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FEDERAL MARITIME COMMISSION

Original Title Page

AGREEMENT NAME: FOML/ZIM Space Charter Agreement

FMC NUMBER: 011957

CLASSIFICATION: The generic classification of this Agreement in conformity with 46 C.F.R § 535.104 is a Space Charter Agreement.

DATE LAST REPUBLISHED: Not applicable.

CURRENT EXPIRATION DATE: See Article 9



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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the FOML/ZIM Space Charter Agreement ("Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit the FOML to charter space from ZIM in the Trade (as defined below).

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "party" or "parties") are:

1. Fesco Ocean Management Limited ("FOML")
801 Second Avenue
Seattle, WA 98104

2. ZIM Integrated Shipping Services, Ltd. ("ZIM")
9 Andrei Sakharov Street
"Matam" – Scientific Industries Center
P.O.B. 1726
Haifa, 31016
Israel

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of the Agreement shall cover the Trade from (i) ports in the United States, on the one hand, and to (ii) ports in Korea, on the other hand, or vice versa (hereinafter referred to as the "Trade").

ARTICLE 5: AGREEMENT AUTHORITY

1. Space Sale

- a. ZIM shall charter space to FOML on sailings in the Trade on vessels operated by ZIM or on which ZIM has space allocated to it under an effective FMC agreement, for carriage of FOML containers on an "as needed, as available" basis, provided that the space shall be limited to use by FOML. The parties may consult and agree on the terms and conditions of and relating to the sale of such space, including terms and conditions relating to the compensation to be paid for the space. For purposes of this Agreement, a TEU shall be defined as a 20' container at 14 GWT.

- b. FOML may not sub-charter to any third party any space the use of which has been granted to FOML under this Agreement.

c. This Agreement shall cover stevedoring and terminal costs at the origin and destination ports. Costs for drayage at the loading port shall be the responsibility of FOML.

2. **Advertising**

With respect to the space purchased hereunder, FOML is authorized to use in its advertising the names of the ZIM vessels for the U.S. to Busan, Korea portion of FOML's service to the Russian Far East.

3. **Miscellaneous**

The parties may discuss and agree upon such other terms and conditions as may be necessary, including, but not limited to, change in ownership, insolvency, performance procedures, responsibility for loss or damage, liabilities, claims, indemnification, consequences for delays, documentation and treatment of hazardous and dangerous cargoes.

4. **Further Agreements**

Pursuant to 46 C.F.R. § 535.408, any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns routine operational or administrative matters.

5. Implementation

The parties shall implement this Agreement in accordance with the provisions of Attachment A hereto.

ARTICLE 6: OFFICIALS AND DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (a) Any authorized officer of either party; and
- (b) Legal counsel for either party.

ARTICLE 7: MEMBERSHIP

Not applicable.

ARTICLE 8: VOTING

All actions taken pursuant to this Agreement shall require unanimous agreement of the parties.

ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT

This Agreement shall take effect on the date it becomes effective under the Shipping Act of 1984, as amended. This Agreement shall remain in effect until terminated by either party upon ninety (90) days' prior written notice to the other party. The Federal Maritime Commission shall be promptly notified in writing when this agreement is terminated.

ARTICLE 10: FORCE MAJEURE

- 10.1 Neither ZIM nor FOML shall be deemed responsible with respect to its failure to perform any term or condition of this Agreement if such failure is due to an event beyond its reasonable control, such as, but not limited to, war, declared or undeclared; hostilities; warlike or belligerent acts or operations; piracy; riots; civil commotion or other disturbances; acts of God; blockade of port or place or interdict or prohibition of or restriction on commerce or trading; governmental action, including, but not limited to, quarantine, sanitary or other similar regulations or restrictions; strikes, lockouts or other labor troubles, whether partial or general and whether or not involving employees of ZIM or FOML; shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of the goods; epidemics of disease; or unusually severe weather which can cause operational hindrance.
- 10.2 Any party claiming an event beyond its reasonable control shall exercise reasonable endeavors to remedy the consequences of such event. Upon the termination of such event causing a party's failure to perform its obligations under this Agreement, such party shall as soon as possible resume its performance of its obligations according to the terms and conditions of this Agreement.

ARTICLE 11: INSURANCE

For the duration of this Agreement, each party shall undertake to have valid P&I Insurance for all conventional P&I Risks with a club being a member of the International Group of P&I Clubs. In the event the terms and conditions or the cover in general are materially amended, the affected party shall notify the other party without delay.

ARTICLE 12: NON-ASSIGNMENT

Neither party shall assign all or any part of its rights or delegate all or any part of its obligations under this Agreement to any other person or entity without the prior written consent of the other party.

ARTICLE 13: APPLICABLE LAW AND ARBITRATION

This Agreement shall be governed by and construed exclusively in accordance with the laws of the United States and by the laws of the State of New York, to the exclusion of its rules on the conflict of law, which would refer the matter to the laws of another jurisdiction. However, nothing herein shall relieve the parties of their obligation to comply with the Shipping Act of 1984, as amended. Except as otherwise agreed, all disputes in connection with this Agreement, which cannot be resolved amicably, shall be referred to arbitration in New York, and governed by the Rules of the Society of Maritime Arbitrators, New York. A party must provide the other party at least sixty (60) days' notice of its intention to refer a matter to arbitration, specifying the nature of the controversy or claim. Such notice must be delivered in writing to the other party. The arbitration shall be referred to a single arbitrator to be appointed by agreement of the parties, or

failing such agreement within fourteen (14) days of such reference, to three arbitrators. The party referring a matter to arbitration and the remaining party shall appoint one arbitrator each and the third arbitrator shall be appointed by the two arbitrators appointed by the parties. If the two selected arbitrators fail to appoint a third arbitrator within thirty (30) days after the request for arbitration, such third arbitrator shall be selected and appointed by the Society of Maritime Arbitrators, New York. The arbitrator(s) shall not have the power to award punitive or consequential damages. Unless agreed otherwise, all discovery and evidence pursued or submitted in connection with the arbitration shall be subject to the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The parties agree to exclude any right of application or appeal to any courts in connection with any question of law arising in the course of such arbitration or with respect to any award made therein. Any arbitration award rendered will be final and binding upon the parties, shall not be subject to appeal, and may be enforced in any court of competent jurisdiction.

ARTICLE 14: NO AGENCY OR PARTNERSHIP

This Agreement does not create and shall not be interpreted as creating any partnership, joint venture or agency relationship between the parties, or any joint liability under the law of any jurisdiction.

ARTICLE 15: NOTICES

All notices required to be given in writing, unless otherwise specifically agreed, shall be sent by registered mail or courier service to the parties as set forth in Article 3 hereof.

ARTICLE 16: LANGUAGE

This Agreement and all notices, communications or other writings made in connection therewith shall be in the English language. Neither party shall have any obligation to translate such matter into any other language and the wording and meaning of any such matters in the English language shall govern and control.

ARTICLE 17: SEVERABILITY

If any provision of this Agreement, as presently stated or later amended is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

ARTICLE 18: WAIVER

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement, or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against either party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

ARTICLE 19: AMENDMENT

Any modification or amendment of this Agreement must be in writing and signed by both Parties and may not be implemented until filed with the FMC and effective under the Shipping Act of 1984.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the 11th day of May, 2006.

ZIM Integrated Shipping Services, Ltd.

By: Ron Podlaskowich

Name: RON PODLASKOWICH

Title: Vice President

Regulatory Matters and Trade Development

Fesco Ocean Management Limited

By: Neal M. Mayer

Name : Neal M. Mayer

Title : Attorney-in-Fact

ATTACHMENT A

1. DEFINITIONS

"Dangerous or Hazardous Commodities" shall mean those cargoes designated as such by IMCO and/or CFR entries and if agreed by the parties to be carried under the Agreement shall be duly designated, properly documented, classified, placarded, stowed etc., in compliance with the prevailing regulations either IMCO or CFR's, whichever is applicable by ZIM.

2. COMPENSATION

A. FOML shall pay ZIM as compensation for the performance of the services, such rates as they may from time to time agree.

B. Financial settlement shall be conducted on a monthly basis in accordance with the following procedure:

1. Invoicing:

After the amount confirming between the Lines, the Slot Provider shall issue invoice(s) to the Slot Charter via mail and facsimile respectively within 10 days or on such other mutually agreed date.

2. Due Date of Payment

The invoices, so issued, should be settled by the Slot Charterer within 20 days or as otherwise mutually agreed.

C. ZIM shall be paid without offset against any other expenses or liabilities.

D. In the event of any fees or expenses, including reasonable attorney's fees and costs incurred by either party in connection with the enforcement of the other party's obligation to make payments under this Agreement, the charges shall be recovered by the prevailing party. The party to whom costs are awarded, shall be deemed the prevailing party.

E.. Any costs or charges assessed by governmental authorities, including but not limited to, U.S. Customs and Border Patrol inspection charges for clearance of Equipment and/or cargo shall be for the account of the party incurring such expense.

3. CONTRACTS OF CARRIAGE

A. ZIM will issue an internal memorandum bill of lading for shipments moving under FOML's through bill of lading. The original of such memorandum bill of lading shall not be furnished to the Cargo Interest and shall not prevail and shall not govern the relationship between the FOML and its Cargo Interest, or any other person having an interest in the cargo.

B. Unless both parties have agreed, in writing, prior to the shipment, the following are excluded from this Agreement:

- Dangerous or Hazardous Commodities
- Out of Gauge Cargo
- Break Bulk Cargo
- Heavy Lift Cargo
- Temperature Controlled/Refrigerated Cargo

4. COMMUNICATIONS

It will be the ZIM's responsibility to keep FOML advised by email, or other mutually agreeable means of communication, of the ETA's of vessels carrying shipments under this Agreement within not less than 48 hours of vessel arrival in order to facilitate the coordination of the on-carriage, and also to advise FOML of the ETA of vessels carrying returned Equipment to the origin port. FOML will in turn, keep ZIM advised by email, or other mutually agreeable means of communication, of the ETA and number of pieces of Equipment being returned to Busan, Korea for return by the ZIM to the origin port.

5. DOCUMENTATION

It will be the FOML's responsibility to give ZOM the proper documentation for the export of said cargoes under this Agreement. This required documentation includes, but is not limited to: Customs Entries, Shipper's Export Declarations, copy of FOML's through bill of lading or equivalent information sufficient to provide ZIM with all the information necessary for it to safely load, handle and accurately document the cargo movement. The preparation of the Custom's Entry, will be for the account of the FOML, and executed by FOML. Any documentation given to IM shall be for operational use only and will be maintained as confidential between the FOML and ZIM.

6. CARGO CLAIMS

- A. FOML shall handle and settle all Cargo Claims directly with the cargo claimants. For the purposes of this Agreement, "Cargo Claim(s)" means claims for loss, damage, shortage (including slackage, ullage or pilferage), over-carriage of or delay to cargo including customs dues or fines in respect of such loss, damage, shortage, over-carriage or delay and include (a) any legal costs or interest claimed by the cargo claimant; (b) all legal, Club correspondents' and experts' costs reasonably incurred in the defense or in the settlement of the claim made by the cargo claimant, but shall not include any costs of whatsoever nature incurred in making a claim or in seeking an indemnity under this Agreement.
- B. Prior to any settlement where FOML will look for participation from the ZIM, FOML shall obtain approval from ZIM or their P&I Club representative. FOML shall advise ZIM at least once a calendar quarter as soon as possible in case of a major Cargo Claim, which is,

identified as a claim that exceeds \$5,000.00. FOML shall inform ZIM about all pending Cargo Claims where ZIM may be involved.

- C. ZIM shall reimburse FOML for the cost of settlement of any Cargo Claim in accordance with the provisions of ZIM's memorandum bill of lading. It is agreed that claims for cargo damage not exceeding \$500.00 per shipment will not be made.
- D. If it cannot be determined which party is responsible for the Cargo Claim, it is agreed, subject to the above limitation that the parties will negotiate, in good faith, an allocation of the respective liability.
- E. The terms of this provision shall survive the termination of this Agreement.

7. INDEMNITY

- A. Each party (the "Indemnifying Party") shall indemnify, save harmless, and defend the other party (the "Indemnified Party") and its insurers, reinsurers, and owners and despondent owners of vessels chartered by the Indemnified Party, from and against any and all suits, legal proceedings, claims, demands, damages, costs, and expenses of whatsoever kind or character (including, but not limited to, reasonable attorney's fees and costs) arising out of any injury (including death) or loss or damage to any cargo, property or Equipment, which arises out of, or results from, any defect in the services rendered by the Indemnifying Party, or the Indemnifying Party's employees, agents or subcontractors or from any act, omission, fault, negligence or default of the Indemnifying Party or its employees or agents or subcontractors. If either party fails to honor its obligations hereunder, the other party shall be entitled to recover all expenses and costs, legal or otherwise incurred in enforcing compliance with this provision.
- B. The terms of this provision shall survive the termination of this Agreement.

8. INSURANCE

Each party agrees to maintain cargo legal liability insurance with customary limits and with underwriter's reasonably satisfactory to the other party. Parties to this Agreement have the specific right to request certificate of insurance to evidence the coverage at any time they deem necessary.

9. DRUG LIABILITY

If illegal narcotics or other illegal material are discovered in a piece of Equipment, sealed at the time of loading, the party who was responsible for the Equipment (either directly or through its agent) at the time the Equipment was sealed shall be responsible for all fines, penalties and costs incurred arising from such illegal material being present. If the party having possession of the Equipment at the time of discovery of the illegal material is not the responsible party as provided above, then the responsible party shall indemnify, defend and hold harmless that party pursuant to the Indemnity Clause.

If no illegal materials are discovered in the Equipment and the Equipment is returned to the party, that party is thereafter held responsible for the contents of the Equipment as long as the Equipment is in their custody.

10. EQUIPMENT RETURN

- A. Any agreement to move a container "one-way" removes the responsibility of ZIM to return FOML's Equipment from Busan to the origin port.
- B. The parties may on a case by case basis agree in writing to the direct interchange of Equipment, subject to any required Lessor's consent.
- C. The parties may on a case by case basis agree on the carriage of FOML empty containers by ZIM on such terms and conditions as they may from time to time agree.

11. EQUIPMENT DAMAGE

Each party will be responsible for damages and repairs to the other party's owned or leased Equipment while that Equipment is in its possession or control. Damages will be determined based on a comparison of the Equipment inspection report made at the time the unit of Equipment is turned over to a party and the report made at the time the unit of Equipment is returned by that party. The inspections shall be made at the origin port and at Busan and noted on the Equipment Interchange Receipt (EIR) or other agreed upon documentation. A mutually agreed upon third party surveyor may be used to settle any disputed damages. It is agreed that damages costing less than \$300.00 (based on Busan repairing charge level) to repair will not be billed.

12. REPAIR AUTHORIZATION

When repair expenses exceed an estimated \$300.00 for a piece of Equipment, authorization by the Maintenance Department of the party leasing or owning that piece of Equipment must be obtained prior to commencement of repairs