

Japanese Government General Indemnity Contract (English translation)

CHAPTER I. GENERAL PROVISIONS

Article 1. Contents

This contract sets forth the general terms and conditions for the Government Indemnity Contract for Works of Art pursuant to the provisions of the Act on the Indemnification of Damage to Works of Art in Exhibitions (Act No. 17 of 2011).

Article 2. Definitions

The following terms used in this document are defined as follows:

- (1) Contracting Institution: Organizer of the exhibition
- (2) Owner: Owner of the subject Artwork
- (3) Artwork: Works of art covered by this Indemnity Contract listed in the attached Schedule
- (4) Agreed Appraisal Value: Value stated in the attached Schedule presented by the Owner with consent from the Minister of Education, Culture, Sports, Science and Technology (the "Minister" hereinafter) and the Contracting Institution prior to commencement of transport of the Artwork

Chapter II. Contents of Indemnity

Article 3. Covered Damages

1. The Minister shall indemnify against all physical loss or damages to the Artwork directly caused by any accidental events, including damages caused by earthquakes or volcanic eruptions or tsunami caused therefrom or terrorism (acts by a person acting on behalf of or in cooperation with an organization, who engages in activities directed to overturn or control any government established legally or illegally, through armed forces or violence, including any parties acting for political, ideological, or religious motives; the same shall apply hereinafter), excluding damages caused by events set forth in each of the items in Article 9 (hereinafter referred to as "Covered Damages").
2. In the event the Artwork is in the state described in the following items due to Covered Damages, the Artwork will be deemed to have been totally lost:
 - (1) The Artwork is destroyed or incurs significant damages equivalent thereto;
 - (2) The Owner has lost the Artwork and there is no likelihood of recovery; or
 - (3) The aircraft carrying the Artwork is missing, and the Artwork is reasonably believed to be lost, excluding where the aircraft is assumed to be missing due to an accident other than the Covered Damages.

Article 4. Appraised Amount of Covered Damages

1. The amount of Covered Damages shall be calculated based on the Agreed Appraisal Value.

2. The amount of Covered Damages in case the Artwork that incurred damages from Covered Damages is repairable shall be the sum of cost of repairs and amount of loss of value subsequent to repair (or if such sum exceeds the Agreed Appraisal Value, the Agreed Appraisal Value).

Article 5. Pairs and Sets

Where the Artwork is part of a pair or set (except where each part of the pair or set has a separate Agreed Appraisal Value), the amount of Covered Damages in case of its loss, damage or destruction shall be the proportion of loss to the total value of the pair or set, giving consideration to the importance of each Artwork comprising the pair or set; provided, however, the loss of a portion shall not be evaluated as total loss of the pair or set.

Article 6. Indemnification Period

1. The Indemnification period commences from the later of (i) the commencement of removal of the Artwork from the wall or shelf of the storage place of the Artwork for the purpose of shipment to the exhibition place, or transport in another manner; or (ii) the day of commencement of the indemnity stated in the Certificate for Government Indemnity. And, after passing through the ordinary course of transit, packing, unpacking, display, temporary storage, etc., it shall terminate at the earlier of (i) the delivery of the Artwork to the wall, shelf, or other place of storage instructed by the Owner and confirmation of a report on detailed conditions of the Artwork (hereinafter referred to as the "Condition Report") by the Contracting Institution and the Owner (including their agents); or (ii) the day of termination of the indemnity stated in the government indemnity certificate. Provided, however, during the indemnification period, no Artwork shall be covered by this Indemnity Contract until the Condition Report is confirmed by the Contracting Institution and the Owner (including their agents) at the time of initial packing.
2. Where the Minister, Contracting Institution, and the Owner agree to changes in the transport process, the indemnification period may be extended.
3. Subject to the two preceding paragraphs, this Indemnity Contract shall remain in force during delay beyond the control of the Contracting Institution or Owner, any deviation, unavoidable unloading, reloading or transshipment, or change in any risks (referring to the possibility of damage; the same shall apply hereinafter) arising from the exercise of discretion granted to the carriers under the contract of carriage.

Article 7. Casualty Insurance

In the event the Contracting Institution is to purchase a casualty insurance policy for the Artwork to cover the outstanding amount of Covered Damages after deducting the amount of indemnification under this Indemnity Contract, agreed value of such policy for each Artwork shall be equal to the Agreed Appraisal Value.

Article 8. Indemnity Payment

1. In the event of each of the following items, indemnity payment by the Minister pursuant to this Indemnity Contract shall be the amount calculated by deducting the amount stated in the relevant item (in the event all of the following items are applicable, the sum total of amounts stated in each of the items) from the total amount of Covered Damages, and such deducted amount shall be payable by the Contracting Institution:
 - (1) In the event the total amount of Covered Damages except those stated in the following item (hereinafter referred to as "General Damages") exceeds five billion (5,000,000,000) Japanese yen:
Five billion (5,000,000,000) Japanese yen
 - (2) In the event the total amount of Covered Damages stated in the following sub-items (hereinafter referred to as "Specific Damages") exceeds one hundred million (100,000,000) Japanese yen:
One hundred million (100,000,000) Japanese yen
 - (a) Damages due to fire, rupture/explosion (destruction involving rapid expansion of gas or vapor, or such phenomena), destruction, burial or being carried away in a flood, resulting directly or indirectly from an earthquake or volcanic eruption or from a tsunami, flood, or other water disasters following these events; or
 - (b) Damages due to terrorism.
2. In the event two or more incidents occur during the period of single exhibition, the amount of Covered Damages shall be the total of damages caused by all of the incidents.
3. Notwithstanding the provisions of Paragraph 1, the total amount of indemnity to be paid by the Minister pursuant to this Indemnity Contract shall be limited to ninety-five billion (95,000,000,000) Japanese yen.

Article 9. Exclusions

Loss or damage caused by any of the events falling under the following items shall be excluded from the coverage of this Indemnity Contract:

- (1) Loss, damage, or expenses caused willfully or by gross negligence of the Owner, its statutory agent, or employee (excluding independent contractors; the same shall apply hereinafter);
- (2) Ordinary leakage; ordinary loss of weight or volume; loss, damage or expenses caused by specific defect or nature of the Artwork; or natural depletion of the Artwork; or
- (3) Loss, damage, liability, or expense directly or indirectly caused by following events:
 - (a) Ionizing radiation or radiation contamination from any nuclear fuel, nuclear waste, or nuclear fuel combustion;
 - (b) Any toxicity, explosiveness, other risks or contaminating nature of any nuclear equipment, nuclear reactor, other nuclear structure or radiation in such nuclear components;
 - (c) Any weapon or equipment that utilize nuclear fission, nuclear fusion, or other similar reactions, or radiation or radioactive substance;
 - (d) Toxicity, explosiveness, or other risks or contaminating nature of any radioactive substance. Provided, however, the same

shall not apply where radioisotope other than nuclear fuel is created, transported, stored, or used for commercial, agricultural, medical, scientific, or other peaceful purposes; or

- (e) Use of chemical weapon, biological weapon, bio-chemical weapon, or electromagnetic weapon.

- (4) Loss, damage, or expense caused by following events on shore:
 - (a) War, civil war, revolution, insurrection, rebellion, or civil strife caused by such acts, or any hostile acts by or against hostile factions;
 - (b) Capture, seizure, restraint, inhibition, or detention, and their results or any such intention arising from the risk of (a) above; or
 - (c) Abandoned mine, torpedo, bomb, and other abandoned weapons.

Article 10. Calculation of Individual Indemnification Amount

1. The amount of indemnification payable by the Minister for individual Artwork shall be calculated by multiplying the amount of total Covered Damages less the amount set forth in Article 8, Paragraph 1 (in the event such amount is in excess of ninety-five billion [95,000,000,000] Japanese yen, ninety-five billion [95,000,000,000] Japanese yen) by the proportion of Covered Damages for such Artwork to the total amount of Covered Damages. In particular, the amount shall be as set forth in the following items pursuant to the relevant classifications:

- (1) Amount of indemnity for each Artwork that incurred General Damages in the event of Article 8, Paragraph 1, Item (1) (excluding events falling under Item (3)) shall be calculated using the following formula:

$(\text{Sum total of General Damages} - \text{¥5 billion})^* \times$
 $(\text{General Damages for individual Artwork} / \text{Sum total of General Damages})$

- In the event the sum total of General Damages exceed ninety-five billion (95,000,000,000) Japanese yen:
Ninety-five billion (95,000,000,000) Japanese yen

- (2) Amount of indemnity for each Artwork that incurred Specific Damages in the event of Article 8, Paragraph 1, Item (2) (excluding events falling under Item (3)) shall be calculated using the following formula:

$(\text{Sum total of Specific Damages} - \text{¥100 million})^* \times$
 $(\text{Specific Damages for individual Artwork} / \text{Sum total of Specific Damages})$

- In the event the sum total of Specific Damages exceed ninety-five billion (95,000,000,000) Japanese yen:
Ninety-five billion (95,000,000,000) Japanese yen

- (3) Amount of indemnity for each Artwork that incurred Covered Damages in the event that falls under both Article 8, Paragraph 1, Items (1) and (2) shall be calculated using the following formula:

$(\text{Sum total of Covered Damages} - \text{¥5.1 billion})^* \times$
 $(\text{Covered Damages for individual Artwork} / \text{Sum total of Covered Damages})$

- In the event the sum total of Covered Damages exceed

ninety-five billion (95,000,000,000) Japanese yen:
Ninety-five billion (95,000,000,000) Japanese yen

Article 11. Payment in Foreign Currency

1. The payment of indemnification where the Agreed Appraisal Value of the Artwork is set in a foreign currency shall be made in such currency.
2. The conversion between the foreign currency and Japanese yen for the application of provisions of Articles 8 and 10 in the preceding paragraph shall be made using the currency exchange rate at the time of the execution of this Indemnification Contract.

Chapter III. Invalid Indemnity Contract, Etc.

Article 12. Validity

1. An Indemnity Contract executed by the Contracting Institution for the purpose of unlawfully obtaining or causing a third party to unlawfully obtain indemnification shall be null and void.
2. In the event the ownership of the Artwork is transferred subsequent to execution of this Indemnity Contract, the part of this Indemnity Contract covering the Artwork shall become null and void. Provided, however, the same shall not apply where the Contracting Institution or the Owner applies to the Minister and obtains approval from the Minister to maintain its validity.

Article 13. Cancellation

In the event the Minister executes the Indemnity Contract under fraud or duress by the Contracting Institution or the Owner, the Minister may cancel the Indemnity Contract upon written notice to the Contracting Institution.

Article 14. Termination

1. In the event of any of the followings, the Minister may terminate the Indemnity Contract upon written notice to the Contracting Institution:
 - (1) The Contracting Institution or the Owner has caused or attempted to cause damages for the purpose of having the Minister make indemnification payments based on this Indemnity Contract;
 - (2) In addition to the Item (1), the Contracting Institution or the Owner has caused material events that undermined the confidence of the Minister in these parties to the same degree as occurrence of events in the Item (1) as to make continuation of this Indemnity Contract difficult;
 - (3) The Contracting Institution or the Owner has willfully or due to gross negligence failed to disclose, or provided false information, with respect to the disclosure requested by the Minister at the time of execution of the Indemnification Contract pursuant to provisions of Article 16; or
 - (4) The Contracting Institution failed to report or made false report with respect to the report set forth in Article 18.
2. Even in case where the termination pursuant to the provisions of the

preceding paragraph occurred subsequent to the occurrence of Covered Damages, the Minister shall not pay indemnification for Covered Damages that occurred between the time of the event falling under any of the items in the preceding paragraph and the termination. In such an event, if indemnification has already been paid, the Minister may demand the Contracting Institution or the Owner (Contracting Institution where such termination occurred due to an event attributable to the Contracting Institution) to return such payment.

Chapter IV. Obligations of the Contracting Institution

Article 15. Duty of Consideration for Safety

To hold the exhibition in a safe manner, the Contracting Institution, Owner, and their employees must secure safety for the Artwork with utmost care and consideration when packing, transferring, displaying, or performing other tasks, in accordance with the plan indicated in the Indemnity Contract Application by the Contracting Institution with approval from the Owner.

Article 16. Duty of Disclosure

At the time of execution of this Indemnification Contract, the Contracting Institution and the Owner must accurately disclose facts requested by the Minister as significant matters concerning risks requiring disclosure in the Indemnification Contract Application or other documents.

Article 17. Duty of Notice

1. In the event a fact falling under any of the following occurs subsequent to the execution of the Indemnity Contract, the Contracting Institution, Owner, and their employees must report such fact to the Minister without delay and request approval, in advance where the fact was caused by an event attributable to them, and subsequent to becoming aware of the fact if it was caused by an event not attributable to them:
 - (1) Significant delay in commencement or performance of the transport;
 - (2) Interruption of normal performance of transport due to insolvency or financial default of the owner, manager, charterer, or operator of the aircraft;
 - (3) An attack by use or manipulation of computers, computer systems, computer software programs, malicious code, computer virus, electronic processing, and other electronic systems; or
 - (4) In addition to the facts in the preceding three items, occurrence of a fact that causes change to the contents of the matters stated in the Indemnity Contract Application and other documents.
2. In the event a fact falling under any of the items in the preceding paragraph, where increased risk is recognized, and securing safety is deemed to be impossible (excluding where the Minister approves pursuant to the provisions of the preceding paragraph), the Minister may terminate the Indemnity Contract upon written notice to the Contracting Institution, regardless of whether or not a document requesting approval on the fact has been received.
3. In the event the procedures set forth in Paragraph 1 have not been

followed, the Minister shall not pay indemnification for Covered Damages incurred between the occurrence of the fact falling under any of the items in the said paragraph and receipt of the document requesting approval. Provided, however, the same shall not apply where a justifiable reason exists for the failure to follow such procedure.

Article 18. Collection of Reports

The Contracting Institution must comply where the Minister requests a report on the status of the exhibition to the extent necessary for the performance of this Indemnity Contract.

Article 19. Written Consent of the Owner

1. The Contracting Institution must explain the contents of this Indemnity Contract to the Owner promptly after execution, and obtain written consent from the Owner concerning the content of and benefit from this Indemnity Contract, and submit a copy of such written consent to the Minister.
2. The Indemnity Contract shall not become effective until the copy of the written consent is submitted to the Minister.

Article 20. Condition Report on the Artwork

The Contracting Institution, Owner, or their agents must prepare a Condition Report prior to the commencement of the indemnification period, and have a person with knowledge and experience on inspection and restoration of works of art such as a conservator to confirm the status of the Artwork at the time of loan, packing and unpacking, and return, and prepare and maintain a record of the confirmation.

Article 21. Duty to Avoid Damages

1. In the event the Contracting Institution and the Owner become aware of the occurrence or the possibility of occurrence of Covered Damages, such fact must be notified to the Minister without delay, unless there is justifiable reason. In such an event, the Minister may examine the status of the Artwork subjected to or may have been subjected to the incident.
2. In the event the Contracting Institution, Owner, and their employees become aware of occurrence of Covered Damages, they must endeavor to avoid expansion of the damages.
3. In the event a claim, indemnification, and other payments for damages may be made against a third party, the Contracting Institution, Owner, and their employees must endeavor to preserve or exercise the right to such claim.

Chapter V. Procedures for Claim and Payment of Indemnification

Article 22. Claims for Indemnification

1. The right to claim indemnification by the Owner against the Minister becomes effective and exercisable as of the occurrence of the Covered Damages. Provided, however, in principle, the claim for payment of indemnification shall be made through the Contracting

Institution.

2. When making the claim stated in the preceding paragraph, the Contracting Institution must submit the following documents or evidence based on the fact, as requested by the Minister:
 - (1) Written claim for indemnification;
 - (2) Estimate of damages; and/or
 - (3) Other documents or evidence necessary for confirmation of essential matters required by the Minister to make the indemnity payment as set forth in the Indemnity Contract Application Guideline.
3. The Minister may request the Contracting Institution and Owner to submit documents and evidence other than those stated in the preceding paragraph or for cooperation in investigation performed by the Minister, as necessary.
4. In the event of the preceding paragraph, the Contracting Institution and Owner must promptly submit the documents or evidence requested by the Minister or provide cooperation necessary for the investigation by the Minister.

Article 23. Timing of Indemnity Payment

Upon completion of the indemnification claim procedure by the Contracting Institution in accordance with the provisions of the preceding article, the Minister shall immediately confirm the necessary matters for the payment of indemnification, and subsequent to completion of financial procedures in the government for making the payment, promptly make such payment.

Article 24. Breach of Contractual Duties

In the event the Contracting Institution, Owner, or their employees fail to perform the duties set forth in Articles 15, 21, and Article 22 Paragraphs 2 and 4, the Minister shall pay indemnification less the amount of damages caused by such failure (where such amount exceeds the amount of indemnification payable to the Owner, no payment of indemnification shall be made).

Article 25. Statute of Limitations

The right to claim indemnification shall be extinguished in the event three years pass from the day after the occurrence of the Covered Damages.

Article 26. Subrogation

1. In the event the Owner acquires the claim for damages or other claims due to the occurrence of damages, the right to such claim shall transfer to the Minister upon payment of indemnity for the damages by the Minister. Provided, however, the amount of claim to be transferred shall be the lesser of the following:
 - (1) The amount of indemnity paid by the Minister; or
 - (2) The amount of claim acquired by the Owner.
2. The Contracting Institution and Owner must cooperate in preservation and exercise of the claim acquired by the Minister

pursuant to the preceding paragraph and in obtaining evidence and documents necessary for such purpose. In such an event, the expenses required for cooperating with the Minister shall be borne by the Contracting Institution.

Article 27. Waiver

Subject to handling of the Artwork with utmost consideration during the indemnification period of this Indemnity Contract, the Minister shall not exercise the right to claim against the Contracting Institution, Owner, packers, transporters, and other related parties, for damages during packing, transport, and exhibition.

Article 28. Loss Buy-Back

In the event the Minister has paid indemnification due to theft of the Artwork, and the Artwork is recovered thereafter, the Owner may buy back the Artwork acquired by the Minister at the amount of indemnity paid by the Minister together with any other amount required for the acquisition by the Minister, by expression of intent in writing within thirty days of recovery.

Article 29. Treatment of Indemnity Contract after Indemnification

In the event of total loss of the Artwork, the part of this Indemnity Contract regarding the Artwork shall be terminated upon occurrence of the damages causing payment of the indemnification.

Article 30. Reimbursement after Indemnification

In the event the Minister makes indemnity payment to the Owner for the loss, damage, or expenses caused willfully or due to gross negligence of the Contracting Institution or its statutory agent or employee, Contracting Institution shall reimburse the Minister for the amount of indemnity.

Chapter VI. Miscellaneous

Article 31. Filing of Action

Any action relating to this Indemnity Contract shall be filed with a court in Japan.

Article 32. Governing Law

Matters relating to this Indemnity Contract shall be governed by the laws of Japan.