

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 42-25, Item 2. of the Law Relating to Prevention of Maritime Pollution and Maritime Disasters)

As of end of July 2007

This Contract is made between \_\_\_\_\_ (hereinafter "Ship Owner") and the Maritime Disaster Prevention Center (hereinafter, "Center") as an independent administrative institution, with respect to implementation of pollution prevention and control operation and fire fighting operation (hereinafter, "Operations") 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 and hazardous noxious substance" (hereinafter, "HNS etc")

Notes:

(1) This Contract is for the Center's services of the operation to respond to an incident or a threat thereof which involves fuel oil loaded on HNS tanker and noxious liquid substance/ non-persistent oil (other than the specified oil) onboard as cargo. This services have been made by the Center as the "item 2 operation" (Article 42- 25, 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 will be made successively after the Center's emergency response operation made under the Contract for HNS Response Resource Deployment and Emergency Response. Please see <[http.....](http://.....)>

(Assignment)

Article 1

Ship Owners shall assign 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 fact that the Center's objective is provided by the Law for the prevention of occurrence and expansion of disaster at sea, the Center's Operation is principally made at the sea (up to the highest high water level).
- (3) Taking account of the provisions on contract of consignment in the Civil Code, 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 fence 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 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 personnels, 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 fence 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 owner 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 owner 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 involving 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

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

NOTES:

(1) The Japanese Civil Code necessitates the assignor's agreement when the work is assigned to sub-contractor. By this Article, the Center can hire sub-contractors for implementation of the Operation. It makes it clear that the work can be re-assigned under this agreement without the Ship Owner's approval. Also, the Center will assign the Disaster Response Contractor to do the job in almost all spill incident cases; however, it clarifies to the Ship Owners of the Center's liability by this provision that the Center will assume responsibility for the Disaster Response Contractor's conduct.

(2) The Center, conforming to the provisions on contract of assignment in the Japanese Civil Code, will carry out the Operation in accordance with the Ship Owner's instructions. However, in reality, the operation will be conducted smoothly after the discussion in the crisis response meeting organized chiefly by the Japan Coast Guard involving various agencies (including the Ship Owners).

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

(4) The Ship Owners is not prevented from using other experts at the same time and developing independent measures notwithstanding this Contract with the Center. In addition, even when the Ship Owners agreed for the Center to do the operation, if the Ship Owners wishes 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 with the Center's Operation and its result 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, to the Ship Owners. Also, the Center is expected to send its final report after the completion of the Center's operations.

(Billing and Payment)

Article 5

- (1) The Center shall charge the Ship Owners 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, if the both parties agree to such way of payment.
- (3) The Ship Owners shall make payment of the cost charged by the Center in a prompt manner. In the event that the payment is not made within 3 months of the invoice date, the interest thereon shall be added, calculated by 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)

NOTES:

- (1) The amount to be charged shall be determined, taking account of various factors, such as the emergency response capability and salary schemes of employees of the contractors. The parties shall discuss each other and agree to the amount to be charged, also taking account of the cases in the past (Section 7(3)).
- (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 will issue the invoice to request the payment upon having agreement with relevant parties, and thus the Ship Owners would not have any hesitation to make a quick payment. 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 (Section 7(5)).

(Liability for Damage)

Article 6

The Center shall be liable for the loss and damage only if any action of the Center with its gross negligence caused such loss or damage.

NOTES:

(1) Article 3 says, all actions made by the Disaster Response Contractor, who 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, if the Disaster Response Contractor commits gross negligence, the Center shall be deemed as having committed the same.

(2) The Center will assume liability only for the loss and damage caused by actions made by the Center and the Disaster Response Contractor with gross negligence. The third party who suffered loss/damage would claim against the Ship Owners, and the Ship Owners would not seek indemnity for their payment from the Center in case the Center or the Disaster Response Contractor was not at the gross negligence.

(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 procedure 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 there arises the procedure corresponding to any of the above.

(3) If the Ship Owners receive attachment or other enforcement procedures against 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 the Contract of Consignment may be terminated at any time by either party.

(2) Under this contract, the Center will pursue the Operation responding to HNS incident. If it is found that the Ship Owners do not have sufficient financial background, the Center may terminate the Contract or may suspend its performance. This Section has made this clear. Especially, enormous amount of cost could be incurred for actions to respond to maritime disaster, and thus the Contract demands the Ship Owners to keep appropriate H&M and P&I policies and their coverage.

(Dispute Resolution)

Article 8

(1) This Contract shall be governed by the laws of Japan, and any and all disputes in connection therewith shall be discussed between the parties with sincerity.

(2) Any and all dispute arising out of this Contact shall be exclusively referred to the Yokohama District Court.

NOTES:

(1) Considering that an Ship Owners can be a foreign entity, this Section has made it clear that Japanese law is governing law. This Contract does not refer to arbitration, but it would not disturb the parties' agreement later to refer to the arbitration by the Japan Shipping Exchange to solve the dispute smoothly.

(2) In case any dispute arises Section 10-1 requests the parties discussions with sincerity to aim in principle a solution without legal steps, but in case such attempts fails, Yokohama District Court has the exclusive jurisdiction over such dispute.

As evidence for this Contract, each party hereto executes two originals of this Contract, each keeping one copy.

Dated:

Ship Owners:

Name

Address

Center:

Name Toshinao Kurihara

**President of Japan Maritime Disaster Prevention Center**

Address Minato Mirai 3-3-1, Nishi-ku, Yokohama, Kanagawa, Japan