217-011450

FMC Agreement No. _____

RECEIVED
'94 APR 21
FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

SPACE CHARTER AGREEMENT

BETWEEN

KYOWA SHIPPING CO., LTD. AND NIPPON YUSEN KAISHA

(A space charter agreement as defined in
46 C.F.R. § 572.104(dd))

effective 5/20/94

TABLE OF CONTENTS

Article 1: Agreement Name 2

Article 2: Purpose of the Agreement 2

Article 3: Parties to the Agreement 2

Article 4: Geographic Scope of the Agreement 3

Article 5: Overview of Agreement Authority 3

Article 6: Officials of the Agreement and Delegations of Authority 4

Article 7: Membership, Withdrawal, Readmission and Expulsion 4

Article 8: Voting 5

Article 9: Duration and Termination 5

Article 10: Effective Date 5

Article 11: Force Majeure 6

Article 12: Limitations 6

Article 13: Notices 6

Article 14: Governing Law and Arbitration 7

Article 15: Assignments 8

Signatures 9

THIS AGREEMENT is entered into on this 20th day of April, 1994 by and between KYOWA SHIPPING CO., LTD. ("KYOWA"), a Japanese Corporation, having its principal place of business at 2-3, Hamamatsucho 2-chome, Minato-ku, Tokyo 105, Japan, and Nippon Yusen Kaisha ("NYK"), a Japanese corporation having its principal place of business at 3-2, Marunouchi, 2-chome, Chiyoda-ku, Tokyo 100, Japan, on the following terms and conditions.

ARTICLE 1: AGREEMENT NAME.

This Agreement's full name is "Space Charter Agreement Between Kyowa Shipping Co., Ltd. and Nippon Yusen Kaisha".

ARTICLE 2: PURPOSE OF THE AGREEMENT.

The purpose of this Agreement is to permit the parties to achieve efficiencies and economies in conducting their respective Pacific Islands ocean common carrier services by permitting NYK to make use of space on vessels owned, operated or chartered by Kyowa, on specified terms and conditions, within the geographic scope of this agreement as set forth in Article 4 hereof.

ARTICLE 3: PARTIES TO THE AGREEMENT.

The parties to this Agreement are: (1) Kyowa Shipping Co., Ltd., a Japanese Corporation and an ocean common carrier in the trade covered hereby, having its principal place of business at

2-3 Hamamatsucho 2-chome, Minatu-ku Tokyo 105, Japan and (2) Nippon Yusen Kaisha, a Japanese Corporation and an ocean common carrier in the trade covered hereby, having its principal place of business at 3-2, Marunouchi, 2-chome, Chiyoda-ku, Tokyo 100, Japan.

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT.

The geographic scope of this Agreement shall extend to the trade between ports in the Far East and South East Asia, on the one hand, and ports of Guam and Saipan, on the other hand, whether any such ports or points are served by direct vessel call, relay or transshipment and includes the inland intermodal carriage of cargoes by the parties via such ports (the "Trade").

ARTICLE 5: OVERVIEW OF AGREEMENT AUTHORITY.

A. KYOWA will provide to NYK 50 TEU slots per month in the Trade, on terms, conditions, and compensation to be adopted by the parties, provided, however, that the parties may from time to time decrease or increase the number of such slots (up to a maximum of 200 TEU per month) with such adjustments to terms, conditions and compensation as the parties may adopt. NYK shall pay for slots actually utilized.

B. KYOWA schedule adjustments and/or alterations in service in the Trade, including cancellations or substitutions of

ports and/or vessels are at the sole convenience of KYOWA. KYOWA shall give NYK notice of any such adjustments and/or alterations as soon as it is practicable.

C. Any movement or repositioning of NYK containers will be required only to the extent permitted by the laws of the United States and applicable regulations issued thereunder, including, but not limited to, the Jones Act (46 U.S.C. § 883) and related U.S. Government regulations.

D. The liability and obligations as between KYOWA and NYK with respect to cargo and containers carried for the account of NYK ("NYK Cargo") while in the custody of KYOWA shall be governed by the terms and conditions of the KYOWA long-form combined transport Bill of Lading in use at the time as if KYOWA were the "Carrier" and NYK the "Merchant" referrred to herein.

ARTICLE 6: <u>OFFICIALS OF THE AGREEMENT AND DELEGATION OF AUTHORITY</u>.

There are no officials of the Agreement. Legal counsel for the parties are hereby authorized to file and process this Agreement, together with any subsequent amendments thereto adopted by the parties, with the Federal Maritime Commission.

ARTICLE 7: <u>MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION</u>.

None.

ARTICLE 8: VOTING.

None.

ARTICLE 9: DURATION AND TERMINATION.

A. This Agreement shall continue in effect until terminated by either party giving written notice to the other not less than sixty (60) days prior to the termination date specified in that notice, provided that no notice of termination shall be given by either party before August 1, 1994, unless a mutual decision to terminate is agreed by the parties; and further provided that as to any voyage begun while this Agreement is in effect but not completed at the time of this Agreement's termination, this Agreement shall remain applicable to such voyage until completed. Termination of this Agreement shall not relieve the parties of any obligations which they incurred under this Agreement prior to the termination date.

B. Upon termination of this Agreement, the parties shall promptly so notify the Federal Maritime Commission.

ARTICLE 10: EFFECTIVE DATE.

This Agreement shall be effective on the earliest date it may lawfully be carried out under the Shipping Act of 1984.

ARTICLE 11: FORCE MAJEURE.

Neither party to this Agreement shall be held responsible with respect to its failure to perform any term or condition of this Agreement if such failure is due to civil commotion, invasion, rebellion, hostilities, sabotage, strikes, labor disputes, work slowdowns or work stoppages, governmental (national, state, territorial, prefectrual, municipal or other) regulation, controls or actions, acts of God, or any other cause whatsoever beyond the control of the party.

ARTICLE 12: LIMITATIONS.

A. Each party to this Agreement shall issue its own Bill of Lading applicable to its cargoes and each party shall maintain individually its own tariff unless the parties should each be members of the same Conference or Rate Agreements.

B. Neither party shall be deemed to be the agent of the other for purposes of this Agreement.

C. The parties shall solicit and book cargoes for their own separate accounts, and there shall be no joint solicitation and/or booking.

ARTICLE 13: NOTICES.

A. Any notices or other communication between the parties in connection with this Agreement shall be sent by first class

airmail, postage prepaid, addressed as follows:

Kyowa Shipping Co., Ltd.
2-3, Hamamatsucho 2-chome
Minato-ku, Tokyo 100
JAPAN

Nippon Yusen Kaisha
3-2 Marunouchi, 2-chome
Chiyoda-ku, Tokyo 100
JAPAN

B. Notice provided under paragraph A of this Article shall be effective as of the date of the notice.

ARTICLE 14: GOVERNING LAW AND ARBITRATION.

Any and all differences and disputes of whatever nature arising out of this Agreement shall be arbitrated in Tokyo. This Agreement shall be governed by the laws of Japan. The parties expressly choose the above-described laws to the exclusion of all other laws or choice-of-law rules which mich otherwise be applicable. The parties agree that any such arbitration shall be before a board of three persons, consisting of one arbitrator to be appointed by each party and one by the two so chosen. Either party may call for arbitration by service upon the other of a written notice specifying the name and address of the arbitrator chosen by the first party and a description of the disputes or differences which that party desires to put to arbitration. If the other party shall not, by notice served within twenty days of the service of such first notice, appoint its arbitrator to

arbitrate the disputes or differences specified, then the first party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator had been appointed by the other party. The selection of all arbitrators under this Article shall be accomplished within 90 days following the original notice calling for arbitration. Any award of the arbitrators under this Article shall be binding upon the parties and enforceable as a rule of court in any court of competent jurisdiction. Nothing provided in this Article shall be construed to relieve the parties from any duties or obligations under the laws of the United States, including but not limited to, the Shipping Act of 1984, as amended.

ARTICLE 15: <u>ASSIGNMENTS</u>.

Neither party to this Agreement may assign its rights or delegate its obligations under this Agreement to any person firm or corporation without the prior written consent of the other party, subject to any requisite filings with the U.S. Federal Maritime Commission.

KYOWA SHIPPING CO./NIPPON YUSEN
KAISHA SPACE CHARTER AGREEMENT
F.M.C. NO._____

ORIGINAL
PAGE NO. 9

Dated this 20th day of April, 1994

For and on behalf of
KYOWA SHIPPING CO., LTD.

MR. H. KONDOH
General Manager
Line Department

For and on behalf of
NIPPON YUSEN KAISHA

MR. T. NARAOKA
Manager Oceania Department
Europe and Oceanic Division