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HMM/ELJSA Slot Exchange Agreement

FMC No.: 012004

Effective date: _____

Expiration date: None



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ARTICLE 1. **NAME OF AGREEMENT**

This Agreement shall be known as the “HMM / ELJSA Slot Exchange Agreement” (hereinafter the “Agreement”).

ARTICLE 2. **PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to permit the Parties hereto to obtain optimum efficiency of fleet operations and to maximize space utilization with regard to the trade covered herein so as to offer efficient, competitive services to the shipping public.

ARTICLE 3. **PARTIES**

The Parties hereto are:

- (1) Hyundai Merchant Marine Co., Ltd. (“HMM”), and
- (2) Evergreen Line Joint Service Agreement 011982 (“ELJSA”).

ARTICLE 4. **GEOGRAPHIC SCOPE**

A. The geographic scope of this Agreement shall extend to and from ports on the East and Gulf Coast of the United States, and inland and coastal points served via such ports, on the one hand, and ports in the Far East via the Panama Canal (including, Japan, Korea, Taiwan, and China including Hong Kong) and Panama, and inland and coastal points served via such ports, on the other hand (hereinafter the “Trade”).

B. It is understood that the Parties may use ships, slot allocations and administrative procedures subject to this Agreement to serve trades that extend solely between foreign ports or points. However, this Agreement is not intended to and does not bring any activity for service solely between foreign ports or points within the jurisdiction of the Federal Maritime Commission or the scope of Shipping Act of 1984, codified at 46 U.S.C. § 40101 *et seq.* (“Shipping Act”), including the antitrust exemption conferred by the Act.

ARTICLE 5. **AGREEMENT AUTHORITY**

A. The Parties may discuss and agree upon the terms and conditions for exchanging, selling and/or allocating space to each other on the vessels subject to this Agreement.

B. The Parties may discuss and agree upon the deployment and utilization of vessels in the Trade up to a maximum of 26 vessels having a maximum average capacity of up to approximately 4500 TEUS per vessel, including, without limitation, the addition, withdrawal and substitution of vessels, sailing schedules, service frequency, ports required to be served, port rotations, type and size of vessels to be utilized, operational responsibilities of various parties, number and type of slots to be exchanged, feeder arrangements, including the sale or exchange of feeder slots between them, the addition or withdrawal of capacity from the Trade, and the terms and conditions of any such addition or withdrawal.

C. The parties agree that:

1. The following vessel strings shall be subject to this Agreement:

(a) ELJSA’s NUE Service: ELJSA’s string of vessels operating in a pendulum service that calls insofar as is relevant to this Agreement between the Far East and the U.S. East and Gulf Coast via the Panama Canal.

(b) HMM's ESX Service: HMM's space on a string of vessels (including vessels deployed by HMM pursuant to Agreement 011960, The New World Alliance Agreement ("TNWA")), operating between the Far East and the U.S. East and Gulf Coast via the Panama Canal pursuant to FMC Agreement No. 011960.

2. Initially, slots will be purchased or exchanged on the above-mentioned strings as follows:

(a) ELJSA's NUE Service: HMM will charter from ELJSA slots aggregating approximately 150 dry TEUS or 1350 metric tons (whichever comes first) per sailing on a used or unused basis, in each leg, between the Far East and the U.S. East Coast. ELJSA will guarantee the availability of such slots.

(b) HMM's ESX Service: ELJSA will charter from HMM slots aggregating approximately 150 dry TEUS or 1350 metric tons (whichever comes first) per sailing on a used or unused basis, in each leg, between the Far East and the U.S. East Coast. HMM will guarantee the availability of such slots.

(c) The parties will not accept any variation in capacity compared to the guaranteed space in accordance with Articles 5.C.2(a) and (b), unless mutually agreed otherwise. Any variation deviating from Articles 5.C.2(a) and (b) will be for the account of the Service Operator, i.e. the party who provides and maintains vessels operation or has slots exchanged from other associated partners, operated within the terms of this Agreement.

(d) The Parties may sell, purchase or exchange additional slots on the above-mentioned services on an ad hoc basis on such terms as the Parties may agree.

D. The berth at each port of call shall be decided by the Service Operator. Terminal User Agreement and Service Agreement shall be concluded individually and separately between individual Party and the Terminal Operator. .

E. The Parties may discuss and agree upon documentation, data systems and computerization and joint communication including any joint negotiations, leasing or contracting related hereto.

F. The Parties may discuss and agree upon administrative, legal and operational matters and related issues, including, but not limited to, operation procedures, accounting procedures, bills of lading, terminal operations, stowage planning, schedule adjustments, recordkeeping, responsibility for loss or damage, change in ownership or insolvency of any Party, the interchange of information and data and the respective rights, liabilities and indemnities of each Party arising under this Agreement, including with respect to matters such as failure to perform, cargo claims, insurance, indemnification, consequences for delays, port omission, port substitution, force majeure relief and treatment of hazardous and dangerous cargoes. Notwithstanding the foregoing, procedures for operation and administration will be in accordance with respective standard operating procedures of the Service Operator unless otherwise agreed by the Parties.

G. The Parties may discuss and agree upon the terms and conditions by which the Parties directly or indirectly, interchange, lease, sublease, return, and may otherwise cooperate among or between themselves in connection with containers, chassis and other equipment used in the service.

H. The Parties may exercise the authority granted by this Article 5 to discuss and agree on changes to be made from time to time in any of the matters identified in Articles 5.A through 5.G above, except for the maximum number and average capacity of vessels specified in Article 5.B.

I. The Parties may discuss and agree on whether to enter into agreements jointly with third-parties, and/or whether to sell either jointly or separately space on the vessels operated under this Agreement to ocean common carriers not signatories to this Agreement and to share or allocate any revenues received therefrom, on such terms, rates and conditions as the Parties may from time to time agree in writing. Any agreement entered into pursuant to this subparagraph with an ocean common carrier not party to this Agreement shall be filed with the Federal Maritime Commission in accordance with the requirements of the Shipping Act.

J. Each Party shall retain its own separate identity and shall have separate sales, pricing and marketing functions. Each Party will issue its own bills of lading, handle its own claims and shall be fully responsible for the expenses, husbandry and operation of its owned or chartered vessel(s) operated in the Trade, including drydocking, special survey and future capital improvements. Additionally, each Party shall be fully responsible for any and all terminal costs attributable to cargo moved on its own bill of lading.

K. The Parties are authorized to make and enter into implementing and interstitial arrangements, writings, oral and written communications, understandings, procedures and documents within the scope of the authorities set forth in this Agreement in order to carry out the authorities and purpose hereof.

L. This Agreement shall not require a common position on conference membership.

M. Pursuant to 46 C.F. R. 535.408, any further non-exempt agreement between the Parties cannot take effect unless filed and effective under the Shipping Act except to the extent that such agreement concerns routine operational or administrative matters.

N. No Party shall assign, space charter, or sub-space charter any slots it has obtained from another Party under this Agreement to any third-parties in the Trade that are not subject to this Agreement, without obtaining prior written consent from the other Party.

O. During the term of cooperation, if Service Operator wish to introduce any change of the service schedule permanently, such Party shall first consult with the other Party to seek agreement. Such consent by the other Party shall not unreasonably be withheld. If Service Operator should exercise sole discretion, without obtaining agreement from the other Party, to unilaterally make permanent changes to the service structure, i.e. the calling ports and/or the rotation, deviation or omission or any schedule port call cancellation, transit time etc., the other Party has the right to either reduce the basic slot allocation (BSA) based on historical volume of such port or terminate this Agreement by giving a 60 day written notice. The number of slots in such case shall not be treated as reciprocal exchange and financial compensation shall be made in accordance to the slot rate as agreed between the Parties.

ARTICLE 6. RELATIONSHIPS AMONG THE PARTIES; ADMINISTRATION

A. The Parties undertake the rights and obligations under this Agreement individually, and are individually responsible to each other for their obligations under this Agreement. TNWA, as such, is not a party to this Agreement.

For administrative convenience, rights (including slot allocations) and obligations (including obligations to provide slots and pay for slots) under this Agreement may be stated as applying to ELJSA on the one hand and HMM on the other hand.

B. Evergreen Marine Corporation (Taiwan) Ltd., Italia Marittima S.P.A and Evergreen Marine (UK) Ltd shall be treated as a single party hereunder and shall be referred to collectively as "ELJSA." They shall be jointly and severally responsible for the performance of each of their obligations under this Agreement (or any agreements entered into pursuant hereto) and for any and all damages arising out of or resulting from any breach of this Agreement or any agreements entered pursuant hereto.

ARTICLE 7. **MEMBERSHIP**

Membership in this Agreement is limited to the Parties hereto, except that additional parties may be admitted by unanimous consent of the Parties and by amendment of the Agreement pursuant to the Shipping Act.

ARTICLE 8. **VOTING**

Except as provided in Article 6 above, decisions under this Agreement and any amendment to this Agreement shall be by unanimous agreement of the Parties.

ARTICLE 9. **DURATION AND TERMINATION**

A. The effective date of the Agreement shall be the date it becomes effective under the Shipping Act or the arrival date at the first loading port of the first vessel on which the slot exchange shall commence by mutual agreement of the Parties, which date is expected to be on or about June 4, 2007, whichever is later.

B. This Agreement shall remain in effect for an initial period of twelve (12) months from the effective date of this Agreement and, thereafter, shall continue in effect unless it is terminated by either Party upon not less than three (3) months prior written notice which notice cannot be given any earlier than nine (9) months after the effective date of this Agreement. .

C. Notwithstanding the above, this Agreement may be terminated pursuant to the following provisions:

1. If, at any time during the term of this Agreement either Party ("The Affected Party):
 - a) is dissolved;
 - b) becomes insolvent or fails to pay its debts as they become due;
 - c) make a general assignment, arrangement or composition with, or for the benefit of its creditors;
 - d) has a winding-up order made against it or enters into liquidation whether voluntarily or compulsorily;
 - e) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;

and

2. the Non Affected Party is of the opinion that:
 - a) such event or occurrence is or may be materially detrimental to the Service; or
 - b) sums that may be owed (other than those that would be considered disputed in good faith) may not be paid or have not been paid in full or that their payment may be delayed

Upon the occurrence of any of the events set forth in Article 9.C.1 or 2 above, the Non Affected Party may give notice to the Affected Party terminating with immediate effect, or suspending for such period as the Non Affected Party in its sole discretion deems appropriate, this Agreement or any part thereof.

D In the event of default and notwithstanding any termination made in accordance with this Article 9, the non-defaulting Party retains the right to bring a claim against the defaulting Party for any loss and/or damage caused or arising out of such default.

E. Notwithstanding the above, and only applying within the initial 12 months from the effective date herein, in the event a Party will have to cease operation of its service in the trade, either Party may terminate this Agreement with 3 months prior written notice at any time after the expiration of 6 months.

F. Any termination or withdrawal hereunder (whether from a particular service or the entire Agreement) shall be without prejudice to the Parties' respective financial obligations to one another as of the date of termination or withdrawal.

G. The Parties will promptly notify the Federal Maritime Commission as well as any other relevant governmental authorities of any termination of, or withdrawal from, a particular service or the Agreement.

ARTICLE 10. **FORCE MAJEURE**

A. Neither HMM nor ELJSA shall be deemed responsible with respect to its failure to perform any term or condition of the Agreement if such failure, wholly or partly, is due to an event of Force Majeure, such as, but not limited to,

1. War declared or undeclared
2. Hostilities
3. Warlike or belligerent acts or operations
4. Piracy
5. Riots
6. Civil commotion or other disturbances
7. Acts of God
8. Blockade of port or place or interdict or prohibition of or restriction on commerce or trading
9. Governmental action including but not limited to quarantine sanitary or other similar regulations or restrictions
10. Strikes, lockouts or other labor troubles whether partial or general and whether or not involving employees of HMM, MOL, APL, CMA CGM, ELJSA
11. Shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of the goods
12. Epidemics of disease
13. Shallow water, ice, landslide or other obstacles in navigation or haulage

14. Any act of barratry
15. Unusual severe weather which can cause operational hindrance

B. Any Party claiming an event of Force Majeure shall notify the other Party in writing of such event and shall exercise reasonable endeavors to remedy the consequences of such event. Upon the termination of such Force Majeure 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, all vessel operators undertake to have valid P&I Insurance for all conventional P&I risks with a club being a member of the Group of International P&I clubs. Each Party shall undertake to notify the other Party of any material amendments to their P&I cover.

ARTICLE 12. NOTICES

Any correspondence or notices hereunder shall be made by courier service or registered mail, or in the event expeditious notice is required - by fax or e-mail, confirmed by courier or registered mail, to the following addresses:

ELJSA
Evergreen Line Joint Service
Agreement 011982
No. 163, Sec. 1, Hsin-Nan Road
Luchu Hsian, Taoyuan Hsien, 338 Taiwan

HMM
Hyundai Merchant Marine Co., Ltd.
66, Chokson-Dong, Jongro-Ku
Seoul
South Korea

ARTICLE 13. **GOVERNING LAW AND ARBITRATION**

This Agreement shall be governed by and construed exclusively in accordance with the laws of the United States. All disputes or claims in connection with this Agreement, which cannot be resolved amicably, shall be resolved by arbitration in New York in accordance with the Rules of the Society of Maritime Arbitrators, Inc., before a single arbitrator familiar with ocean container shipping who shall have no financial or personal interest in or with any party and shall not have acquired a detailed prior knowledge of the matter in dispute. Within fifteen (15) days after any party serves a written demand for arbitration, the parties in dispute shall jointly agree upon an arbitrator of the aforesaid qualifications, failing which within five (5) days thereafter, they shall request the President of the Society of Maritime Arbitrators, Inc. to appoint an arbitrator.

ARTICLE 14. **AMENDMENT**

Any modification or amendment of this Agreement must be in writing and signed by all Parties.

ARTICLE 15. **NO AGENCY OR PARTNERSHIP**

Nothing in this Agreement shall give rise to, nor shall any group of Parties be construed as constituting, a partnership for any purpose or extent. Nor shall any Party or group of Parties be considered an agent of any other Party or group of Parties, unless expressly otherwise agreed for

the limited purposes of specified matters or specified things done or not done under or in connection with this Agreement.

ARTICLE 16. **ASSIGNMENT**

Neither Party shall be entitled to assign or transfer its rights or obligations under this Agreement including but not limited to the subcharter of any slots covered by this Agreement to third parties, without the prior written consent of the other Party.

ARTICLE 17. **SEVERABILITY**

Should any term or provision in this Agreement be held invalid, illegal or unenforceable, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those as to which it is invalid, illegal or unenforceable, shall not be affected thereby; and each term or provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

ARTICLE 18. **LANGUAGE**

This Agreement and all notices, communications or other writings made in connection herewith, shall be in the English language. No Party shall have any obligation to translate such matters into any other language and the wording and meaning of any such matters in the English language shall govern and control.

ARTICLE 19: SIGNATURES

IN WITNESS WHEREOF, ELJSA and HMM have caused this Agreement to be executed
by their duly authorized representatives as of the 1st day of June, 2007.

HYUNDAI MERCHANT MARINE CO., LTD.

By: _____
Name:
Title:

EVERGREEN LINE JOINT SERVICE
AGREEMENT FMC # 011982

Consisting of the following:

EVERGREEN MARINE CORPORATION
(TAIWAN) LTD.

By: Paul M. Keane
Paul M. Keane
Attorney-in-Fact

ITALIA MARITTIMA S.P.A.

By: Paul M. Keane
Paul M. Keane
Attorney-in-Fact

EVERGREEN MARINE (UK) LTD.

By: Paul M. Keane
Paul M. Keane
Attorney-in-Fact

ARTICLE 19: SIGNATURES

IN WITNESS WHEREOF, ELJSA and HMM have caused this Agreement to be executed
by their duly authorized representatives as of the 1st day of June, 2007.

HYUNDAI MERCHANT MARINE CO., LTD.

By: Eliot J. Halperin
Name: Eliot J. Halperin
Title: Attorney-in-Fact

EVERGREEN LINE JOINT SERVICE
AGREEMENT FMC # 011982

Consisting of the following:

EVERGREEN MARINE CORPORATION
(TAIWAN) LTD.

By: _____
Paul M. Keane
Attorney-in-Fact

ITALIA MARITTIMA S.P.A.

By: _____
Paul M. Keane
Attorney-in-Fact

EVERGREEN MARINE (UK) LTD.

By: _____
Paul M. Keane
Attorney-in-Fact