



北京中英衡达海事顾问有限公司  
CHINA MARINE SERVICES COMPANY LTD.

## **Oil Spill Response Services Advisory Agreement for Vessels Operating in Chinese Waters**

This Oil Spill Response Services Advisory Agreement (“**AGREEMENT**”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between China Marine Services Company Ltd. (“**CMS**”), and \_\_\_\_\_ (“**COMPANY**”), and shall remain in force until terminated as described in the General Provision section below.

### **PURPOSE**

Regulations of People’s Republic of China on the Administration of Prevention and Control of Pollution to the Marine Environment by Vessels (“**REGULATIONS**”) require that the operators of vessels carrying harmful and polluting liquid goods in bulk and other vessels over 10,000 GT shall conclude contracts (“**CONTRACTS**”) with approved Spill Response Organizations (“**SPROs**”) prior to the relevant operations of the vessel or the vessel’s entry into or departure from the ports of PRC.

CMS offers the following advisory services to assist the **COMPANY** in meeting with the requirements of the **REGULATIONS**:

#### **Services Scope**

- (1) Advice to **COMPANY** (or **COMPANY**’s Chinese Agents) of identity and status of MSA-approved **SPRO(s)** for Designated Ports
- (2) Arrangement of **CONTRACT** between **COMPANY** and **SPRO** in Chinese and subject to Chinese Law compliant with MSA and International Group requirements, providing **COMPANY** with English translation
- (3) Monitoring of Evolving PRC and Local Regulations and on-going qualification of **SPRO**
- (4) Renewal of **CONTRACT**, as required by the **COMPANY**

## **DESCRIPTION OF SERVICES**

### **1 General**

1.1 CMS will assist the COMPANY to identify and conclude the CONTRACT with one or more suitably qualified SPRO as required by applicable law of PRC. To the extent that a SPRO has network servicing several ports to which the COMPANY intends to utilize, CONTRACT will extend to cover such ports.

1.2 Subsequent to implementation of the Contract, CMS will monitor

- I. The central and local government and Maritime Safety Administration (“MSA”) requirements regarding their requirements with regard to the CONTRACT and notify COMPANY of material changes, and
- II. The status of SPRO, advising COMPANY if the SPRO should cease to be qualified to provide the relevant services required by the CONTRACT

### **2 Responsibilities of CMS**

2.1 CMS will identify MSA-approved SPRO for COMPANY to meet the requirements of REGULATION in relation to port, ports or areas requested by COMPANY.

2.2 CMS does not warrant either the capabilities or performance of any SPRO, nor shall CMS be responsible for any failure of any SPRO to meet the criteria or to comply with any term or condition of its contracts with COMPANY. CMS assumes no liability for consequential or other damages, fine, or penalties arising from a failure of MSA/governmental CONTRACT approval, including any damages caused by trading delays while awaiting MSA/governmental approval.

2.3 It is understood and agreed that the CONTRACT is not intended to establish any standards of performance in response to an actual spill event. CMS does not represent or warrant that the standards established in the CONTRACT will be met, nor does CMS represent or warrant the adequacy of performance of any response SPRO identified in the CONTRACT. CMS obligations are limited to verifying that SPRO is duly authorized by competent MSA to provide SPRO services.

2.4 Monitoring and Annual Update. Subject to agreed fees having been paid in advance by COMPANY, CMS will monitor and notify to COMPANY any new governmental requirements and/or changes of the capability of SPRO, and annually update the CONTRACT, to include

updates of regulatory body and SPRO phone numbers, and any contact changes furnished by COMPANY. CMS will advise on any further changes that may be proposed by SPRO.

2.5 If for any reason the CONTRACT is rejected by MSA or a local government agent, CMS will work with the COMPANY to correct noted deficiencies and resubmit a CONTRACT for approval. CMS accepts no liability for consequential or other damages, fines or penalties arising from a failure of CONTRACT approval, including damages caused by trading delays while awaiting MSA/government approval or resubmission for approval, or from failure to report changes in governmental requirements.

2.6 CMS will provide one (1) copy of the CONTRACT and English translation and send them to COMPANY's office or as otherwise directed by COMPANY for the basic cost agreed in Schedule A & B. CMS will provide additional copies of the CONTRACT at a cost as stated in Schedule A & B.

### **3 Responsibilities of COMPANY**

3.1 COMPANY shall provide sufficient information to CMS to prepare the CONTRACT. COMPANY shall keep CMS informed of any changes in the information provided. COMPANY is responsible for assuring that changes to the CONTRACT are properly entered into the CONTRACT held onboard its vessels and by personnel, agents or representatives.

3.2 COMPANY must issue a letter of authorization in the IG standard form to CMS and CMS should transfer a copy to the MSA for registration via email or other approved method.

3.3 COMPANY must execute CONTRACT with SPRO in a manner sufficient to meet the governmental requirements of PRC. Unless authorized to execute CONTRACT, CMS is not responsible for any delays in executing CONTRACT.

3.4 COMPANY agrees that the CONTRACT, if provided by CMS, is only for the use of the COMPANY and the vessel(s) listed in Schedule A & B, and that the CONTRACT will not be reproduced, distributed, or made available to other parties without the express written permission of CMS.

### **4 Fees**

Fees shall be paid by COMPANY on initial appointment of CMS and annually as set forth in Schedule A/B.

## **GENERAL PROVISIONS**

### **5 Insurance**

5.1 During any period in which this Agreement remains in effect, COMPANY shall maintain full form P & I Insurance, which shall specifically include coverage for pollution liabilities, including clean-up expenses, as required by the P&I Club and applicable law. CMS may terminate this Agreement immediately, if such coverage is terminated. Upon request, COMPANY shall provide CMS with a copy of a P & I Club Certificate of Entry.

5.2 CMS shall maintain commercial general liability insurance in the amount of RMB2,000,000.

### **6 Independent Contractor**

CMS is an independent contractor and not an agent of the COMPANY save as in respect of specific authority (if given) to execute CONTRACT in China on behalf of COMPANY and is retained solely to render services consistent with the governmental regulations as described in this Agreement.

### **7 Liability and Indemnification**

7.1 CMS, its directors, officers, agents, contractors and employees shall have no liability to the COMPANY for:

- I. any loss or damage, including injury or loss of life, caused to any person, property or the environment, of any nature or kind; or
- II. any liability arising as the result of the breach of any statute, regulation, rule, court order or other governmental or administrative decree having the force of law;

caused by an act or omission of the COMPANY or any of the COMPANY's directors, officers, contractors, agents or employees.

7.2 CMS its directors, officers, agents, contractors and employees shall have no liability to COMPANY for:

- I. any loss or damage, including injury or loss of life, caused to any person, property or the environment, of any nature or kind; or
- II. any liability arising as the result of the breach of any statute, regulation, rule, court order or other government or administrative decree having the force of law;

caused by the act or omission of CMS or any of its directors, officers, agents, contractors, or employees in performing oil spill response services unless such act or omission is a result of the fault or negligence of CMS or any of its directors, officers, agents, contractors or employees in carrying out the services under the CONTRACT.

7.3 CMS shall indemnify, defend and hold harmless COMPANY, its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by COMPANY and its directors, officers, employees and agents as a result of the fault or negligence of CMS, its directors, officers, agents, sub-contractors or employees in carrying out the services under the CONTRACT.

7.4 COMPANY shall indemnify, defend and hold harmless CMS, its directors, officers, employees, sub-contractors and agents from and against all claims, losses, damages, costs, expenses and other liabilities arising against or incurred by CMS, its directors, officers, employees, contractors or agents as a result of carrying out the services under the CONTRACT, except where any such claim, loss, damage, costs, expense or other liability is incurred by CMS, its directors, officers, employees, contractors and agents as a result of CMS's own fault or negligence or the fault or negligence of CMS's directors, officers, agents, sub-contractors or employees, in carrying out the above mentioned services under the contract. COMPANY acknowledges that CMS shall not be required to exhaust its recourses against any third party as a condition precedent to claiming indemnification under this section.

7.5 With regard to Clauses 7.1 to 7.4 above the Parties agree that COMPANY is entitled to limit liability in accordance with the applicable law.

## **8. New Laws/Regulations**

After the date of this Agreement, if the governmental agencies, issues laws or regulations or interpretations thereof which substantially affect the scope of responsibilities or liabilities for the COMPANY or SPRO etc., CMS reserves the right to terminate or revise this Agreement upon 30 days notice.

## **9 Billing and Payment**

## **9.1 Fees**

### **9.1.1 Basic Services**

Fees are due and payable in United States Dollars (USD) on the effective date of this agreement in accordance with Schedule A & B enclosed, net of any bank fees

- I. Upon signing of this Agreement, COMPANY agrees to promptly pay an invoice in the amount of one hundred percent (100%) of the fees for the services. Invoices shall be paid within 30 days of receipt.
- II If any change in fees is intended, CMS will provide COMPANY with written notice of proposed fees.

### **9.1.2 Unpaid Invoices**

Unpaid invoices may accrue interest at an annual rate of four percent (4%) per annum commencing fourteen (14) days after the due date of payment. COMPANY shall be liable for any costs and legal fees incurred by CMS to secure payment.

## **9.2 Dispute**

9.2.1 In the event of a dispute regarding an invoice for fees or services, COMPANY will pay CMS the undisputed portion promptly, pending resolution of the dispute.

9.2.2 Disputes will be settled in accordance with the lawsuit provisions in Section 12.

## **10 Termination.**

10.1 Each of the parties shall be entitled to terminate this Agreement by giving notice in writing thirty (30) days in advance to the other.

10.2 CMS may terminate the Agreement immediately if COMPANY fails to pay any invoice within 45 days after receipt.

10.3 Termination does not relieve the COMPANY from the obligation to pay retainers due for reasonably prorating of service period, or for payment for all services completed or in progress in accordance with Clause 9.1. The outstanding fees shall be calculated up to 30 days after the notice in writing given by any party.

**11 Lawsuit.**

11.1 Any and all disputes of whatsoever nature arising from this Agreement shall be put to lawsuit in Shanghai Maritime Court of PRC.

11.2 Awards made pursuant to this clause may include costs and judgment may be entered upon any award hereunder in any court having jurisdiction.

11.3 It is agreed that attorneys' fees are at the discretion of the Court

**12 Applicable Law**

This Agreement shall be governed by the applicable laws and rules of the People's Republic of China.

**13 Third Party Beneficiaries.**

Except as provided in the General Provisions herein (Indemnification and Limitation of Liability), this Agreement specifies rights and duties only between CMS and COMPANY. This Agreement does not and shall not create any third party beneficiaries or any rights in any other party.

**14 Confidentiality**

CMS will treat as confidential all information provided by COMPANY and not release such information without COMPANY's consent. COMPANY will likewise treat its contractual terms and fees with CMS as confidential except for the COMPANY's P&I Club.

**SIGNATURES:**

For CMS:

For COMPANY:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE A

### Contract Establishment Services

Annual rate for multiple entries of any ports in China

CMS Service Registration Fee: US\$ 2,000 per COMPANY annually, and

- Package 1: US\$ A / 100 voyages
- Package 2: US\$ B / 50 voyages
- Package 3: US\$ C / 10 voyages

- Notes:
1. A, B, C are the annual package rates for all the ships of one COMPANY;
  2. If within the one year duration, the voyages of the fleet of one COMPANY do not reach the package quantity purchased, no refund would be given to the COMPANY;
  3. If the voyages in the package are exhausted before the end of annual term, the COMPANY could additionally purchase one of three packages.

Additional copies of the CONTRACT: US\$100

Any other expense which are not billed directly to COMPANY, but are provided by, or through CMS, will be billed to COMPANY at cost, plus ten percent (10%) and COMPANY agrees to pay CMS in accordance with the agreed billing procedures.



## **SCHEDULE B**

### Contract Establishment Services

Occasional call entry of one particular port:

CMS Service Fee: US\$ 300 / contract for a particular ship annually

- Notes:
1. At least 4 working days in advance notice is needed by CMS to complete the contract conclusion with an particular SPRO;
  2. In case the contract is concluded, the contract will be valid automatically for 365 days.
  3. The retainer fee will be additionally charged per voyage by the particular SPRO;

Additional copies of the CONTRACT: US\$100

Any other expense which are not billed directly to COMPANY, but are provided by, or through CMS, will be billed to COMPANY at cost, plus ten percent (10%) and COMPANY agrees to pay CMS in accordance with the agreed billing procedures.