

MEMORANDUM OF AGREEMENT

between the

UNITED STATES COAST GUARD

and

Nippon Kaiji Kyokai

GOVERNING THE DELEGATION OF CERTAIN SURVEY

AND CERTIFICATION SERVICES

FOR UNITED STATES OF AMERICA FLAGGED VESSELS

1. PARTIES.

This Memorandum of Agreement delegates authority and sets forth guidelines for cooperation between the United States Coast Guard and Nippon Kaiji Kyokai, hereafter referred to as “Coast Guard” and “ClassNK,” respectively.

2. AUTHORITY.

The Coast Guard is statutorily authorized to administer laws and promulgate and enforce regulations for the promotion of the safety of life and property at sea and the protection of the marine environment. In accordance with the authority granted by Title 46, United States Code, Section 3316, and as implemented under the regulations in Title 46, United States Code of Federal Regulations, Part 8, the Coast Guard may delegate the authority to perform plan review and approval, inspections and examinations and issuance of certain international convention certificates. The Coast Guard also has statutory authority under Title 46, United States Code, Part J - Measurement of Vessels, for the measurement and the certification of tonnage for vessels for which the application of a law of the United States depends on the vessel’s tonnage. Under Title 46, United States Code, Section 14103, the Coast Guard may delegate the authority to measure vessels to qualified persons. Title 46, United States Code, Section 5107, authorizes the Coast Guard to delegate the authority to assign load lines, survey vessels, determine that load line marks are marked correctly, and issue load line certificates to qualified organizations.

3. PURPOSE.

The purpose of this Agreement is to authorize ClassNK to perform specified vessel survey functions on U.S. flagged vessels on behalf of the Coast Guard.

This Agreement defines the scope, terms and conditions and requirements of the authority delegated to ClassNK.

The term “Agreement” in this document refers to this Memorandum of Agreement and its Annex, Addendum to its Annex, or subsequent amendments, that may be agreed upon by ClassNK and the Coast Guard. In this Agreement, the term “Commandant” refers to the United States Coast Guard Assistant Commandant for Marine Safety, Security, and Stewardship.

This Agreement relates to the initial and subsequent surveys and periodic re-inspections or examinations of “Vessels” of the United States, as that term is defined by 46 United States Code, Section 116, both in the United States and in foreign countries, in the review and approval of plans, the tonnage measurement of vessels, and in associated activities. Nothing in this Agreement alters in any way the statutory or regulatory authority of the Coast Guard.

This Agreement shall be governed by and conducted in accordance with United States law.

4. RESPONSIBILITIES -- GENERAL CONDITIONS.

Delegated functions performed by, and certificates issued by, ClassNK will be accepted as functions performed or certificates issued by the Coast Guard, provided that ClassNK remains in compliance with all provisions of this Agreement. This MOU does not apply to offshore facilities subject to 33 USC 3316(d), as enacted in Section 622 of the Coast Guard Authorization Act of 2010.

5. RESPONSIBILITIES -- AUTHORIZED FUNCTIONS.

5.1 The Coast Guard delegates to ClassNK the authority to measure vessels, conduct the initial and subsequent surveys, periodic re-inspections and examinations including dry-docking examinations and the authority to issue and endorse certain certificates as provided in the Annex to this Agreement for U.S. flagged vessels, both in the United States and in foreign countries. In carrying out these functions, ClassNK shall comply with any restrictions, special instructions or supplemental requirements as required by this Agreement.

5.2 The Coast Guard will accept the review and approval of vessel plans by ClassNK in the same manner as if approved by the Coast Guard for those plans related to the functions authorized by this Agreement.

5.3 The Coast Guard retains the authority to revoke or suspend any certificates issued by ClassNK on behalf of the Coast Guard. (See paragraph 10.3 for related reporting requirements.)

6. RESPONSIBILITIES -- DEVELOPMENT OF RULES AND/OR REGULATIONS -- INFORMATION.

6.1 ClassNK shall allow the Commandant to participate in the development of class rules and provide the Commandant the opportunity to comment on any proposed changes to its class rules and to respond to the disposition of those comments.

6.1.1 ClassNK will notify the Coast Guard when draft revisions to class rules have been uploaded for review on ClassNK’s public website.

6.1.2 If the Coast Guard identifies any areas of concern between the draft class rules and Title 46, Code of Federal Regulations, the Coast Guard will request ClassNK to modify their United States specific Instructions to Surveyors to meet this requirement.

6.1.3 ClassNK will submit any revised Instructions as indicated in 6.1.2 to the Coast Guard for approval.

6.2 Where ClassNK adopts changes to its rules for ship classification that are determined by the Coast Guard to be inconsistent with Title 46, United States Code of Federal Regulations, Chapter I, or Coast Guard policy, the Coast Guard may require ClassNK to administer corrective measures or provisions to any rules or activities that affect any delegated activities on behalf of the Coast Guard.

6.3 ClassNK shall submit for approval by the Coast Guard proposed changes to any supplemental requirements to ClassNK rules that may affect any vessel inspection or certification activities by ClassNK under this Agreement.

6.4 "Supplemental Requirements," as contained in the Annex to this Agreement (also known as the "Supplement"), to ClassNK rules shall include all requirements applicable for the issuance of a Certificate of Inspection, which are not, in the opinion of the Commandant, adequately established by either ClassNK rules or applicable international conventions.

7. RESPONSIBILITIES -- OTHER CONDITIONS.

7.1 Remuneration for delegated survey and certification services carried out by ClassNK on behalf of the Coast Guard will be charged by ClassNK directly to the party requesting such services.

7.2 ClassNK shall provide the Commandant with a current copy of fee schedules, including changes to the schedule, for all functions delegated under this Agreement.

7.3 In issuing certificates or performing other functions on behalf of the Coast Guard under this Agreement, ClassNK shall apply Coast Guard interpretations, when they exist.

7.4 ClassNK shall ensure that its employees engaged in the performance of functions delegated under this Agreement are appropriately certified under the ClassNK qualification scheme and are familiar with and require compliance with applicable United States laws and regulations, Coast Guard policies, interpretations, and instructions, including, but not limited to:

(1) as authorized, applicable international conventions to which the United States is a party;

(2) United States statutes;

(3) United States federal regulations;

(4) ClassNK rules and regulations for the classification of ships; and

(5) any restrictions, special instructions, and supplemental requirements as required by this Agreement.

7.5 Unless specifically stated otherwise, only qualified "exclusive employees" of ClassNK, who are defined as persons permanently employed by ClassNK rendering services exclusively on behalf of ClassNK and holding Certificates of Competence within the Fields of

Competence covered by the ClassNK qualification scheme, are authorized to perform work pursuant to any delegated function specified under this Agreement.

7.6 ClassNK shall honor any appeal decision made by the Commandant on issues related to delegated functions under this Agreement.

7.7 ClassNK, in exchange for express assurances of confidentiality, will in furtherance of this agreement, provide the Coast Guard with information which is otherwise not available to private or public parties. This information is only provided to the Coast Guard due to the express assurance of confidentiality, and in the event that the confidentiality is breached, it will serve as a basis for restricting access by the Coast Guard to ClassNK's confidential and proprietary information. It is further expressly agreed that the Coast Guard will promptly notify ClassNK in writing upon receipt of any request for ClassNK records.

7.8 In the event the Coast Guard is found liable in a court of law for losses or damages sustained due to a negligent act or omission by ClassNK, its officers, employees or others who were acting on behalf of ClassNK pursuant to this Agreement, the Coast Guard is entitled to obtain compensation from ClassNK up to, but not exceeding, the amount of the Coast Guard's financial liability.

7.9 While acting on behalf of the Coast Guard under this Agreement, ClassNK shall be free to create contracts directly with clients and such contracts may contain ClassNK's normal contractual conditions for limiting its legal liability.

7.10 The interpretation by the Coast Guard of the technical aspects of this Agreement shall be final.

7.11 ClassNK shall require a U.S. flag vessel to meet all of the classification society's requirements prior to accepting the vessel into ClassNK class upon transfer from another classification society.

7.12 ClassNK shall suspend class for any U.S. flag vessel that is overdue for special renewal or annual survey.

8. RESPONSIBILITIES -- SPECIFICATION OF DELEGATED FUNCTIONS.

8.1 This Agreement applies to any delegated function performed by ClassNK for U.S. flagged vessels that are certificated for international voyages, except as explicitly stated otherwise in the Annex to this Agreement.

8.2 Authorized functions, applicable instruments and any restrictions, special instructions or supplemental requirements for those functions performed on behalf of the Coast Guard are contained in the Annex and its Addendum to this Agreement.

8.3 ClassNK shall obtain approval from the Commandant prior to granting exemptions from the requirements of international conventions, class rules, and any applicable U.S. supplemental requirements to ClassNK class rules as these requirements and rules relate to any authorized functions performed on behalf of the Coast Guard under this Agreement.

8.4 ClassNK shall obtain approval from the Commandant prior to granting any extensions of authorized certificates. ClassNK will apply to the Coast Guard for approval as far in advance as practical with the circumstances and conditions related to the requested extension.

8.5 ClassNK shall attend any U.S. flagged vessel for which it has performed any delegated function on behalf of the Coast Guard at the request of an appropriate Coast Guard official.

8.6 ClassNK shall accept all requests to perform delegated services without regard to the vessel's location, unless prohibited from doing so under the laws of the United States or under the laws of the jurisdiction in which the vessel is located.

8.7 ClassNK shall allow those exclusive employees, authorized to perform delegated functions on behalf of the Coast Guard, to participate in training with the Coast Guard regarding those functions.

8.8 All documentation issued by or requested from ClassNK pursuant to this Agreement shall be in the English language.

8.9 ClassNK shall maintain a corporate office in the United States that has adequate resources and staff to support all delegated functions.

8.10 All records of survey, inspection, examination, review and approval related to delegated functions conducted on behalf of the Coast Guard shall be maintained in the United States in accordance with the provisions of Title 46, United States Code, Section 3316.

9. RESPONSIBILITIES -- SUPERVISION OF DELEGATED FUNCTIONS.

9.1 ClassNK shall allow the Coast Guard to accompany internal and external quality audits and shall provide written results of such audits to the Commandant upon request.

9.2 ClassNK shall provide the Coast Guard sufficient access necessary to oversee ClassNK to ensure that it continues to comply with the minimum standards required for a recognized classification society as set forth in Title 46, United States Code of Federal Regulations, Part 8.

9.3 ClassNK shall provide a copy of its regulations, rules, instructions, survey procedures, circulars and guidelines that are related to the performance of the delegated functions under this Agreement to the Commandant.

9.3.1 ClassNK shall make available to the Coast Guard written documents related to the performance of the delegated functions. These include, but are not limited to, the following:

- (a) equivalency determinations,
- (b) approvals,
- (c) surveys,
- (d) certificates,
- (e) report forms,

- (f) vessel deficiencies, and
- (g) ClassNK vessel recommendations.

9.4 ClassNK shall grant the Coast Guard access to all plans and documents, including survey reports, on the basis of which international certificates are issued or endorsed by ClassNK on behalf of the Coast Guard.

9.5 ClassNK shall provide information and access to the Coast Guard which may conduct oversight of those activities performed and related to delegated functions conducted on behalf of the Coast Guard pursuant to this Agreement.

9.6 At the request of the Commandant, ClassNK shall provide any information, statistics and data related to U.S. flagged vessels' compliance to ClassNK rules for the classification of ships, supplemental requirements under this agreement and any appropriate Coast Guard regulations including reports of damage and/or casualties that such vessels may have incurred.

10. REPORTING AND DOCUMENTATION.

10.1 All notifications made by ClassNK under this Agreement shall be made within the time frames specified herein once ClassNK has become aware of the incident, infraction or deficiencies.

10.2 ClassNK shall immediately notify the Commandant of any events where it finds itself unable to fulfill its responsibilities as set forth in this Agreement.

10.3 When ClassNK makes a determination that a U.S. flagged vessel receiving certificates under this Agreement is not in compliance with class rules, applicable international conventions, or supplemental requirements under which its reports or certificates were issued and corrective action is either insufficient to ensure compliance or is not taken or are beyond any extensions allowable under the appropriate instruments, ClassNK immediately shall report the determination to the Coast Guard. The report shall contain the vessel name and official number, if applicable, and a description of the circumstances and deficiencies.

10.4 ClassNK shall report to the Commandant in writing the names and official numbers, if applicable, of any vessels removed from ClassNK class for which ClassNK has performed any function delegated under this Agreement on behalf of the Coast Guard. The written notification shall be made within thirty (30) days, and shall include a description of the reason for the removal from class.

10.5 ClassNK shall, upon notification of such events, inform the Commandant immediately of all cases where U.S. flagged vessels, subject to, or having surveys performed under this Agreement, have been detained under port state control proceedings, or have otherwise been found unfit to proceed to sea without endangering the ship, persons on board or presenting an unreasonable threat or harm to the environment. The report shall contain a description of the circumstances and deficiencies.

10.6 If an employee of ClassNK, while performing the delegated functions of this Agreement, discovers any deficiency that directly or indirectly affects the validity of any

aspect of a certificate issued by another classification society, ClassNK shall notify as soon as practicable, but no later than fifteen (15) days following discovery, the cognizant office of that classification society both verbally and in writing. A copy of the written notice shall be simultaneously provided to the Commandant.

10.7 ClassNK shall provide or make available through the internet to the Commandant within sixty (60) days of publication/posting the ClassNK Register of Vessels.

10.8 ClassNK shall report to the Commandant all information specified in this Agreement at the specified frequency.

11. POINTS OF CONTACT

ClassNK shall designate appropriate persons employed exclusively by ClassNK to serve as points of contact with the appropriate Coast Guard personnel on matters of interpretation, policy, and the working relationship. The points of contact for matters related to this Agreement are listed below.

Commandant (CG-543)
U.S. Coast Guard
Office of Vessel Activities
Domestic Vessels Division (CG-5431)
2100 Second Street, S.W.
Washington DC 20593-7581
Tel: (202) 372-1231
Fax: (202) 372-1224

Nippon Kaiji Kyokai (ClassNK)
New York Office
Regional Manager of North America
400 Kelby Street, One Parker Plaza
14th Floor , Fort Lee, NJ 07024
Tel: (201) 944 - 8021
Fax: (201) 944 -8183

12. MODIFICATION.

Amendments to this Agreement or the acceptance of revised annexes shall become effective only after consultation and written agreement between the Coast Guard and ClassNK. Amendments and revised annexes shall go into effect upon authorized signature of both parties.

13. EFFECTIVE DATE.

This Agreement becomes effective upon authorized signature of both the Coast Guard and ClassNK.

14. TERMINATION.

14.1 Termination of this Agreement, any delegated functions under this Agreement and any amendments to this Agreement will occur sixty (60) days after written notice has been given by either party.

14.2 Revocation and termination of this Agreement, any delegated functions under this Agreement and any amendments to this Agreement may be made under the following conditions:

- 14.2.1 Failure of ClassNK to maintain the minimum standards of a Recognized Class Society, set forth in Title 46, Code of Federal Regulations, Part 8, Subpart B, may be cause for Termination of ClassNK as a classification Society.
- 14.2.2 Termination of ClassNK as a Recognized class society by the Coast Guard will terminate this Agreement.
- 14.2.3 Breach of any terms or conditions of this Agreement may be cause for termination of this Agreement.
- 14.2.4 Change of Authority delegated to the American Bureau of Shipping by the Ministry of Land, Infrastructure, Transport, and Tourism

15. ALTERNATE COMPLIANCE PROGRAM

- 15.1 ClassNK will be eligible to participate in the Alternate Compliance Program (ACP) after it has satisfactorily performed a delegated function for a period of two years, as required by Title 46, Code of Federal Regulations, Part 8.420, paragraph (c).
- 15.2 The two-year period will commence on the date of issuance of the first certificate issued by ClassNK on behalf of the Coast Guard, that relates to general vessel safety as defined in Title 46, Code of Federal Regulations, Part 8.100.

16. SEVERABILITY

- 16.1 If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by statute and regulation.

For the United States Coast Guard

For ClassNK


P. F. ZUKUNFT on DEC 8, 2011
Rear Admiral, U. S. Coast Guard
Assistant Commandant for Marine Safety,
Security and Stewardship


Takuya Yoneya on Nov. 25, 2011
Executive Vice President
Nippon Kaiji Kyokai (ClassNK)

ANNEX

To the MEMORANDUM OF AGREEMENT

between the

UNITED STATES COAST GUARD

and

Nippon Kaiji Kyokai

GOVERNING THE DELEGATION OF CERTAIN SURVEY

AND CERTIFICATION SERVICES

FOR UNITED STATES OF AMERICA FLAGGED VESSELS

APPLICABLE INSTRUMENTS AND AUTHORIZATIONS

1. Tonnage

A. The following instruments apply:

- International Convention on Tonnage Measurement of Ships of 1969, and Title 46, United States Code of Federal Regulations, Part 69, Subpart B - Convention Measurement System
- Title 46, United States Code of Federal Regulations, Part 69, Subpart C - Standard Measurement System
- Title 46, United States Code of Federal Regulations, Part 69, Subpart D - Dual Measurement System.

B. ClassNK is authorized to issue Tonnage certificates and perform all related functions in accordance with the International Convention on Tonnage Measurement of Ships, 1969, or in accordance with the Standard or Dual Measurement Systems under Title 46, United States Code, Chapter 145, for U.S. flag vessels. This authorization may be performed for U.S. flag vessels certificated, or to be certificated, for international and domestic voyages.

C. In addition to the conditions set forth in the Agreement and the requirements set forth in the applicable instruments, the following conditions will be adhered to in execution of this authorized function on behalf of the Coast Guard:

1.1 ClassNK may use part-time employees or independent contractors in lieu of exclusive employees to provide measurement services, provided such individuals have been specifically designated by ClassNK to perform this function.

1.2 ClassNK shall not use an employee or contractor to measure and certify the tonnage of a vessel if that employee or contractor is acting or has acted as a tonnage consultant for the same vessel.

1.3 ClassNK shall physically conduct a compliance inspection before issuing each tonnage certificate.

1.4 ClassNK will notify the Coast Guard of scheduled meetings that may take place between ClassNK and other vessel tonnage measurement organizations pertaining to tonnage measurement of U.S. flagged vessels or to systems under which U.S. flagged vessels are measured.

1.5 ClassNK shall, in addition to any requirements of class rules and applicable instruments, apply the supplemental requirements contained within this Annex when performing any authorized function on behalf of the Coast Guard pertaining to the Tonnage certification and survey of U.S. flagged vessels.

2. Load Line

A. The following instruments apply:

- International Convention on Load Lines (ICLL), 1966
- Protocol of 1988 relating to the International Convention on Load Lines, 1966

B. ClassNK is authorized to issue International Load Line certificates and perform all related functions in accordance with the International Convention on Load Lines for U.S. flag vessels. International Load Line certificates issued under the provisions of this Agreement may be endorsed as being issued on behalf of the “United States of America.”

C. In addition to the conditions set forth in the Agreement and the requirements set forth in the applicable instruments, the following conditions will be adhered to in execution of this authorized function on behalf of the Coast Guard:

2.1 All requests for exemptions, equivalencies, and experimental purposes (per International Convention on Load Lines Articles 6, 8, and 9, respectively), or other special considerations allowed under the International Convention on Load Lines at the discretion of the Flag Administration, must be forwarded to the Commandant for approval. Such requests must include supporting information and a recommendation from ClassNK concerning approval. Upon approval by the Commandant, ClassNK may issue the appropriately annotated International Load Line Certificate.

2.2 With respect to ICLL Regulation 10, Information to be supplied to the master: IMO circular MSC.1/Circ. 1229 sets forth guidelines for approval of stability instruments. Paragraph 4.6 therein specifies tolerances for various data values. However, the Coast Guard has determined that certain tolerances specified in ISO Standard 16155 are more-stringent, and has issued instructions to all authorized class societies that when approving stability instruments on behalf of the Coast Guard, the ISO tolerances should be used in lieu of the MSC circular as follows:

Hull Form Dependent	MSC.1/Circ. 1229	ISO Standard 16155
Displacement	2%	0.35%
LCB, from AP	1% / 5 cm max	0.2% / 5 cm max
Transverse metacentric height	1% / 5 cm max	0.2% / 5 cm max

2.3 In addition to the requirements of class rules and applicable conventions, the policies and interpretations of the following references should be applied where the ICLL leaves certain details to the satisfaction of the Administration:

- *USCG Load Line Technical Manual*: the *LL Technical Manual* integrates USCG load line regulation and policies, ABS and IACS interpretations, IMO circular, and the ICLL into a single reference document published in 1990; and
- *USCG Load Line Policy Notes*: the *LL Policy Notes* supplement the *LL Technical Manual* by updating all load line interpretations and policies implemented since 1990.

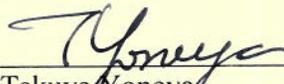
(the *LL Technical Manual* and *LL Policy Notes* are posted on the USCG load line website at: <http://www.uscg.mil/hq/cg5/cg5212/loadlines.asp>)

This Annex to the Agreement between the United States Coast Guard and Nippon Kaiji Kyokai, becomes effective as provided in the Agreement.

For the United States Coast Guard

For ClassNK

 on ~~DEC~~ 8, 2011
P. F. ZUKUNFT
Rear Admiral, U. S. Coast Guard
Assistant Commandant for Marine Safety,
Security and Stewardship

 on Nov. 25, 2011
Takuya Yoneya
Executive Vice President
Nippon Kaiji Kyokai (ClassNK)

