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Maersk/MSC Vessel Sharing Agreement

FMC Agreement No. **012293**

A Cooperative Working Agreement

Expiration Date: None

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SIGNATURE PAGE

ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the Maersk/MSC Vessel Sharing Agreement ("Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize the parties to share vessels with one another in the Trade (as hereinafter defined) and to authorize the parties to enter into cooperative working arrangements in connection therewith.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement are:

1. A.P. Møller-Maersk A/S, trading under the name of Maersk Line ("Maersk")
   Esplanaden 50
   1098 Copenhagen K
   Denmark

2. MSC Mediterranean Shipping Company SA ("MSC")
   12-14 Chemin Rieu
   1208 Geneva
   Switzerland

Maersk and MSC are hereinafter referred to individually as a "Party" and jointly as "Parties."

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT[1]

The geographic scope of the Agreement shall extend to the trades between (a) ports in Northern Europe (North Cape, Norway to Europa Point (Gibraltar) range) and

[1] The 2M Vessel Sharing Agreement also includes the Asia-Europe trade, which is not subject to the Shipping Act or FMC jurisdiction. Accordingly, the Asia-Europe trade is not reflected in this Agreement. Similarly, inclusion of non-U.S. trades in Article 4 does not bring such trades within the scope of the U.S. Shipping Act or the FMC's jurisdiction.

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the Mediterranean (Spain, France, Italy, and Malta), and the countries bordering on the Black Sea on the one hand, and ports on the U.S. Atlantic, Gulf and Pacific Coasts, and ports in Mexico and the Bahamas on the other hand; and (b) ports in Asia (countries in the Japan to Indonesia range) and in Sri Lanka, Oman, Egypt, Morocco, and in countries bordering the Adriatic Sea, the Bahamas, Panama and Canada on the one hand and ports on the U.S. Atlantic, Gulf and Pacific Coasts of the United States on the other hand).[2] All of the foregoing is hereinafter referred to as the "Trade." It is understood and agreed that any Party may use slots provided to it hereunder to move cargo between coastal locations (subject to applicable law and such criteria as the Parties may establish from time to time) or to move cargo from any origin to any destination worldwide via feeder, transshipment or other arrangements.

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Vessels.

(a) The Parties are authorized to discuss and agree on the size, number and operational characteristics of vessels to be operated hereunder, and the number of vessels to be contributed by each Party. Initially, the Parties will operate approximately ninety-seven (97) vessels in the Trade, with nominal capacities ranging from approximately 4,000 TEUs to approximately 13,000 TEUs. Without further amendment hereto, the Parties are authorized to operate up to one hundred and thirty (130) vessels in the Trade, each with a capacity of up to 19,200 TEUs. Each Party

[2] The Parties will not begin cooperation in the Asia-U.S. Gulf Coast or North Europe-U.S. Pacific Coast/Canada trades immediately upon entry into effect of this Agreement.

shall contribute vessel capacity as may be agreed by the Parties. The Parties are authorized to discuss and agree upon the possible future deployment of new buildings in the Trade, and the possible withdrawal of then-deployed capacity in the event of such deployment.

(b) The vessels contributed by the Parties shall be assigned to trade lanes and services in a manner that is expected to maximize operational and cost efficiencies. The Parties may substitute vessels within the Agreement subject to such standards and criteria as the Parties may establish from time to time.

(c) The Parties are authorized to discuss and agree on the ports to be called, port rotation, itineraries, service speed, and all other aspects of the structure and scheduling of the services to be operated hereunder, including on-time performance criteria and consequences for failing to adhere to the established schedule and/or to load cargo in accordance with its obligations hereunder. The Parties shall agree upon rules governing the time and place of phasing-in and phasing-out of tonnage and responsibility for the costs of transshipment or other operations in the event of changes in the vessels deployed hereunder. The Parties are authorized to discuss and agree on the circumstances, if any, under which phase-in and/or phase-out costs are to be apportioned between the Parties, and the method of such apportionment.

(d) The Parties are authorized to blank (i.e., skip) sailings when utilization is likely to fall below such thresholds as may be established by the Parties from time to time including, but not limited to, periods such as Christmas, Easter, Chinese New Year, and Chinese May and October bank holidays. Blankings must be proportionate to the expected fall in demand, and may not be imposed on a particular vessel if

arrangements have been made for dry-docking or maintenance of the vessel or the vessel is to be redelivered (in either case, at a location closer to the other end of the service).

(e) Either Party may propose that an extra loader vessel be deployed on the basis of the levels of demand at the relevant time and other operational considerations. If the other Party objects based on objective criteria established by the Parties, an extra loader shall not be deployed hereunder. In such circumstance, the other Party may deploy an extra loader outside the Agreement at its own cost (to which Article 5 of this Agreement shall not apply). If an extra loader is deployed hereunder, it shall be provided by one of the Parties in accordance with criteria established by them from time to time, and shall be treated as part of the Agreement.

(f) Each Party shall keep the other informed of the dry docking schedule it establishes for the vessels it contributes hereunder. Each of the Parties shall use reasonable efforts to ensure that dry dockings are scheduled at a time that avoids unnecessary disruptions to the sailing schedule. The Parties are authorized to agree on their respective responsibilities, if any, for cargo handling and other costs resulting from vessel dry dockings, which responsibilities may vary depending on whether the dry docking meets such scheduling criteria as the Parties may establish from time to time.

(g) No Party shall have a lien on the vessels under the ownership or control of any other Party as a result of obligations or liabilities arising out of this Agreement.

(h) No U.S.-flag vessels employed by Maersk which are within the Agreement, or any slots on such vessels, shall be used, other than by Maersk, for the carriage of

cargoes reserved to U.S.-flag vessels pursuant to the cargo preference laws of the United States (including, but not limited to, Public Resolution Number 17, sections 901(b) and 901b of the Merchant Marine Act, 1936, as amended, and the Military Cargo Preference Act of 1904); provided, however, that nothing herein shall prevent the Parties from using Maersk-employed U.S.-flag vessels or any slots thereon for the carriage of that portion of preference cargoes that is not reserved to U.S.-flag vessels.

(i) No Party shall operate any containership in the Trade other than under this Agreement, unless otherwise agreed.

5.2 Slot Capacity Allocation and Use of Slots.

(a) Each Party shall have a slot capacity[3] allocation on each service and in each trade lane covered by this Agreement, which is the maximum number of slots and weight (whichever is reached first) specified in its capacity allocation as agreed by the Parties hereunder. The slot capacity contributed by and allocated to each of the Parties across the entire Agreement shall be as closely balanced as possible. Capacity allocations, as well as the need to adjust existing services or establish new services to meet trade demand, shall be reviewed by the Parties annually or earlier if both Parties agree that exceptional circumstances warrant.

(b) Pursuant to such procedures as the Parties may establish from time to time, the Parties may buy and sell slots to one another on an *ad hoc* basis on all or part of any given round-trip voyage. In the event a Party wishing to buy or sell slots is unable to purchase or sell such slots from/to the other Party, it may purchase slots

[3] As used herein, the term "slot capacity" includes reefer slots. A "slot" equals one twenty-foot equivalent unit (TEU).

from or sell slots to any non-party carrier, subject to applicable regulatory requirements.

(c) The Parties are authorized to discuss, establish and revise the policies and procedures to be followed when the actual slot capacity available on a vessel is greater than the aggregate capacity allocations of the Parties on that vessel and when the actual slot capacity available on a vessel is less than the amount required to satisfy the aggregate capacity allocations of the Parties.

(d) The Parties are authorized to net out vessel contribution against vessel usage and to discuss, establish and revise financial settlement procedures based on notional costs (save where the costs are publicly available) related to imbalances in the Parties' respective capacity allocation, if any, and for additional elements such as operating reefer containers.

(e) No Party may sell slots made available to it under this Agreement to any third party or purchase slots from any third party unless it has first attempted to sell or purchase such slots to/from the other Party in accordance with Article 5.2(b) hereof.

5.3 Dealings with Third Parties

(a) In order to maximize the utilization of the assets deployed hereunder and the efficiencies the Parties intend to achieve by entering into this Agreement, it is hereby agreed that the Parties shall cause the following agreements to be terminated at the earliest possible date consistent with their terms: FMC Agreements No. 011885, 012032, 012037, 012119 and 012271. The obligations of the Parties hereunder are expressly conditioned on the aforementioned agreements being terminated.

(b) No Party may enter into any arrangement with a third party vessel-operating common carrier after the actual commencement of the services under this Agreement for the acquisition, disposal or sharing of slots in the Trade other than where it is expressly permitted to do so by this Agreement.

(c) Where a Party disposes of slots (and/or, if applicable, reefer slots) to a third party under Article 5.2(b) it shall remain subject to the financial requirements established by the Parties hereunder with respect to such slots. Any third party which acquires slots within the Agreement shall be subject to the same operational rules and procedures as the Parties.

(d) The Parties are authorized to discuss and agree on the circumstances under which the vessels of a third party, ownership of which is acquired by a Party during the term hereof, may be deployed in the Trade under the Agreement.

5.4 Terminals, Stevedores and Other Services.

(a) The Parties are authorized to discuss and agree upon the terminals to be called by the vessels operated hereunder and/or the volume of cargo to be handled by such terminals. Terminals shall be selected on the basis of such objective operational criteria as the Parties may agree from time to time, and such selection will also take into account any financial interest of a Party in a terminal. Changes to terminals previously selected shall require agreement of the Parties. Each Party shall bear all terminal costs incurred in connection with its containers. The Parties are authorized to discuss and agree on the allocation of terminal costs other than costs incurred in connection with its containers (such as but not restricted to certain jointly incurred terminal charges as determined by the Parties).

(b) The Parties shall negotiate independently with and enter into separate individual contracts with marine terminal operators, stevedores, tug operators, other providers or suppliers of other vessel-related goods and services and/or inland carriers in the United States; provided, however, that the Parties are authorized to discuss, exchange information, and/or coordinate negotiations with marine terminal operators relating to operational matters such as: port schedules and berthing windows, availability of port facilities, equipment and services, adequacy of throughput and productivity, and procedures for the interchange of operational data in a legally compliant matter.

5.5 Separate Identities and Sensitive Information

(a) Each Party shall retain its separate identity and shall have fully separate and independent sales, pricing and marketing functions. This Agreement does not create and shall not be construed as creating any legal entity or joint liability under the law of any jurisdiction.

(b) No information which is commercially sensitive may be exchanged hereunder directly or indirectly between any of the Parties (including through the Joint Co-Ordination Committee), other than as strictly necessary for the proper functioning of the Agreement. Subject to the procedures set forth in this Agreement, including the preceding sentence, the Parties are authorized to obtain, compile, maintain and exchange information related to any aspect of operations in the Trade including, but not limited to, economic and/or cargo forecasts/projections, records, statistics, studies, compilations, and other data, whether prepared by a Party or Parties or obtained from outside sources.

5.6 Other Cooperation.

The Parties are authorized to discuss and agree upon the chartering of vessels by one or both of them for use hereunder.

5.7 Administrative Matters and Implementation.

The Parties are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time. Such matters, terms, conditions and procedures may be memorialized in such implementing agreements or manuals as the Parties may deem appropriate from time to time. Such implementing matters include, but are not limited to, record-keeping; cargo acceptance, handling and stowage; responsibility for loss or damage; general average; salvage; insurances; the handling and resolution of claims and other liabilities (including liabilities to third parties arising out of the act, neglect or default of one or more Parties); indemnification; documentation and bills of lading; the acceptance of dangerous, break bulk and out-of-gauge cargoes, and force majeure. In the event of a conflict between this Agreement and any implementing agreement, this Agreement shall govern.

ARTICLE 6: AGREEMENT ADMINISTRATION

6.1 Committees.

The Parties are authorized to establish such standing and/or *ad hoc* committees as they deem necessary or appropriate for the efficient administration of this Agreement. Initially, the Parties shall establish a standing Joint Co-Ordination

Committee comprised of employees of the Parties (each of whom shall remain subject to supervision by his/her employer), which Committee shall have a location physically distinct from the offices of the Parties. The members of the Joint Co-Ordination Committee shall be the Parties' primary interface with respect to day-to-day issues arising under this Agreement, and shall monitor the operation of the Agreement to ensure the maximum efficiencies are obtained from the Parties' cooperation. The Joint Co-Ordination Committee may make recommendations to the Parties, but has no operational responsibility, and is not authorized to make or implement any decisions. The Parties may establish such other function-specific committee as they determine from time to time. Function-specific committees may be standing or *ad hoc,* but shall not be co-located or have a distinct physical location.

6.2 Delegation 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:

(i) Any authorized officer of a Party; and

(ii) Legal counsel for a Party or for the Agreement.

ARTICLE 7: VOTING

Except as otherwise provided herein, all decisions hereunder, including amendments to this Agreement, shall require mutual agreement of the Parties.

ARTICLE 8: DURATION AND TERMINATION OF AGREEMENT

8.1 This Agreement shall become effective on the date it is effective under the U.S. Shipping Act of 1984, as amended, or such later date as may be agreed by the Parties in writing, and shall continue for a minimum of ten (10) years. Any Party may resign from this Agreement on not less than two (2) years written notice to the other Parties; provided, however, that any such two-year resignation notice given prior to the eighth annual anniversary of the entry into effect of this Agreement shall not be effective for purposes of initiating the 2-year notice period until the day following the date of such eighth annual anniversary.

8.2 Notwithstanding Article 8.1, either Party may terminate this Agreement with immediate effect upon written notice to the other Party if the other Party either (a) is subject to an insolvency event (as defined by the Parties from time to time) or (b) has committed a material breach (as defined by the Parties from time to time) and fails to remedy said breach to the reasonable satisfaction of the non-breaching Party within a reasonable period of time following receipt of written notice of the material breach.

8.3 Notwithstanding Article 8.1, either Party may terminate this Agreement on not less than (six) 6 months written notice if the other Party is subject to a change of control (as defined by the Parties from time to time).

8.4 Any termination of this Agreement shall be without prejudice to, and shall not affect any rights, remedies, obligations or liabilities of that Party that have accrued prior to the date of such termination. The Parties are authorized to adopt such reconciliation and settlement procedures as may be necessary or desirable to

bring an orderly conclusion to this Agreement or a Party's participation herein.

8.5 The Federal Maritime Commission shall be notified of the termination of this Agreement.

ARTICLE 9: APPLICABLE LAW AND DISPUTE RESOLUTION

9.1 This Agreement is to be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law; provided, however, that nothing herein shall relieve the Parties of their obligation to comply with the U.S. Shipping Act of 1984, as amended.

9.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (the "Rules"), which are deemed to be incorporated by reference to this Article. Either Party may initiate arbitration proceedings pursuant to this Article 9 by sending its request to the London Court of International Arbitration (a copy of which request shall be sent to the other Party) (such request being an "Arbitration Request").

9.3 The arbitral tribunal constituted pursuant to the Rules shall, subject to Article 9.4, consist of one arbitrator, who shall be appointed by agreement of the other Party. If the Parties fail to agree upon the appointment of the arbitrator within 21 days of the date of deemed receipt of the Arbitration Request, the President of the

London Court of International Arbitration shall appoint the arbitrator at the written request of any Party (a copy of which request shall be sent to the other Party).

9.4 Either Party may, within five days of receipt of an Arbitration Request, give notice to the other Party that a panel of three arbitrators should be appointed (such notice being a "Panel Expansion Notice"). If a Party sends a Panel Expansion Request, Article 9.3 shall not apply and the Arbitral Tribunal constituted pursuant to the Parties. If the Parties fail to agree upon the appointment of the three arbitrators within 21 days of the date of deemed receipt of the Panel Expansion Notice, the President of the London Court of International Arbitration shall appoint the three arbitrators at the written request of any Party (a copy of which request shall also be sent to the other Party).

9.5 The seat of any arbitration pursuant to this Article 9 shall be London and the language to be used in the arbitral proceedings shall be English.

ARTICLE 10: MISCELLANEOUS

10.1 Except as otherwise provided in this Article 10.1, no Party may assign or transfer its rights or obligations under this Agreement in part or in full to any third party, company, firm or corporation without the prior written consent of the other Party, which consent may be withheld for any reason. Notwithstanding the preceding sentence, it is acknowledged and agreed that Maersk shall have the right to transfer Maersk Line (including all or substantially all of the assets pertaining to the Maersk Line business unit) to any affiliate (as that term is defined by the Parties from time to time) without the prior consent of, or provision of a guarantee to, MSC. A Party may

assign its rights under this Agreement to an affiliate without approval provided that, if the assignee ceases to be an affiliate of the relevant Party the assignee shall, within ten (10) business days of so ceasing, assign its rights under this Agreement to the assigning Party or another affiliate thereof. The benefits and obligations of each Party under this Agreement may be conferred upon or be satisfied on behalf of that Party by its subsidiaries. For the avoidance of doubt, each Party shall be liable for any breach of its obligations under this Agreement, regardless of whether such breach is committed by that Party or by one of its subsidiaries.

10.2 If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational, then said provision(s) shall cease to have effect between the Parties, but only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remaining binding and enforceable.

10.3 No variation or waiver of any of the provisions of this Agreement and no agreement concluded pursuant to any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Parties.

10.4 Communication of all written notices required pursuant to this Agreement (other than notice of termination, which will be sent by registered mail) shall be sent by e-mail, fax or letter to the following addresses or as otherwise advised:

Party	Address	Fax number	E-mail address
Maersk	50 Esplanaden, 1098 Copenhagen Denmark Attn: Søren Toft	45-3363-4784	soren.toft@maersk.com
MSC	12-14 Chemin Rieu 1208 Geneva Switzerland Attn: Caroline Becquart	41-22-703-8787	cbecquart@mscgva.ch

Any notice given under this Agreement shall be effective upon receipt.

10.5 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

10.6 This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

ARTICLE 11: COMPLIANCE

11.1 The Parties agree to comply with all applicable laws, rules, regulations, directives and orders issued by any authorities having jurisdiction in relation to the rights and obligations of the Parties under this Agreement, and any consequence to this Agreement resulting from the non-compliance of a Party with such applicable laws. rules, regulations, directives and orders shall be borne in full by that Party.

11.2 The Parties shall be signatory to the Agreement to Voluntarily Participate in Customs-Trade Partnership Against Terrorism ("C-TPAT Agreement") and agree to develop and implement a verifiable, documented program to enhance security procedures throughout their respective portions of the supply chain process, as described in the C-TPAT Agreement.

Maersk/MSC Vessel Sharing Agreement
FMC Agreement No. 012293-001

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have agreed this 17TH day of September, 2014, to amend the Agreement per the attached page and to file same with the U.S. Federal Maritime Commission.

A.P. Møller-Mærsk A/S
Name:
Title:

MSC Mediterranean Shipping Company S.A.
Name:
Title:

Caroline Pontoppidan
General Counsel, Maersk Line Legal
A.P. Møller - Mærsk A/S
Esplanaden 50
1098 København K
Danmark

Maersk/MSC Vessel Sharing Agreement
FMC Agreement No. 012293-001

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IN WITNESS WHEREOF, the parties have agreed this 17 day of September, 2014, to amend the Agreement per the attached page and to file same with the U.S. Federal Maritime Commission.

A.P. Møller-Maersk A/S
Name:
Title:

MSC Mediterranean Shipping Company S.A.
Name: MR DIEGO APONTE
Title: PRESIDENT AND CEO