

(For Articles 39 and 39-5, Law Relating to the Prevention of Maritime Pollution and Maritime Disasters)

Contract for HNS Response Resource Deployment and Emergency Response Terms and Notes

Warning 1:

This is a translation of the original contract written in Japanese and notes thereon. It is to be used only as a reference. No part of this translation affects the interpretation of the Japanese terms and notes, which always take precedence.

Warning 2:

Please also note that the 'HNS' defined herein differs from 'HNS' used in the "Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000" (OPRC-HNS Protocol), which Japan has ratified, or 'HNS' used in the "International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996" (HNS Convention), which Japan has not ratified.

Section 1: General Provisions

(1) This Contract for HNS Response Resource Deployment and Emergency Response (hereinafter the "Contract") shall be applied to procedures, rights and obligations between the Maritime Disaster Prevention Center (hereinafter the "Center") as an independent administrative institution, and the ship owner (if the relevant ship is co-owned, the ship manager; if the relevant ship is leased, the lessee) and, if applicable, the person who acted on behalf of the said ship owner, who applied for issuance of a certificate (hereinafter the "Ship Owners"), with respect to the Center's service for preparing materials, deploying equipment and securing experts necessary to respond to an incident relating to a large amount of oil (except for designated oil) and noxious liquid substance (hereinafter " 'HNS' ") and the Center's issuance of a Certificate of 'HNS' Response Resource Deployment (hereinafter the "Certificate") thereon, as well as initial preventive actions to respond to an 'HNS' incident, fire extinction/spread prevention and other emergency responses in the case of a threat of the said 'HNS' incident (hereinafter "Emergency Response"), in accordance with the Law Relating to the Prevention of Maritime Pollution and Maritime Disasters (Law No. 136 of 1970 as revised, hereinafter the "Law") and the Regulation for Implementation of the said Law (Ministry of Transportation Ordinance No. 38 of 1971 as revised, hereinafter the "Regulation"). The Ship Owners shall be deemed to have agreed to the terms and conditions hereof at the time they applied for issuance of the Certificate, and this Contract shall become valid and enforceable at the time when the Certificate is issued.

(2) 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 sets forth the terms and conditions to be applied to cases where the Center will provide the systems it has established to carry out the operations and services provided in paragraphs 1 and 2 of Article 42-25 of the Law (hereinafter, "Para-1 Operation" and "Para-2 Operation" respectively) with the Ship Owners who is legally obligated to prepare and deploy materials, equipment and secure experts, and where, if an 'HNS' incident or a threat thereof occurs near the Center's stockpile base for the said materials and equipment and if the Ship Owners (or the master of the ship involved) requests so, the Center will take initial response actions (Emergency Response) in the designated areas (the areas provided in Article 33-13 of the Regulation).

This Contract is open to any Ship Owners, provided that the Ship Owners duly made application and fee payment. Please note that this Contract is only with respect to 'HNS'. Therefore, a separate contract is to be made for a specified oil, or so-called "persistent oil."

(2) 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 petrol gas) and other substances, which are not in liquid with ordinary temperatures.

(f) 'HNS' tanker means a vessel having a structure to carry 'HNS' cargo in bulk.

Section 2: Deployment of Materials, Equipment and Experts, and Certificate

- (1) When the Ship Owners takes the steps provided in Sections 3 and 4 hereof, without any omission or irregularity therein, the Center shall then prepare and deploy the materials and equipment, and secure experts as required under the Law and the Regulation, at the Center's base for materials and equipment etc. (hereinafter the "Base") listed in the attached table, for the ship, with respect to which the Ship Owners files the application (hereinafter the "Ship").
 - (2) The Center may enter into agreements with contractors, if necessary, to pursue storage and maintenance of the materials and equipment (hereinafter "materials and equipment") at the Base, or to secure experts and/or to make Emergency Response.
 - (3) The Center shall issue a certificate to the Ship Owners to certify preparation and deployment of the materials and equipment and securing of experts, as provided in the preceding two paragraphs hereof.
 - (4) The Center will issue one of three types of Certificates: Annual Certificate, Limited Annual Certificate or Specified Period Certificate. The Ship Owners shall select one of these at the time of its application, in accordance with Section 3 (1).
 - (5) The Annual Certificate shall be valid for a period of one fiscal year, from April 1 to March 31.
 - (6) The Limited Annual Certificate shall be valid either for a period from April 1 to an end date in the middle of the said fiscal year, or a period from a start date in the middle of the said fiscal year to the next March 31.
 - (7) The Specified Period Certificate shall be valid for a period of a minimum 14 days from a start date, or a period of multiples of 14 days from a start date.
 - (8) The start date of the validity period of the Limited Annual Certificate which is valid from any start date in the middle of the fiscal year to the next March 31 (hereinafter "Limited Annual Certificate Starting Midyear") and the start date of the validity period of a Specified Period Certificate shall be, in principle, the preferable start date that the Ship Owners states in the application form, in accordance with Section 3 (1).
 - (9) The end date of the Limited Annual Certificate which is valid from April 1 to any end date in the middle of the fiscal year (hereinafter "Limited Annual Certificate Starting on April 1") shall be, in principle, the preferable end date that the Ship Owners states in the application form in accordance with Section 3 (1).
 - (10) If the owner of a ship is changed due to a ship's sale or for any other reason, the Certificate issued for the said ship shall become invalid.
-

Notes

- (1) Once the Ship Owners files an online application through the Center's website for the deployment of the materials, equipment and experts and completes fee payment, pursuant to the provisions hereof, the Center will prepare and deploy the materials and equipment, and secure experts as required by the Law and the Regulation, for the ship for which the Ship Owners makes an application (hereinafter the "Ship"), and the Center will issue a Certificate (Section 2(1) and (3)).
- (2) Under the regulations on consignment in the Japanese Civil Law, re-consignment requires prior approval of a Ship Owners. Therefore, the Center clearly states that services are contracted out in this article, and this Contract allows the Center to do so (Section 2(2)).
- (3) There are three types of Certificate depending on the length of its validity period: Annual Certificate, Limited Annual Certificate and Specified Period Certificate.
 - (a) The Annual Certificate is valid for one year from April 1 to March 31 (Section 2(5)).
 - (b) The Limited Annual Certificate is a certificate that is prepared for the circumstances of a ship that is sold or newly built, which occurs from time to time. The validity is decided on a monthly basis to adapt to a case in which the Certificate is continued from the previous year, or renewed for another year. There are two types of Limited Annual Certificates: one is valid from April 1 to any end date in the middle of the fiscal year, and the other valid from any start date in the middle of the fiscal year to the end of that fiscal year, the next March 31 (Section 2(6)).
 - (c) The Specified Period Certificate is valid for a two-week period or a multiple thereof, from a start date (Section 2(7)).
 - (d) The start or end date of the Limited Annual Certificate or Specified Period Certificate is, respectively, the start or end date that the Ship Owners requests (Section 2(8) and (9)).
 - (e) If the owner of the ship changes, for instance, due to the ship's sale, the Certificate will become invalid. Therefore, the new owner of the ship will have to apply for a new certificate in accordance with Sections 3 (1) and (2).

Section 3: Application for Certificates and Information to be Given

- (1) The Ship Owners shall use "the Application Form for Certificate of 'HNS' Response Resource Deployment "(Form 1) (hereinafter the "Application Form") for application for the issuance of the Certificate. The Application Form must include information such as the Ship's specifics, hull and machinery or protection and indemnity insurance coverage for the Ship and its planned voyage in the designated areas (areas designated in Article 33-13 of the Regulation), and type and quantity of 'HNS' scheduled to be on board.
- (2) The Ship Owners must send the application form to the Center either in writing or online by the deadlines of March 20 (if that day is a bank holiday, the immediately preceding bank business day) for the Annual Certificate, or the Limited Annual Certificate Starting on April 1, and the deadline of three days before the start date (if that day is a bank holiday, the immediately preceding bank business day) for the Limited Annual Certificate Starting Midyear, provided, however, that if the Ship Owners needs the issuance of the Certificate for

an emergency, the Ship Owners may make emergency application no later than two days before the start date of the validity period.

- (3) The Center shall promptly issue a Certificate when the fee payment or its equivalent is duly made in accordance with Section 4.
 - (4) The Ship Owners must promptly notify the Center of any change, if any, of information on the Application Form.
-

Form 1:

Application Form for Certificate of 'HNS' Response Resource Deployment

Notes

- (1) The application for the issuance of the Certificate is made by filling out the Application Form for Certificate of 'HNS' Response Resource Deployment (Form 1: hereinafter the "Application Form") and sending the completed form to the Center. In usual cases, however, to facilitate and accelerate these steps, the Center and the Ship Owners can usually take the procedure via the internet through the Center's website (Section 3(1)).
- (2) For (1) above, the Ship Owners in filling out the Application Form should give to the Center information, such as the Ship's specifics, applicable H&M and P&I coverage, voyage schedule in the designated areas (areas as defined in Article 33-13 of the Regulation), and type and quantity of 'HNS' scheduled to be on board so that the Center can refer to the information on its data file in order for it to properly ensure Emergency Response based on the information (second sentence of Section 3(1)).
- (3) Application for the issuance of certificate may be made to the Center either in writing or online. The deadlines are as follows (Section 3(2)):
 - (a) For Annual Certificate or Limited Annual Certificate Starting on April 1:
The Center has fixed the deadline as March 20 since most non-oceangoing vessels are expected to select the Annual Certificate. This will resultantly consolidate applications around the same time. However, if payment is not made to the Center in time, the Certificate will not be issued even if the other steps for the application are completed.
 - (b) For Limited Annual Certificate Starting Midyear or Specified Period Certificate:
The deadline is set to be three days before the start date of the validity period.
 - (c) Exception (emergency application):
Even after the deadline given in (a) and (b), an emergency application for issuance of a Certificate will be accepted if application is made no later than two days before the start date of the validity period, provided that even if the application step is completed, the Certificate will not be issued unless the payment of an overdue fee in addition to the Certificate fee is paid no later than two days before the start date of the validity period; e.g., March 30 for the Annual Certificate.
- (4) The Certificate will be issued promptly, via email etc., when the application process has been completed, and the payment of the Certificate fee (in some cases, with additional fees) is made pursuant to the Fare Regulation referred to in Section 4, which is confirmed by the Center (Section 3(3)).

Section 4: Payment of Certificate fees

- (1) The Ship Owners, when applying for the Certificate, must remit the fee, etc., which is provided in the Center under the Fare Regulation Relating to 'HNS' Materials, Equipment and Experts Deployment Certificate Issuance (hereinafter "Fare Regulation"), to the bank account designated by the Center.
- (2) The due date for payment of the Certificate fee shall be as follows. Payment shall be deemed completed when full amounts of the Certificate fee, service charges and other items are paid (hereinafter "Certificate fee and other items") to the bank account designated by the Center.
 - (i) For Annual Certificate or Limited Annual Certificate Starting on April 1, March 20 (if that day is a bank holiday, the nearest preceding bank business day)
 - (ii) For Limited Annual Certificate Starting Mid-year or Specified Period Certificate, three days before the start date (if that day is a bank holiday, the immediately preceding bank business day).
- (3) If the Ship Owners fails to make the payment by the due date as provided in the preceding paragraph in a situation where the Ship Owners has applied for emergency issuance of the Certificate in accordance with the provisos of Section 3 (2), the Ship Owners shall pay an additional fee fixed by the Center as set forth in the Fare Regulation no later than two days prior to the start date of the validity period of the Certificate (if that day is a bank holiday, the immediately preceding bank business day).
- (4) The Ship Owners, by writing to the Center, may cancel the application for issuance of the Certificate, provided however, that the Ship Owners shall pay a cancellation fee of 10,000 yen if the cancellation is applied after the Center receives the Certificate fee. If the Ship Owners cancels after the validity period of the Certificate begins, the Center will not refund the Certificate fee.

Notes

- (1) The amount of the Certificate fee depends on the ship size (gross tonnage) and the type of Certificate (Annual Certificate, Limited Annual Certificate or Specified Period Certificate). The Ship Owners must remit the Certificate fee and other items in full to the bank account designated by the Center as per Fare Regulation Relating to HNS Materials, Equipment and Experts Deployment Certificate Issuance (hereinafter the "Fare Regulation") (Section 4(1)).
- (2) Payment of the Certificate fee and other items must be remitted to the bank account designated by the Center. The payment shall not be deemed completed unless the whole amount of the Certificate fee and other items is received in the said bank account, even if the Ship Owners on their side have completed remittance. Even if the Ship Owners have completed this, the Certificate fee and other items may not be transferred to the Center's bank account within one day, and in such cases the payment is deemed as still not completed.

The provision here clarifies that the payment is deemed as completed by the Center's

receipt of the whole amount at its bank rather than the Ship Owners' remittance. (Section 4(1) and (2))

- (3) The deadline of the Certificate fee payment is the same date as the deadline of the application for the Certificate (Section 4(2)). Please see the examples below to show the payment deadline and the start date of the validity period. Bank holidays are underlined.
- (a) Type of Certificate: Specified Period Certificate / Starting Date of Validity: Tuesday (italics)
- When Monday is a business day, payment deadline is Thursday of the previous week (M. T. W. **Th.** F. Sa. Su. M. T.)
 - When Monday is a bank holiday, payment deadline is Wednesday of the previous week (M. T. **W.** Th. F. Sa. Su. M. T.)
 - When Friday is a bank holiday, payment deadline is Wednesday of the previous week (M. T. **W.** Th. F. Sa. Su. M. T.)
 - When Thursday is a bank holiday, payment deadline is Wednesday of the previous week (M. T. **W.** Th. F. Sa. Su. M. T.)
 - When Wednesday, Thursday and Friday are bank holidays, payment deadline is Monday of the previous week (M. T. **W.** Th. F. Sa. Su. M. T.)
- (b) Type of Certificate: Specified Period Certificate / Starting Date of Validity: Wednesday, Jan. 5 (italics)
- Payment deadline is December 29 due to New Year's holidays (Dec.31, Jan. 1, 2 and 3) and the bank holidays (Sat. and Sun.).(**Dec. 29, 30, 31, Jan. 1, 2, 3, 4, 5**)
- (c) Type of Certificate: Annual Certificate or Limited Period Certificate Starting on April 1
- When March 20 is a bank business day, deadline is March 20
 - When March 20 is Sunday, deadline is one prior business day: Friday, March 18
 - When March 20 is Saturday, deadline is one prior business day: Friday, March 19
- (4) When the Certificate is applied for in an emergency situation, as provided in Section 3 (2), and the deadline for payment provided in Section 4 (2) has passed, the Ship Owners is required to pay an additional fee. The additional fee shall be paid no later than two days prior to the start date if that day is a bank holiday, the immediately preceding bank business day per the Fare Regulation (Section3(3)).
- (5) The Ship Owners at any time may cancel the application for the Certificate by sending a written notice to the Center. If the cancellation is made between the receipt of the Certificate fee and other items and the start of the validity period, the cancellation fee is ¥10,000, but if cancellation is made after the start date of the Certificate, the Certificate fee and other items will not be refunded. (Section 4 (4)).
- (6) The validity period of the Specified Period Certificate is set at 14 days or multiples thereof. It is possible that many of the holders of this type of certificate will be oceangoing vessels. As their voyage schedule is subject to change, the holders are expected to request a change (shortening or extension) of the validity period. In these cases, the Certificate should be cancelled and an application should be newly made. If the ship's voyage or stay extends beyond the validity period, the Ship Owners shall obtain a Specified Period Certificate (for a minimum of 14 days) for its additional stay or voyage.

Section 5: Request for Emergency Response

- (1) If an 'HNS' spill occurs from the Ship or there is a threat thereof and the Emergency Response to such an incident is needed in the designated areas as provided in Article 33-13 of the Regulation (hereinafter the "Designated Areas"), the Ship Owners or the Master of the Ship (hereinafter the "Ship Owners/Master") shall notify the Center of such incident immediately, and may request the Center to take Emergency Response.
- (2) At the time of the notice as in the preceding paragraph, the Ship Owners /Masters 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 Emergency Response.

Notes

- (1) "Emergency Response" means, as provided in Section 1, actions taken by the Center against the 'HNS' spill or a threat thereof from the Ship within the Designated Areas, including initial pollution prevention and control operations, and firefighting operations to extinguish and control the fire, after prompt arrival (within approximately 2-3 hours) at the incident site (Section 5(1)).
- (2) The Ship may not have enough crewmembers to deal with an 'HNS' incident if it involves an 'HNS' tanker. The Ship Owners/Master can contact the Center immediately to request Emergency Response to an 'HNS' incident or a threat thereof as provided hereunder. In such cases, the Ship Owners/Master shall give the Center necessary information so that the Center can take appropriate Emergency Response (Section 5(2)).
- (3) The 'HNS' incident is potentially expose to a danger of ignition of fire and/or explosion, or a danger to the human body. Therefore, the Ship Owners/Master should recognize that it is essential for the Center to have the information of HNS in order to take safe and appropriate Emergency Response.

Section 6: Implementation of Emergency Response

- (1) In the event that an Emergency Response is requested pursuant to the preceding section, the Center shall collect necessary information in connection with the 'HNS' from the Ship Owners/Master and the other relevant parties such as the charterers, shipper, consignee and 'HNS' manufacturer (hereinafter "HNS-relevant Parties"), to determine the appropriate Emergency Response. In response to the Center's request, the Ship Owners/Master 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.
- (2) The Center shall take appropriate Emergency Response, including dispatch of a ship, investigation and assessment of pollution by 'HNS' spill, facilitating 'HNS' evaporation or controlling and cleaning up by spraying water or other methods, treatment of 'HNS' by solidifying agents spray, and other 'HNS' prevention and cleanup operations, firefighting to

extinguish and control fire, warning third parties and the public about the 'HNS' incident, and other appropriate measures of Emergency Response.

- (3) The Center shall inform the Ship Owners/Master of the Emergency Response plan immediately after details are determined. If the Ship Owners/Master disagrees with the Center's Emergency Response, the Ship Owners/Master shall immediately communicate the disagreement to the Center.
- (4) Emergency Response shall be taken by the Center or a disaster response contractor with which 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.
- (5) The Center shall conduct the Emergency Response in good faith and with the utmost care.
- (6) The Emergency Response by the Center shall not be continued more than 24 hours after its start.
- (7) In the event that the Center finds that its Emergency Response alone is not enough to cope with the situation, it shall immediately inform the Ship Owners/Master. The Ship Owners/Master shall confer with the Center and the relevant parties with regard to the operations under paragraph 2 of Article 42-25 of the Law and other necessary measures, in order to take appropriate action.
- (8) Upon the completion of the Emergency Response, the Center shall promptly submit a report on the details of its Emergency Response to the Ship Owners.

Notes

- (1) The Center will collect relevant information from the Ship Owners/Master and other HNS-relevant Parties to immediately set up an appropriate Emergency Response plan and take actions (Section 6(1) and (2)), which include:
 - Investigate and assess pollution from an 'HNS' spill in the incident area by gas detection and other measures
 - Facilitate 'HNS' evaporation, e.g., by spraying water, and clean up 'HNS' spills by spraying chemical agents
 - Control and clean up 'HNS' using gel bubbles and other methods
 - Prevent fire, extinguish fire in the initial stage and control fire spread
 - Give warning at the incident site to third parties and the public
- (2) "HNS-relevant Parties" means the Ship Owners, the master of the Ship and:
 - The charterers of the Ship
 - The shipper and consignee of 'HNS' laden with the Ship
 - The manufacturer of 'HNS' laden with the Ship
- (3) The Center does not necessarily have full information about the 'HNS' tanker involved in the incident. The Ship Owners/Master 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/Master requests Emergency Response. The Center might not be able to take Emergency Response if the Ship Owners/Master fails to properly provide information on 'HNS' (second half of Section 6(1)).

- (4) Upon the request of the Ship Owners/Master, the Center will instruct the nearest Disaster Response Contractor to immediately dispatch one or two ships to the incident site, and they will pursue the whole or a part of the response action as mentioned in the above paragraph (1). The Disaster Response Contractor will pursue Emergency Response for the Center. Staff of the Center will also rush quickly to the site (Section 6(2) and (4)).
- (5) The Center should make every effort to keep close communication with the Ship Owners/Master by immediately giving the details of Emergency Response before the operation and thereafter by communicating the progress. The Center shall promptly report the details of Emergency Response when it is completed (Section 6(3) and (8)).
The Center communicates with the Ship Owners/Master by means such as telephone, fax and email, with phone calls followed by another means, including fax message and email, so that details of communication can later be confirmed.
- (6) The Center will conduct Emergency Response operations for up to 24 hours, during which it will conduct the response measures in collaboration with the Disaster Response Contractors to the best of its ability. In the event, however, that the Center finds its initial Emergency Response is or will not be enough to cope with the incident, the Center will coordinate with the relevant parties and conduct further actions, including Para-2 Operation (Section 6(5)-(8)).
In such cases, the Center will promptly advise the ship owner and consult with the relevant parties as to whether they will continue to start Para-2 Operation or terminate the Emergency Response (Section 6(8)).

Section 7: Cost of Emergency Response

- (1) The Ship Owners shall pay the cost for the Emergency Response that the Center takes in accordance with this Section.
- (2) The Center shall charge the Ship Owners the following costs and fees:
 - (i) Costs and fees of the Disaster Response Contractor for Emergency Response
 - (ii) Costs for the vessels, materials and equipment owned by the Center and used for Emergency Response
 - (iii) Administrative costs of the Center for Emergency Response
 - (iv) Any other costs for Emergency Response, which are separately agreed upon between the Ship Owners and the Center
- (3) Costs described in the preceding paragraph shall be discussed between the Ship Owners and the Center. With regard to the materials used for Emergency Response, such as chemicals, payment can be made via the supply of such materials under consultation between both parties.

- (4) The Center shall not charge the Ship Owners or a third party any remuneration or expense other than those provided in this section, such as a salvage fee, no matter what it is called.
- (5) The Ship Owners shall promptly make payment of the cost charged by the Center. In the event that the payment is not made within three months of the invoice date, 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 (Notice of the Ministry of Finance No. 991, dated December 12, 1949).

Notes

- (1) The amount of fees to be charged shall be determined, taking in consideration of various factors, such as 'HNS' prevention and cleanup capabilities and performance and fee schemes of the contractors. The parties shall discuss with each other to decide the amount to be charged, taking into account past cases, practices and other factors (Section 7(3)).
- (2) The scope and items of the costs to be charged are the same as for the Center's operations in the past for preventing oil spills and cleaning up oil pollution, on the premise that the Ship Owners should provide the chemicals and other materials instead of monetary payment. This Contract expressly states that the Center will no charge no salvage fee as marine salvage or other remuneration of a similar nature since Emergency Response is taken as initial action for an incident (Section 7(2) and (4)).
- (3) The Center usually sends an invoice after the Center completes discussions and obtains agreement with the relevant parties. Thus the Ship Owners would make a quick payment after the receipt of the Center's invoice. If there is a delay, the Ship Owners shall add, in its payment, default interest to be accrued from three months after the invoice. The rate of default interest is fixed by the Ministry of Finance Notice for government contracts, and is reviewed and determined each year (Section 7(5)).

Section 8: Liability for Loss or Damage

- (1) The Center with its due care shall conduct the operations provided in the Contract. The Center shall be liable to the Ship Owners for their loss or damage caused by the negligence of the Center.
- (2) Notwithstanding the preceding paragraph, the Center shall not be liable for any loss or damage caused by failure or delay of the provision of necessary information by the Ship Owners/Master or HNS-relevant Parties, upon having the Center's request to provide the necessary information for Emergency Response in accordance with Section 6(1), or caused by the inaccuracy or insufficiency of the provided information.

Notes

- (1) Section 6(5) provides that the Center shall take Emergency Response 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 its Emergency Response.

- (2) Section 6(4) provides that all actions made by the Disaster Contractor, which has entered into a contract with the Center beforehand in order to pursue Emergency Response (hereinafter “Disaster Contractor”), shall be deemed as those made by the Center. Thus, negligence of the Disaster 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/Master or HNS-relevant Parties (Section 8(2)). Even without Section 8(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.

Section 9: Breach of Contract / Termination

If any of the followings occurs to the Ship Owners, the Center may terminate this Contract or suspend any or all of its performance hereunder. In such cases, the Center will not refund the fees paid. If the Center suffers any loss or damage, the Ship Owners shall indemnify the Center for such loss or damage.

- (i) If there is any breach of this Contract
- (ii) If a court commences proceedings for bankruptcy, reorganization, liquidation, settlement, rehabilitation (*Hasan, Kaisha-Kosei, Kaisha-Seiri, Tokubetsu-Seisan, Minji-Saisei*) for the Ship Owners, or the Ship Owners is suspended from deals at the Security Clearing House (*Tegata Torihiki Teishi*), or the Ship Owners stops or suspends its business or is dissolved, or in case the Ship Owners is a foreign national or corporation, if proceedings arise corresponding to any of the above in the country to which it belongs.
- (iii) If the Ship Owners are taken the authority's procedure due to non-payment of tax or any other duties
- (iv) If the Center finds that the Ship is not insured with an appropriate H&M or P&I policy

Notes

- (1) This section relates to “Termination of Consignment” Article 651 of the Civil Code, which provides for the termination of consignment contract by either party at any time.
- (2) Under this Contract, the Center is obliged to take Emergency Response to an ‘HNS’ incident in addition to deployment of materials and equipment and securing of experts. This article expressly states that the Center may terminate this Contract or may suspend any or all of the performance arising out of this Contract if it is found that the Ship Owners do not have sufficient ability to pay for the Center's services. In particular, an enormous amount of costs could be incurred for actions to respond to a maritime disaster, and thus the Contract obliges the Ship Owners to keep appropriate H&M and P&I policies and their coverage.
-

Section 10: Dispute Resolution

- (1) This Contract shall be governed by the laws of Japan. Any matter not provided herein or any dispute arising out of this Contract shall be discussed between the parties with sincerity.
- (2) Any 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 a resolution by arbitration, but it would not prohibit the parties to agree to refer to the arbitration such as the one by the Japan Shipping Exchange, Inc. for the purpose of smooth resolution .
- (2) In the event any dispute arises, paragraph 1 stipulates that the parties shall discuss the matter with sincerity, aiming at a solution without taking legal action; but in case of failure to reach to a settlement, Yokohama District Court has jurisdiction over such disputes.

Section 11: Supplementary Provision

This Agreement shall come into force on October 1, 2013.

October 1, 2013

Maritime Disaster Prevention Center
Minato Mirai 3-3-1, Nishi-ku,
Yokohama, Kanagawa-pref., Japan

Notes

This Contract has the approval of “The special committee for cleanup and prevention of discharged Oil and HNS” (hereinafter the “Special Committee”).

This Special Committee is constituted by Maritime Disaster Prevention Center’s relevant parties which are on behalf of Ships owners, Facility owners, Pilot Association, P&I Club, Salvage Association and others.

This Contract shall come into force on April 1st, 2011

Revision history

- On April 1st,2010, Articles 5,6 and 8 were revised.
- On April 1st,2010, Chiba Base and Kawasaki Base were added to “List of Bases”.
- On April 1st,2011, Imabari Base was added to “ List of Bases” and Shimonoseki Base was transferred to Kita-kyushu Base.
- On October 1, 2013,Center become General Incorporated Foundation.

For Section 2
Attached Table: Base

List of Materials, Equipment and Expert Deployment Bases

The Center shall prepare materials, deploy equipment and secure experts at the places of deployment (bases) indicated below.

Place of Deployment	Base	Chief area in charge
Chiba/Ichihara, Chiba	Chiba base	Tokyo Bay
Kawasaki, Kanagawa	Kawasaki base	Tokyo Bay
Yokosuka, Kanagawa	Yokosuka base	Tokyo Bay
Yokkaichi, Mie	Yokkaichi base	Ise Bay
Wakayama, Wakayama	Wakayama base	Osaka Bay and Harimanada area
Sakai, Osaka	Osaka base	Osaka Bay and Harimanada area
Himeji, Hyogo	Himeji base	Osaka Bay and Harimanada area
Kurashiki, Okayama	Mizushima base	East area of Seto Inland Sea
Imabari, Ehime	Imabari base	East area of Seto Inland Sea
Matsuyama, Ehime	Matsuyama base	Middle area of Seto Inland Sea
Shunan, Yamaguchi	Tokuyama base	Middle area of Seto Inland Sea
Sanyo-onoda, Yamaguchi	Ube base	West area of Seto Inland Sea
Kitakyushu, Fukuoka	Kitakyushu base	West area of Seto Inland Sea
Oita, Oita	Oita base	West area of Seto Inland Sea