the event that the payment is not made within 60 days from the invoice date, the default interest thereon shall be added, calculated by the interest rate in accordance with article 4-2 of the Subcontract Act (Fair Trade Commission Rules No. 1 on May 8, 1970).

5. Except as provided in the preceding paragraph, the Ship Owners shall promptly make payment for the cost charged by the Center. In the event that the payment is not made within three months from the invoice date, the default interest thereon shall be added, by applying the interest rate in accordance with the Notice to Pronounce Default Interest Rate against Late Payment in Government Contract (the Notice of the Ministry of Finance No. 991, dated December 12, 1949).
6. If neither of the invoice date nor the date of payment is bank business day, the execution date of which shall be the next bank business day.

NOTES:

- (1) The amount of fees to be charged shall be determined in consideration of various factors, such as evaluation results and salary schemes of contractors. The parties shall consult with each other to decide the amount to be charged, taking into account past cases, practices and other factors (Article 1 and 2).
- (2) The scope and items of the costs to be charged are the same as for the Center's operation to prevent oil spills and clean up oil pollution in the past, in which the Ship Owners could provide with chemicals and other materials instead of monetary payment.
- (3) The Center shall make payments to the Disaster Response Contractor in accordance with the Subcontractor Act. Therefore, this Contract follows Article 2-2 (1) of the Subcontract Act providing that "The date of payment of subcontract proceeds shall be fixed within sixty days, and moreover within as short a period as possible, from the day on which a main subcontracting entrepreneur receives the work from a subcontractor (the day on which a subcontractor provides the service entrusted in the event of service contract. The same shall apply in the next paragraph), regardless of whether or not the main subcontracting entrepreneur inspects the work in detail.", and the rate of default interest shall also be fixed in accordance with the Subcontract Act.

(4) Except for the paragraph 4 of this Section, the Center will issue the invoice to request the payment upon having agreement with relevant parties, and thus the Ship Owners would make a quick payment without any hesitation. In case of failure, the Ship Owners shall add in their payment default interest to be accrued from 3 months after the invoice. The rate of default interest shall be fixed by the Ministry of Finance Notice for the government contracts, which will be reviewed and determined every year.

(Liability for Damage)

Article 6

1. The Center shall conduct the Operation provided herein with the care of a good manager. The Center shall be liable for loss or damage to the Ship Owners that is attributable to the negligence of the Center.

2. Notwithstanding the preceding paragraph, the Center shall be liable for no loss or damage caused by failure or delay of the provision of necessary information by the Ship Owners or HNS-relevant Parties, or caused by the inaccuracy or inadequacy of the information provided, following the Center's request to provide the necessary information for the Operation in accordance with Article 3(1).

NOTES:

(1) Section 1 provides that the Center shall pursue the Operation with good faith and its due care, and the former part of this article refers to this again and emphasizes the Center's obligation to make due diligence in its performance under this Contract, including other operations.

(2) Section 3 provides that all actions made by the Disaster Response Contractor, which has entered into a contract with the Center beforehand in order to pursue the Operation, shall be deemed as those made by the Center. Thus, negligence of the Disaster Response Contractors shall be deemed as negligence of the Center.

(3) However, the Center assumes no liability for loss of or damage to the Ship Owners if it arises not only from the negligence of the Center, but also from the failure/delay of provision of necessary information or inaccuracy/inadequacy in the information provided by the Ship Owners or HNS-relevant Parties (Section 6(2)). Even without Section 6(2), similar conclusions could be reached through review of the facts with respect to contributory negligence and/or



causation. This Section has made it clear, focusing on the importance of the information in 'HNS' accident.

(Termination)

Article 7

1. Either party at any time may terminate this Contract by making a notice to the other party.
2. If any of the following events occur to the Ship Owners, the Center may terminate this Contract by making a notice to the Ship Owners.
  - (1) If there is any breach of this Contract, which is not rectified even after a notice to do so.
  - (2) If the court commences the proceedings for bankruptcy, reorganization, liquidation, settlement, rehabilitation (Hasan, Kaisha-Kosei, Kaisha-Seiri, Tokubetsu-Seisan, Minji-Saisei) as to the Ship Owners, or the Ship Owners are suspended from deals at Security Clearing House (Tegata Torihiki Teishi), or the Ship Owners stop or suspend its business or is dissolved, or in case the Ship Owners are foreign nationals or corporation, if proceedings arise corresponding to any of the above in the country to which it belongs.
  - (3) If the Ship Owners receive a disposition for non-payment of tax or any other duties.
  - (4) If the Center finds that the Ship is not insured by appropriate hull & machinery or protection & indemnity policy.
3. The preceding two paragraphs shall not prevent either party from seeking indemnity for the loss and damage from the other party.

NOTES:

- (1) This Section relates to Article 651 of the Civil Code, providing that "A mandate may be cancelled by either party at any time".
- (2) Under this Contract, the Center will pursue the Operation responding to HNS incident. This article, therefore, expressly states that the Center may cancel this Contract or may not implement any or part of the duties hereunder if it is found that the Ship Owners does not have sufficient ability to pay. In particular, an enormous amount of costs could be incurred for actions to deal with a maritime disaster, and thus the Contract obliges the Ship Owners to keep appropriate hull & machinery or protection & indemnity policies and their coverage.

(Anti-Social Person/Entity)

Article 8

Each party hereto, as of the date of this Contract and during the term of this Contract, represent and warrant that neither each party nor its agent or broker is or belongs to any of gangster(s), a group of gangsters, its associate member, a person who was a gangster during the last 5 years, a person or entity having relation with gangsters, a professional or entity to threaten to cause trouble at the general meeting of the stockholders, a person or entity to profess itself as engaging in political or social activities for cloak or a person or entity similar thereto (hereinafter, "anti-social person/entity") and that neither each party nor its agent or broker does or will make or be involved in relations with any of the following persons or entities: -

- (1) those whose business is managed or controlled by anti-social person/entity;
- (2) those whose business is substantially related with anti-social person/entity;
- (3) those who uses anti-social person/entity or its power with unfair way, such as planning to obtain unfair benefit or suffer a third party;
- (4) those who contribute the fund or to give any benefit to anti-social person/entity or have such relations with anti-social person/entity; or
- (5) those who have an officer, director or managerial person having relations with anti-social person/entity in the way to be blamed in society.

2 Client may demand MDPC to terminate relations with its sub-contractor or a person or entity whom MDPC assigns or entrusts any of its work or whom such sub-contractor or person or entity assigns or entrusts any of their work if any of them falls in any of those as provided in the preceding paragraph, and to take measures necessary to eliminate such anti-social person/entity.

3 Notwithstanding any term of this Contract, either party may terminate this Contract without any advance notice if the other party or its agent or broker falls in any of those as provided in the 1st paragraph of this Article.

4 Client may terminate this Contract in case MDPC does not take measures provided in the 2nd paragraph of this Article in spite of Client's demand to do so.

5 In case this Contract is terminated by either party in accordance with the 3rd or 4th paragraph of this Contract, the party who is terminated this Contract is not entitled to claim any loss or damage arising out of such termination.

NOTES:

MDPC adds this article following “Guideline for How Companies Prevent Damage from Anti-Social Forces” (agreed upon at a meeting on June 19, 2007 of cabinet ministers responsible for anti-crime measures) and “Tackling Exclusion of Anti-Social Forces from Public Works” (agreed upon at a meeting on December 4, 2009 of cabinet ministers responsible for anti-crime measures), and request from Ministry of Land, Infrastructure and Transport thereunder.

(Dispute Resolution)

Article 9

1. This Contract shall be governed by the laws of Japan. Any matter not prescribed herein or any dispute arising out of details hereof shall be discussed sincerely between the parties.
2. Any and all disputes between parties arising out of this Contract shall be exclusively referred to the Yokohama District Court.

NOTES:

- (1) Japanese laws are expressly specified as the governing law herein as the Ship Owners may be a foreign company. This Contract does not refer to dispute arbitration, which will not disturb such arbitration by the Japan Shipping Exchange, Inc. under agreement of the parties for the sake of facilitating paperwork.
- (2) In the event any disputes arises, paragraph 1 stipulates that the parties shall sincerely conduct discussion aiming at a solution with no legal action, in principle; but in the case of a failure to reach a solution, Yokohama District Court has jurisdiction over such disputes.

As evidence for this Contract, the parties hereto have caused this Contract to be executed in duplicate, and each party keep one of the copies.

Dated:

Ship Owners:

Name

Address

Center:

Name ○○○○

President

Maritime Disaster Prevention Center

Address Minato Mirai 4-4-5, Nishi-ku, Yokohama, Kanagawa, Japan