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# TRANSPACIFIC CARRIER SERVICES INC. AGREEMENT

F.M.C. Agreement No. 203-011409

(First Edition)

A Non-Substantive Administrative Services Sharing Agreement
under 46 C.F.R. § 572.302(a)(1)

EFFECTIVE
JUL 8 1997
UNDER THE
SHIPPING ACT
OF 1984
Federal Maritime Commission

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ARTICLE 1: FULL NAME OF AGREEMENT.

The full name of this Agreement is the "Transpacific Carrier Services, Inc. Agreement".

ARTICLE 2: PURPOSE OF THE AGREEMENT.

The purpose of this Agreement is to assist the constituent agreements which are Parties hereto (hereinafter "constituent agreements") in fulfilling obligations imposed by law or required by a constituent agreement through providing administrative and staff support functions.

ARTICLE 3: PARTIES TO THE AGREEMENT.

The Parties to the Agreement are Transpacific Carrier Services, Inc., a California mutual benefit nonprofit corporation, and the constituent agreements listed in Appendix A and Carriers listed in Appendix C. Similar agreements may be added and deleted as constituent agreements as set forth in Article 7, effective as of the earliest date permitted by the United States Shipping Act of 1984, as provided in foreign law or as agreed with Transpacific Carrier Services, Inc., whichever date is the later.

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT.

The administrative support provided under this Agreement is not geographically specific, and the geographic scope of the Agreement is the same as the geographic scope of all constituent agreements.

ARTICLE 5: AGREEMENT AUTHORITY.

5.1 This Agreement authorizes Transpacific Carrier Services Inc. to provide staffing and administrative support to constituent agreements including, but not limited to, (a) preparation and filing with governmental agencies and distribution to members of tariffs, service contracts, agreement amendments, minutes, responses to inquiries, comments, protests, petitions, legal defenses or complaints; (b) distribution of tariffs to subscribers; (c) carrying on public, governmental and shipper/consignee relations as required by section 5(b) (6) and (7) of the United States Shipping Act of 1984; (d) providing staff and arranging for accounting and legal assistance; (e) gathering and distributing statistics and trade data; (f) collecting assessments or dues, pursuant to the provisions of constituent agreements to pay expenses of Transpacific Carrier Services Inc. incurred on behalf of such agreements; (g) facilitating through communication between constituent

agreements, their members, and Transpacific Carrier Services Inc. staff, discussion and exchange of information regarding TCS and the respective constituent agreements, allocation of expenses and other tasks and responsibilities among the constituent agreements, and other matters of mutual interest pertaining to the operations and services of the constituent agreements and their members; and (h) such other assistance to the constituent agreements as they may require.

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5.2 Membership in Transpacific Carrier Services Inc., a membership corporation, is open to any ocean common carrier which is also a member of any constituent agreement.

5.3 Transpacific Carrier Services Inc. may enter into contracts or other arrangements with the constituent agreements and/or their members with respect to the type and manner of services to be performed on behalf of those agreements. The constituent agreements and their members may also enter into contracts or other arrangements with respect to the type and manner of services to be performed on behalf of the agreements and the allocation of costs and responsibilities and other terms and conditions with respect to those services.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATION OF AUTHORITY.

6.1 The officials of the Agreement shall be those designated by the ocean common carrier members of Transpacific Carrier Services Inc. under its by-laws.

6.2 Upon action taken by the Parties in accordance with this Agreement, any official of the Agreement and Agreement Counsel (including all members of the law firm of Agreement Counsel) are each authorized to execute and file amendments to this Agreement with the Federal Maritime Commission on behalf of the Parties.

ARTICLE 7: MEMBERSHIP, WITHDRAWAL, ADMISSION AND EXPULSION.

7.1 Constituent agreements whose members consist of ocean common carriers may become Parties hereto upon obtaining the agreement of Transpacific Carrier Services Inc., executing a counterpart copy of this Agreement and complying with requirements of applicable law.

7.2 Membership herein may be terminated by mutual consent of Transpacific Carrier Services Inc. and the constituent agreements.

7.3 Any constituent agreement may withdraw as a Party upon giving sixty (60) days notice to Transpacific Carrier Services Inc.

7.4 Transpacific Carrier Services Inc. may, upon sixty (60) days written notice, terminate the membership herein of any constituent agreement without its consent by reason of the

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failure of such agreement, directly or through its members, to pay assessments to cover the expenses of the constituent agreement and incurred on its behalf by Transpacific Carrier Services Inc. and may terminate the membership of any constituent agreement for any reason upon ninety (90) days written notice.

7.5 Withdrawal or other termination of membership herein shall not relieve any such constituent agreement or its members of any financial obligations incurred to Transpacific Carrier Services Inc. during the period prior to such withdrawal.

ARTICLE 8: VOTING.

Members of this Agreement may amend it by two-thirds vote. Nothing herein shall affect the voting rights of members of constituent agreements, as provided therein. Voting by ocean common carrier members of Transpacific Carrier Services Inc. shall be as provided in its corporate by-laws, consistent with

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the corporation laws of California, which by-laws are attached hereto as Appendix B and incorporated herein by reference.

ARTICLE 9: DURATION AND TERMINATION OF THIS AGREEMENT.

This Agreement shall terminate upon the mutual agreement of all Parties.

ARTICLE 10: INDEPENDENT ACTION.

Not applicable.

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ARTICLE 11: PROHIBITED ACTS.

Not applicable.

ARTICLE 12: TRADE RELATIONS, CONSULTATIONS, SHIPPERS' REQUESTS AND COMPLAINT.

Transpacific Carrier Services Inc. may perform trade relations functions, consultations and handling of shippers' requests and complaints on behalf of any constituent agreement so requesting.

ARTICLE 13: NEUTRAL BODY POLICING.

This Agreement does not provide for neutral body policing of obligations hereunder. Transpacific Carrier Services Inc. may, on behalf of any constituent agreement so requesting, provide or arrange for cargo inspection, misratings programs and other forms of self-policing of obligations under constituent agreements or otherwise imposed by law.

ARTICLE 14: SERVICE CONTRACTS.

This Agreement does not enter into service contracts. Transpacific Carrier Services Inc. may, on behalf of any constituent agreement, file service contracts with governmental agencies, keep records as may be required by governmental agencies or by the constituent agreement, file reports pursuant thereto and negotiate and administer or assist the constituent agreement in negotiating and administering service contracts.

ARTICLE 15: EXPENSES AND ASSESSMENTS.

The expenses of Transpacific Carrier Services Inc. may be recovered by assessments to a constituent agreement as agreed between Transpacific Carrier Services Inc. and the constituent agreement. Any constituent agreement may assign to Transpacific Carrier Services Inc. the function of assessing ocean common carrier members for a share of the constituent agreement expenses and obligations. Nothing in this Agreement relieves any ocean common carrier member of a constituent agreement of any financial or other obligation under such agreement.

ARTICLE 16: EFFECTIVE DATE AND AMENDMENTS.

This Agreement shall become effective on the earliest date permitted by the United States Shipping Act of 1984.

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TRANSPACIFIC CARRIER SERVICES INC. AGREEMENT
FMC AGREEMENT NO. 203-011409-006

APPENDIX A

WESTBOUND TRANSPACIFIC STABILIZATION AGREEMENT
1901 Harrison Street, Suite 1620
Oakland, CA 94612

TRANSPACIFIC SPACE UTILIZATION AGREEMENT
1901 Harrison Street, Suite 1620
Oakland, CA 94612

ASIA NORTH AMERICA EASTBOUND RATE AGREEMENT
1901 Harrison Street
Suite 1620
Oakland, CA 94612
(Note: The commercial authority of the Asia North America Eastbound Rate Agreement is currently suspended.)

TRANSPACIFIC STABILIZATION AGREEMENT
1901 Harrsion Street
Suite 1620
Oakland, CA 94612

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TRANSPACIFIC CONFERENCE SERVICES INC.
FMC AGREEMENT NO. _____

**BYLAWS**
**FOR THE REGULATION OF**
**TRANSPACIFIC CONFERENCE SERVICES INC.**
**A CALIFORNIA MUTUAL BENEFIT NONPROFIT CORPORATION**

(EXCEPT AS OTHERWISE PROVIDED BY
STATUTE OR ITS ARTICLES OF INCORPORATION)

APPENDIX B

TRANSPACIFIC CONFERENCE SERVICES INC.
FMC AGREEMENT NO. _____

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TRANSPACIFIC CONFERENCE SERVICES INC.
FMC AGREEMENT NO. _____

**BYLAWS**

# TRANSPACIFIC CONFERENCE SERVICES INC.

## A CALIFORNIA MUTUAL BENEFIT NONPROFIT CORPORATION

## ARTICLE I. OFFICES

Section 1.01. Principal Office. The principal office for the transaction of the business is located at 351 California Street, Suite 1450, San Francisco, California.

Section 1.02. Change of Address. The Board of Directors is hereby granted full power and authority to change the principal office of the Corporation from one location to another within or outside of the State of California. Any such change shall be noted by the Secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

## ARTICLE II. MEMBERS

Section 2.01. Classification and Qualification of Members. The Corporation shall have one class of Members (the "Members"). The Members shall be those corporations or other business entities identified in Section 5065 of the Corporations Code (the "Code") who are ocean common carriers and who are parties to the Transpacific Westbound Rate Agreement, formed pursuant to regulations promulgated by the Federal Maritime Commission, or are parties to other similar agreements among ocean common carriers ("Agreements") as may be served by the Corporation and who become Members pursuant to the procedures set forth in Section 2.02 of these Bylaws.

Section 2.02. Admission to Membership. Any person qualified for membership under Section 2.01 of these Bylaws other than members of Transpacific Westbound Rate Agreement shall be admitted to membership only on the approval of the Board of Directors, or any Committee appointed by the Board of Directors for such purpose, of an application submitted by such person in such form and in such manner as shall be prescribed by the Board of Directors and on the payment of any application fee or first annual dues as may be established pursuant to Sections 2.03 and 2.04 of these Bylaws.

Section 2.03. Application Fee. The Board of Directors shall have the power to establish and assess a fee, and to modify the amount thereof from time to time, to be charged for and payable with the application for membership. Such application fee shall be nonrefundable.

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Section 2.04. Dues. The Board of Directors shall have the power to establish and to modify from time to time the amount of annual dues payable to the Corporation by Members. Dues, if any, shall be payable for the first year on admission to membership and annually

thereafter at such time or times as may be fixed by the Board of Directors. A Member, on learning of the amount of dues determined by the Board of Directors and the time or times of payment fixed by the Board of Directors, may avoid liability for the dues by promptly resigning from membership, except where the Member is, by contract or otherwise, liable for the dues.

Section 2.05. Assessments. Memberships shall not be subject to assessment.

Section 2.06. Number of Members. There shall be no limit on the number of Members the Corporation may admit.

Section 2.07. Membership Book. The Corporation shall keep in written form or in any form capable of being converted into written form a membership book containing the name and address of each Member. The book shall also contain the fact of termination and the date on which such membership ceased. Such book shall be kept at the principal office of the Corporation and shall be subject to the rights of inspection required by law as set forth in Section 2.08 of these Bylaws.

Section 2.08. Inspection Rights of Members. Subject to the Corporation's right to set aside a demand for inspection pursuant to Section 8331 of the Code and the power of the court to limit inspection rights pursuant to Section 8332 of the Code, any Member, for a purpose reasonably related to such person's interest as a Member, may inspect and copy the records and/or obtain a list of all the Members' names, addresses, and voting rights on five (5) business days' prior written demand on the Corporation, which demand shall state the purpose for which the inspection rights are requested.

The accounting books and records as well as the minutes of proceedings of the Members, the Board of Directors, and committees of the Board of Directors shall be open to inspection upon the written demand on the Corporation by any Member at any reasonable time for a purpose reasonably related to such person's interests as a Member.

Section 2.09. Certificates of Membership. The Corporation shall not issue membership certificates.

Section 2.10. Nonliability of Members. A Member of the Corporation shall not, solely because of such membership, be personally liable for the debts, obligations, or liabilities of the Corporation.

Section 2.11. Transferability of Membership. Neither the membership in the Corporation nor any rights in the membership may be transferred for value or otherwise.

Section 2.12. Termination of Membership.

(a) Causes of Termination. A Member may resign from membership at any time upon giving written notice of said resignation to the Corporation unless it is a member of

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Transpacific Westbound Rate Agreement in which case it must also have resigned from that Agreement. The membership of any Member also (i) shall terminate at the expiration of the notice period below after such Member's ceasing to be a party to any Agreement served by the Corporation or (ii) may terminate, at the option of the Board of Directors, upon failure by the Member to pay its dues, if any, when due and within thirty (30) days thereafter with termination to be effective at the end of such thirty (30) day period. In the cases of termination under (i) or (ii) immediately above, such Member shall be given both a fifteen (15) days' prior written notice of the termination stating the reasons therefore and an opportunity to be heard not less than five (5) days prior to the effective date of the termination in accordance with the procedures set forth in greater detail in the Code.

(b) Effect of Termination. All rights of a Member in the Corporation and in its property shall cease on the termination of such Member's membership. Termination shall not relieve the Member from any obligation for dues assessed or for its share of any obligations incurred as a party to any Agreements served by the Corporation. The Corporation shall retain the right to enforce any such obligation or obtain damages for its breach.

## ARTICLE III. MEETINGS OF MEMBERS

Section 3.01. Place. Meetings of Members shall be held at the principal office of the Corporation or at such location within or outside of the State of California as may be designated from time to time by the Board of Directors.

Section 3.02. Regular Meetings. The Members shall meet at least once annually at such time and place as the Board of Directors may determine for the purpose of electing Directors and transacting such other proper business as may come before the meeting.

Section 3.03. Special Meetings. Special meetings of Members may be called by the Board of Directors, the Chairman of the Board, if any, the President or five (5) percent or more of the Members and shall be held at such place as is fixed in Section 3.01 of these Bylaws for regular meetings of Members or at such times and places within or outside of the State of California as may be ordered by resolution of the Board of Directors.

Section 3.04. Notice of Meetings. Written notice of every meeting of Members shall be either personally delivered or mailed by the Corporation by first-class United States mail, postage pre-paid, or communicated by facsimile or telegraphic communication not less than ten (10) nor more than ninety (90) days before the date of the meeting to each Member who on the record date for notice of the meeting is entitled to vote thereat. In the case of a special meeting of Members called by any person (other than the Board of Directors) entitled to call such meeting under Section 3.03 hereof, upon request by such person in writing to the Chairman, the President, any Vice-President, or the Secretary, the officer forthwith shall, within twenty (20) days after receipt of the request, cause notice to be given to all Members entitled to vote that

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a meeting will be held at a time fixed by the Board of Directors not less than thirty-five (35) days nor more than ninety (90) days after receipt of the written request.

No meeting of the Members may be adjourned more than 45 days. If a meeting is adjourned to another time or place, and thereafter a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each Member of record who, on the record date for notice of the meeting, is entitled to vote at the meeting.

The notice shall state the place, date and time of the meeting. In the case of regular meetings, the notice shall state those matters which the Board of Directors, at the time the notice is given, intends to present for action by the Members. In the case of a special meeting, the notice of the meeting must state the general nature of the business to be conducted, and no other business may be transacted. The notice of any meeting at which the Directors are to be elected shall include the names of all those who are nominees at the time the notice is given to the Members.

Section 3.05. Waivers, Consents, and Approvals. The transactions of any meeting of Members, however called and noticed, and wherever held, shall be valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote but not present in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.06. Quorum. A quorum at any meeting of Members shall consist of a majority of the voting power, represented in person or by proxy. For purposes of this Bylaw, "voting power" means the power to vote for the election of Directors at the time any determination of voting power is made and does not include the right to vote on the happening of some condition or event which has not yet occurred.

Section 3.07. Loss of Quorum. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if such action taken, other than adjournment, is approved by at least a majority of Members required to constitute a quorum.

Section 3.08. Adjournment for Lack of Quorum. In the absence of a quorum, any meeting of Members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by proxy, but no other business may be transacted except as provided in Section 3.07 of these Bylaws.

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Section 3.09. Voting of Membership.

(a) Entitlement. Each Member is entitled to one vote on each matter submitted to a vote of the Members.

(b) Record Date of Membership. The Board of Directors shall fix, in advance, a date as the record date for the purposes of determining the Members entitled to notice of and to vote at a meeting of Members. The record date for entitlement to notice shall not be more than ninety (90) nor less than ten (10) days before the date of the meeting. The record date for entitlement to vote shall not be more than sixty (60) days before the date of the meeting. The Board of Directors shall also fix, in advance, a date as the record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action. Such record date shall not be more than 60 days prior to such other action.

(c) Cumulative Voting. Every Member entitled to vote at any election of Directors may cumulate the Member's votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which the Member is entitled, or distribute the Member's votes on the same principle among as many candidates as the Member thinks fit. No Member shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to the voting and the Member has given notice at the meeting prior to the voting of the Member's intention to cumulate votes. If any one Member has given this notice, all Members may cumulate their votes for candidates in nomination. In any election of directors by cumulative voting, the candidates receiving the highest number of votes are elected.

(d) Proxy Voting. Members entitled to vote, as set forth in Section 3.09(a) of these Bylaws, shall have the right to vote either in person or by a written proxy executed by such person or its duly authorized agent and filed with the Secretary of the Corporation, except as otherwise expressly provided in these Bylaws, provided, however, that a proxy shall not be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. The maximum term of any proxy shall be three (3) years from the date of its execution. Every proxy shall continue in full force and effect until revoked by the person executing it prior to the vote pursuant thereto.

Section 3.10. Action Without Meeting by Written Ballot.

(a) Ballot Requirements. Subject to the limitations specified in Section 3.10(b) of these Bylaws, any action which may be taken at any regular or special meeting of Members may be taken without a meeting provided there is satisfaction of the following ballot requirements:

(1) The Corporation distributes a written ballot by mail, hand delivery, facsimile or telegraph to every Member entitled to vote on the matter;

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(2) The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Corporation;

(3) The number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(4) The number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(b) Limitations Pertaining to Election of Directors. Directors may be elected by written ballot, except that election of Directors by written ballot shall not be permitted at any time when these Bylaws authorize election of Directors by cumulative voting pursuant to Section 7615 of the Code.

(c) Solicitation of Ballots. Ballots shall be solicited in a manner consistent with the requirements of giving notice of Members' meetings set forth in Section 3.04 of these Bylaws and of voting by written ballot set forth in Section 3.10(d) of these Bylaws. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of Directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation shall specify the time by which the ballot must be received in order to be counted.

(d) Voting by Written Ballot. In any election of Directors, any form of written ballot in which the Directors to be voted on are named therein as candidates and which is marked by a Member "withheld" or otherwise marked in a manner indicating that the authority to vote for the election of Directors is withheld shall not be voted either for or against the election of Director.

(e) Revocation of Ballot. A written ballot may be revoked or another ballot substituted, provided that the Secretary of the Corporation receives the revocation or substitute ballot in writing prior to the date of the vote.

Section 3.11 Conduct of Meetings.

(a) Chairman. The President of the Corporation or, in his or her absence, any other person chosen by a majority of the voting Members present in person or by proxy shall be Chairman of and shall preside over the meetings of the Members.

(b) Secretary of Meetings. The Secretary of the Corporation shall act as the secretary of all meetings of Members; provided that in his or her absence, the Chairman of the meetings of Members shall appoint another person to act as secretary of the meetings.

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(c) Rules of Order. Robert's Rules of Order, as amended from time to time, shall govern the meetings of Members insofar as such rules are not inconsistent with or in conflict with these Bylaws, the Articles of Incorporation of this Corporation, the law, or procedures that may be adopted from time to time by the Board of Directors.

## ARTICLE IV. DIRECTORS

Section 4.01. Powers. Subject to the provisions of the California Nonprofit Mutual Benefit Corporation Law of California and any limitations in the Articles of Incorporation or the Bylaws relating to action required to be approved by the Members or by a majority of all Members, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors. The Board of Directors may delegate the management of the day-to-day operation of the business of the Corporation to a management company or other persons, provided that the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Directors.

Section 4.02. Number. The Corporation shall have not fewer than three (3) nor more than fifteen (15) Directors with the exact number of Directors within that range to be fixed from time to time by the Board of Directors. The initial number of Directors shall be nine (9). Collectively, all of the Directors shall be referred to as the Board of Directors.

Section 4.03. Terms of Office. Each Director shall hold office for a term of one (1) year from the date of the Director's election, and until the Director's successor is elected and qualifies under Section 4.04 of these Bylaws. In the event a Director is removed at a special meeting of the Members called and held as prescribed in Section 3.03 of these Bylaws, the Director shall hold office until his or her removal and his or her successor is elected and qualifies and no longer.

Section 4.04. Election. The Directors shall be elected at each annual meeting of Members as prescribed by Section 3.02 of these Bylaws. The candidates receiving the highest number of votes up to the number of Directors to be elected are elected. Directors shall be eligible for reelection without limit on the number of terms they serve, provided they continue to meet the qualifications required by the Corporation.

Section 4.05. Qualifications of Directors. The Board of Directors may establish, and modify from time to time, qualifications for entitlement to serve on the Board of Directors relating to such matters as experience in the ocean common carrier industry, seniority within the businesses of any of the Members, relevant business or financial expertise, and such other factors as the Board of Directors may determine to be reasonable and appropriate to assure that members of the Board of Directors are suitable in furtherance of the purposes of the Corporation as set forth in its Articles of Incorporation and these Bylaws.

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Section 4.06. Compensation. The Directors shall serve without compensation.

Section 4.07. Meetings.

(a) Call of Meetings. The Board of Directors shall meet at least once per year. Regular meetings of the Board of Directors can be held without notice if the time and place of such meetings are fixed by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman of the Board or the President or any Vice-President or the Secretary or any two (2) Directors. Special meetings shall be held on four (4) days' notice by first-class mail, postage prepaid, or on forty-eight (48) hours' notice delivered personally or by telephone or telegraph. Notice of the special meeting need not be given to any Director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such Director. All such waivers, consents, and approval shall be filed with the corporate records or made a part of the minutes of the meeting.

(b) Place of Meetings. All meetings of the Board of Directors shall be held at the principal place of business of the Corporation as specified in Section 1.01 of these Bylaws or at such other place as shall be identified in the notice of any meeting.

(c) Quorum. A majority of the authorized number of Directors constitutes a quorum of the Board of Directors for the transaction of business, except as hereinafter provided.

(d) Transactions of Board of Directors. Except as otherwise provided in the Articles, in these Bylaws, or by law, every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, provided, however, that at any meeting at which a quorum was initially present, those Directors present may continue to transact business notwithstanding the withdrawal of one or more Directors so long as any action taken is approved by at least a majority of the required quorum for such meeting.

(e) Conduct of Meetings. The Chairman of the Board or, in his or her absence, any Director selected by the Directors present shall preside at meetings of the Board of Directors. The Secretary of the Corporation or, in his or her absence, any person appointed by the presiding officer shall act as Secretary of the meeting. Members of the Board of Directors may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Members participating in such meeting can hear one another. Such participation shall constitute a personal presence at the meeting.

(f) Adjournment. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment to another time or

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place must be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

Section 4.08. Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board of Directors individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as the unanimous vote of such Directors.

Section 4.09. Removal of Directors. Any Director may be removed for cause or without cause as provided in the Code. The Board may declare vacant the office of a Director who has been declared of unsound mind by a final order of court or convicted of a felony.

Section 4.10. Resignation of Director. Any Director may resign effective on giving written notice to the Chairman of the Board, the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 4.11. Nomination for Director. Nominations for election of members of the Board of Directors may be made by the Board of Directors or by any Member entitled to vote for the election of Directors. The Board of Directors shall prepare in connection with each annual meeting of Members a slate of nominees, which slate shall be formed in consultation with the Members. Notice of intention to make any nomination or nominations, other than by the Board of Directors, shall be made in writing and shall be received by the President or Chairman of the Board of the Corporation no more than sixty (60) days prior to any meeting of Members called for the election of Directors, nor more than ten (10) days after the date the notice of such meeting is sent to Members pursuant to Section 3.04 of these Bylaws, and not later than the time fixed in the notice of the meeting for the opening of the meeting.

Any notice of intention to make any nomination or nominations for election of members of the Board of Directors, other than by the Board of Directors, shall contain the following information to the extent known to the notifying Member:

(i) the name and address of each proposed nominee;

(ii) the principal occupation of each proposed nominee;

(iii) information demonstrating that the proposed nominee satisfies the Director qualifications which may be established by the Board of Directors from time to time pursuant to Section 4.05 hereof; and

(iv) the name and address of the notifying Member.

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Nominations not made in accordance herewith may be disregarded by the then chairman of the meeting, and the inspectors of election shall then disregard all votes cast for each such nominee.

Section 4.12. Vacancies in the Board of Directors.

(a) Causes. Vacancies on the Board of Directors shall exist on the death, resignation, or removal of any Director; whenever the number of Directors authorized is increased; and on the failure of the Members in any election to elect the full number of Directors authorized.

(b) Filling Vacancies by Designation. Any vacancy on the Board of Directors as a result of any cause identified in (a) above shall first be filled in accordance with the following procedure. Upon the occurrence of a vacancy, the Member to whom the Director whose position has become vacant is most closely related by employment or other representative capacity, shall within fifteen (15) days give notice to the Board of Directors of the name of a person, meeting the qualifications established pursuant to Section 4.05 hereof, who the Member wishes to fill the vacancy and to serve the remainder of the Director's term. Unless the Board shall conclude within fifteen (15) days from the date of receipt of the notice that the person named by the Member to fill the vacancy does not meet the qualifications established pursuant to Section 4.05 of these Bylaws, the person named by the Member shall become a Director effective as of the expiration of such latter fifteen (15) day period. If the Board concludes during the relevant time that the qualifications are not met, the Board immediately shall notify such Member of the failure to qualify and shall state the bases on which the conclusions were reached. The Member shall, in accordance with the above notice procedure, either resubmit the person's name together with evidence that the qualifications have been satisfied or shall provide the name of a different person to be designated who shall meet those qualifications. If (i) such second submission is again rejected by the Board of Directors for failure to meet established Director qualifications or (ii) upon giving effect to the designation of the Director to fill the vacancy, more than one third of the then authorized Directors would be serving as Directors as a result of using this procedure to fill vacancies caused other than by death, resignation or removal, then the vacancy may not be filled pursuant to this procedure but shall be filled pursuant to Sections 4.12(c) or (d).

(c) Filling Vacancies by Directors. Except as otherwise provided in the Articles or these Bylaws, specifically including Section 4.12(b), and except for a vacancy created by the removal of a Director pursuant to Section 4.09 of these Bylaws, vacancies on the Board of Directors may be filled by approval of the Board of Directors, or, if the number of Directors then in office is less than a quorum, by (1) the unanimous written consent of the Directors then in office; (2) the affirmative vote of a majority of the Directors then in office at a meeting held pursuant to notice or waivers of notice as provided in Section 4.07(d) of these Bylaws; or (3) a sole remaining Director.

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Section 4.15. Committees.

(a) The Board of Directors may, by resolution adopted by a majority of the Directors then in office, provided that a quorum is present, create one (1) or more committees, each consisting of two (2) or more Directors, to serve at the pleasure of the Board of Directors. Appointments to such committees shall be by a majority vote of the Directors then in office. The Board of Directors may designate a chairman for each committee who shall have the sole power to call any committee meeting other than a meeting set by the Board of Directors. The Board of Directors may appoint one (1) or more Directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors or in these Bylaws, shall have all the authority of the Board of Directors, except with respect to:

(1) the approval of any action for which the Nonprofit Mutual Benefit Corporation Law of California requires approval of the Members (as defined in Section 5034 of the Code) or approval of a majority of all Members (as defined in Section 5033 of the Code);

(2) the filling of vacancies on the Board of Directors or in any committee which has the authority of the Board of Directors;

(3) the fixing of compensation of Directors for serving on the Board of Directors or on any committee;

(4) the amendment or repeal of Bylaws or the adoption of new Bylaws;

(5) the amendment or repeal of any resolution of the Board of Directors which by its express terms is not so amendable or repealable;

(6) the appointment of committees of the Board of Directors or the members thereof;

(7) the expenditure of corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected; and

(8) with respect to any assets held in charitable trust, the approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233 of the Code.

The above shall not apply to any committee which does not exercise the authority of the Board of Directors.

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(d) Filling Vacancies by Members. Vacancies created by removal of Directors and not filled pursuant to Section 4.12(b) of these Bylaws shall be filled only by the approval of the Members within the meaning of Section 5034 of the Code. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

Section 4.13. Duties and Liabilities of Directors. A Director shall perform the duties of a Director, including duties as a member of any committee of the Board of Directors upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(a) one (1) or more officers or employees of the Corporation whom the Director believes to be reliable or competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or

(c) a committee of the Board of Directors upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence;

so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a Director in accordance with this Section 4.13 shall have no liability based upon any alleged failure to discharge the person's obligations as a Director.

Section 4.14. Transactions between the Corporation and Its Directors or Corporations Having Interrelated Directors.

(a) No contract or other transaction between the Corporation and one (1) or more of its Directors, or between the Corporation and any corporation, firm, or association in which one (1) or more of its Directors has a material financial interest, is either void or voidable because such Director or Directors or such other corporation, firm, or association are parties or because such Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves, or ratifies the contract or transaction, if

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(1) the material facts as to the transaction and as to such Director's interest are fully disclosed or known to the Members and such contract or transaction is approved by the Members in good faith, with any membership owned by any interested Director not being entitled to vote thereon;

(2) the material facts as to the transaction and as to such Director's interest are fully disclosed or known to the Board of Directors or committee thereof, and the Board of Directors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested Director or Directors and the contract or transaction is just and reasonable as to the Corporation at the time it is authorized, approved, or ratified; or

(3) as to contracts or transactions not approved as provided in paragraphs (1) or (2) of this subsection (a), the person asserting the validity of the contract or transaction sustains the burden of proving that the contract or transaction was just and reasonable as to the Corporation at the time it was authorized, approved, or ratified.

A mere common directorship does not constitute a material financial interest within the meaning of this subsection (a). A Director is not interested within the meaning of this subsection (a) in a resolution fixing the compensation of another Director as a Director, officer, or employee of the Corporation, notwithstanding the fact that the first Director is also receiving compensation from the Corporation.

(b) No contract or other transaction between the Corporation and any corporation or association of which one (1) or more of its Directors are directors is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves, or ratifies the contract or transaction, if

(1) the material facts as to the transaction and as to such Director's other directorship are fully disclosed or known to the Board of Directors or committee, and the Board of Directors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Director or Directors or the contract or transaction is approved or ratified in good faith by the Members; or

(2) as to contracts or transactions not approved as provided in paragraph (1) of this subsection (b), the contract or transaction is just and reasonable as to the Corporation at the time it is authorized, approved, or ratified.

This subsection (b) does not apply to contracts or transactions covered by subsection (a).

(c) Interested or common Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies a contract or transaction.

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(b) The provisions of these Bylaws applicable to the Board of Directors shall apply also in the same general manner to committees of the Board of Directors and action of such committees.

## ARTICLE V. OFFICERS

Section 5.01. Number and Titles. The officers of the Corporation shall be either or both a Chairman of the Board or a President, a Secretary, a Chief Financial Officer, and such other officers with such titles and duties as shall be determined by the Board of Directors or by the President, as set forth in Section 5.03 below, and as may be necessary to enable it to sign instruments. If the Corporation has only a President, and not a Chairman of the Board, the President shall serve as the general manager and chief executive officer of the Corporation. In the event the Corporation has both a President and a Chairman of the Board, the Board of Directors shall determine which shall be the general manager and chief executive officer of the Corporation. Any number of offices may be held by the same person.

Section 5.02. Appointment, Duties and Resignation of Officers. The officers shall be chosen by and serve at the pleasure of the Board of Directors or the President, as the case may be, subject to the rights, if any, of an officer under any contract of employment. The officers shall have such duties as the Board of Directors shall from time to time establish. Any officer may resign at any time on written notice to the Corporation without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5.02. Appointment of Certain Officers by President. The President or, if there is no President, the Chairman may appoint such assistant vice presidents, assistant secretaries, or assistant treasurers as may be appropriate in the judgment of the President to carry out the day-to-day business of the Corporation.

## ARTICLE VI. MISCELLANEOUS

Section 6.01. Keeping Records. The Corporation shall keep adequate and correct records of account and minutes of the proceedings of its Members, Board of Directors, and committees of the Board of Directors. The Corporation shall also keep a record of its Members giving their names and addresses. The minutes shall be kept in written form. Other books and records shall be kept in either written form or in any other form capable of being converted into written form.

Section 6.02. Annual Report. The Corporation shall notify each Member yearly of the Member's right to receive a financial report pursuant to Code Section 8321(a). Except where the Corporation receives less than ten thousand dollars ($10,000) in gross revenues or receipts during the fiscal year, on the written request of a Member the Board of Directors shall promptly cause the most recent annual report to be sent to the requesting Member. The annual report shall be prepared not later than one hundred and twenty (120) days after the close of the



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Corporation's fiscal year. The annual report shall contain in appropriate detail the following: (1) a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year; (2) a statement of the place where the names and addresses of the current Members are located; and (3) any information concerning certain transactions and indemnifications required by Code Section 8322. The annual report shall be accompanied by any report thereon of independent accountants or, if there is not such a report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

Section 6.03. Annual Statement of Certain Transactions and Indemnifications. The Corporation shall furnish annually to its Members a statement of any transaction or indemnification described in Code Section 8322(d) and (e), if such transaction or indemnification took place.

Section 6.04. Authorized Signatures For Checks. All checks, drafts, or other orders for payment of money, notes, and other evidences of indebtedness issued in the name of or payable to the Corporation shall be signed or endorsed in the manner and by the persons authorized by the Board of Directors.

Section 6.05. Executing Contracts and Instruments. The Board of Directors may authorize any of its officers or agents to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. This authority may be general or it may be confined to one or more specific matters. No officer, agent, employee, or other person purporting to act on behalf of the Corporation shall have any power or authority to bind the Corporation in any way, pledge its credit, or render it liable for any purpose in any amount, unless that person was acting with authority duly granted by the Board of Directors as provided in these Bylaws, or unless an unauthorized act was later ratified by the Corporation.

Section 6.06. Indemnification of Officers. To the fullest extent permitted by California Nonprofit Mutual Benefit Corporation Law, this Corporation shall indemnify its officers, including persons formerly occupying such position, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any proceeding or potential proceeding arising out of the relationship, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Corporation, and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. For the purposes of Sections 6.06, 6.07 and 6.08 of these Bylaws, "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative, and "expenses" include but are not limited to attorneys' fees and any expenses of establishing a right to indemnification under this section.

Section 6.07. Indemnification of Other Corporate Agents. To the fullest extent permitted by California Nonprofit Mutual Benefit Corporation Law, this Corporation shall have the power to indemnify its Directors, employees other than officers, and any of its other agents, including

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persons formerly occupying any such position, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any proceeding or potential proceeding arising out of the relationship, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Corporation, and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. For the purposes of this Section 6.07, "agent" means any person who is or was a Director, employee, or other agent of this corporation or its predecessor, and any person who is or was serving as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, at the request of this Corporation or its predecessor.

Section 6.08. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the Board of Directors in a specific instance, expenses incurred by a person to whom the Corporation is providing indemnification under Sections 6.06 and 6.07 of these Bylaws in defending any proceeding covered by those Sections shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Corporation for those expenses.

Section 6.09. Purchase of Liability Insurance. This Corporation shall have the right to purchase and maintain insurance to the maximum extent permitted by the California Nonprofit Mutual Benefit Corporation Law on behalf of its officers, Directors, employees, and other agents, against any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising out of the officer's, Director's, employee's, or agent's status as such.

Section 6.10. Loans and Guarantees to Directors and Officers. Unless otherwise permitted in accordance with Section 7235 of the Code, the Corporation shall not make any loan of money or property to, or guaranty the obligation of, any Director or officer of the Corporation or its affiliates unless the Board of Directors determines that the transaction may reasonably be expected to benefit the Corporation, and unless prior to consummating the transaction, the loan or guaranty is approved by the Members or a majority of the Board of Directors, excluding the vote of any interested Director or officer. Notwithstanding the preceding sentence, the Corporation may advance money to a Director or officer of the Corporation or its affiliates for any expenses reasonably anticipated to be incurred in the performance of the duties of the Director or officer, provided that the Director or officer would otherwise be entitled to be reimbursed for such expenses by the Corporation or its affiliates.

Section 6.11. Construction and Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and the feminine includes the

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masculine, the singular includes the plural and the plural includes the singular, and the term "person" includes both a legal entity and a natural person.

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TRANSPACIFIC CONFERENCE SERVICES INC.
FMC AGREEMENT NO. _____

CERTIFICATE OF SECRETARY
OF

**TRANSPACIFIC CONFERENCE SERVICES INC.,**
a California Mutual Benefit Nonprofit Corporation

I hereby certify that I am the duly elected and acting Secretary of said Corporation and that the foregoing Bylaws, comprising seventeen (17) pages, constitute the Bylaws of said Corporation as duly adopted by the Board of Directors thereof on February 26, 1993.

Dated: February 26, 1993

William J. Anderson, Secretary

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TRANSPACIFIC CONFERENCE SERVICES INC. AGREEMENT
FMC AGREEMENT NO. 203-011409-006

APPENDIX C -- CARRIER PARTIES TO THE AGREEMENT

American President Lines, Ltd. and
APL Co. Pte. Ltd. Operating as A
Single Carrier and As a Single Member)
1111 Broadway, 9th Floor
Oakland, California 94607

Evergreen Marine Corporation
Evergreen Building
330, Mincheng East road
Taipei, Taiwan

Hanjin Shipping Co., Ltd.
9th Floor, 25-11, Yoldo-dong,
Youndeungpo-ku, Seoul, Korea

Hapag-Lloyd Container Linie GmbH
Ballindam 25
2000 Hamburg 1, Germany

Hyundai Merchant Marine, Co., Ltd.
15th Floor, Hyundai Building
178 Se ChongRo, Chongro-Ku
Seoul, Korea

Kawasaki Kisen Kaisha, Ltd.
Hibiya Central Building
2-9 Nishi-Shinbashi 1-chome
Minato-Ku
Tokyo 105, Japan

A.P. MOLLER-MAERSK SEALAND
50 Esplanaden
DK-1098, Copenhagen K

Mitsui O.S.K. Lines, Ltd.
1-1, Toranomon, 2-Chome
Minato-Ku
Tokyo 105-91 Japan

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TRANSPACIFIC CARRIER SERVICES INC. AGREEMENT
FMC AGREEMENT NO. 203-011409-007

APPENDIX C -- CARRIER PARTIES TO THE AGREEMENT (CONTINUED)

Nippon Yusen Kaisha, Ltd
Yusen Building
3-2, Marunouchi 2-chome
Chiyoda-Ku
Tokyo 100-91 Japan

Orient Overseas Container Line Limited
Harbour Centre, 31st Floor
25 Harbour Road
Wanchai, Hong Kong
(Effective January 1, 2001)

P&O Nedlloyd B.V.
One Meadowlands Plaza, 12th Floor
East Rutherford, NJ 07073

P&O Nedlloyd Limited
One Meadowlands Plaza
12th Floor
East Rutherford, NJ 07073

Yang Ming Lines
4th Floor 53 Hwai Ning Street
Republic Taiwan

China Ocean Shipping (Group) Co.
Lucky Tower,
3 Dong San Huan Bei Road
Chaoyang District, Beijing

CMA CGM S.A.
4 Quai d'Arnec
P.O. Box 2409
Marseille 13215 Cx2 France

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