

Original Title Page

Name: NYK/HLAG VESSEL SHARING AGREEMENT

FMC NO.: 012153

CLASSIFICATION: A Cooperative Working Agreement

EXPIRATION DATE: See Article 9

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>NAME OF ARTICLE</u>	<u>PAGE NO.</u>
Article 1	Name of Agreement	2
Article 2	Purpose of Agreement	2
Article 3	Parties to Agreement	2
Article 4	Geographic Scope	3
Article 5	Authority	3
Article 6	Administration and Delegation of Authority	6
Article 7	Membership	7
Article 8	Voting	7
Article 9	Duration and Resignation	7
Article 10	Non-Assignment	9
Article 11	Law and Arbitration	9
Article 12	Notices	10
Article 13	Counterparts	10 <u>11</u>
<u>Article 14</u>	<u>Transition</u>	<u>11</u>

ARTICLE 1: NAME OF AGREEMENT

The name of this agreement is the NYK/HLAG Vessel Sharing Agreement (the "Agreement").

ARTICLE 2: PURPOSE OF AGREEMENT

The purpose of this Agreement is to authorize the Parties (as hereafter defined) to share vessels and vessel space in the Trade (as defined in Article 4) thereby improving efficiency, frequency of service and port coverage, lowering bunker consumption, benefitting the environment, and improving utilization of vessel capacity and equipment.

ARTICLE 3: PARTIES TO AGREEMENT

The parties to the Agreement are:

1. Hapag-Lloyd Aktiengesellschaft ("HLAG")
Ballindamm 25
20095 Hamburg Germany
2. Nippon Yusen Kabushiki Kaisha ("NYK")
3-2 Marunouchi 2-Chome Chiyoda-ku, Tokyo 100-0005, Japan

3. [Ocean Network Express Pte. Ltd. \("ONE"\)](#)
[7 Straights View](#)
[#16-01 Marina One East Tower](#)
[Singapore 018936](#)

NYK and HLAG are sometimes hereinafter referred to individually as a "Party" and jointly as the "Parties."

ARTICLE 4: GEOGRAPHIC SCOPE

This Agreement covers the trades between ports on the West Coast of the United States, including California on the one hand, and ports on the West Coast of Mexico and Central America, including Guatemala, El Salvador, Nicaragua and Costa Rica, on the other hand (the "Trade").

ARTICLE 5: AUTHORITY

5.1 (a) The Parties are authorized to discuss and agree on the number, size, age and other characteristics of vessels to be operated hereunder, as well as the phasing in, phasing out and substitution of vessels. The Parties are authorized, without further amendment, to operate up to ~~three~~ four (4) vessels, each with an approximate nominal capacity of 2600 TEU, operating on a weekly service. ~~Two~~ Three of the vessels shall be contributed by NYK and HL shall provide one (1) vessel.

(b) Each Line shall be responsible for the costs of operating the vessel(s) it provides.

5.2 (a) The Parties are authorized to discuss and agree on the ports to be served, the port rotation to be followed, and the scheduling of vessels. Regular reviews, including operational efficiencies of the service, shall be conducted and changes shall be agreed and action taken where necessary, in order to maintain a high quality network covering the Parties' requirements.

(b) The Parties are authorized to discuss and agree upon matters relating to the use of any terminal or port facilities, and may jointly contract for stevedoring services, and

ARTICLE 13: COUNTERPARTS

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute on and the same agreement. This Agreement may not be executed and delivered by exchange of facsimile copies or other electronic copy showing the signatures of each Party, and the original signatures of need not be affixed to the same copy.

ARTICLE 14: TRANSITION

14.1 Effective April 1, 2018 (the “Transition Date”), the container liner operations of Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha (each individually a “3J Line” and collectively the “3J Lines”) shall be combined into a new company known as Ocean Network Express Pte. Ltd. (“ONE”). In light of the foregoing, the Parties hereto agree as follows:

- (a) Effective as of the Transition Date, this Agreement is hereby amended to add ONE as a Party.
- (b) Subject to subparagraph (c) below, effective as of the Transition Date, Nippon Yusen Kaisha (“NYK”) hereby transfers and assigns all its rights, obligations and liabilities under the Agreement to ONE and, subject to subparagraph (c) below, this Agreement shall automatically be terminated vis-a-vis and cease to apply or bind NYK, and with the same terms and conditions, automatically be effectuated to apply to and bind ONE. ONE hereby accepts above effectuation the transfer and assignment of, and agrees to assume, all of the rights, obligations and liabilities of NYK under the

NYK/HLAG VESSEL SHARING
AGREEMENT
FMC No. 012153-001
Original Page 12

Agreement effective as of the Transition Date. The other Parties to the Agreement hereby consent to the herein described transfer and assignment.

(c) Notwithstanding subparagraph (b) above, NYK shall remain liable to the other Parties to the Agreement for its obligations under the Agreement with respect to the period prior to the Transition Date, as well as for any obligations arising out of or in connection with voyage legs which began prior to the Transition Date but which will not be completed until after the Transition Date and any cargo movements thereon. In this regard, it is understood and agreed by all Parties that ONE shall be responsible only for those obligations arising out of or in connection with voyage legs and/or cargo movements being performed by it, and shall not be responsible for voyage legs and/or cargo movements performed by NYK. The obligations of NYK under this subparagraph (c) shall survive the termination of the membership of NYK in this Agreement.

(d) Subject to the last sentence of subparagraph (c) above, effective as of the Transition Date, the Agreement is hereby amended to delete NYK as a Party; provided, however, that notwithstanding said deletion, NYK shall remain a Party to this Agreement for purposes of completing voyage legs and for fulfilling all obligations arising out of or in connection with such voyage legs which began prior to the Transition Date but which will not be completed until after the Transition Date and any cargo movements thereon.

NYK/HLAG VESSEL SHARING
AGREEMENT
FMC No. 012153-001
Original Page 13

- e) Prior to the Transition Date, ONE is authorized to attend and participate in all decisions under this Agreement. Notwithstanding the foregoing, ONE shall have no voting rights under the Agreement until after the Transition Date. Notwithstanding ONE's participation in discussions under the Agreement prior to the Transition Date, no antitrust immunity shall be conferred upon ONE for discussions that occur prior to the Transition Date.
- f) Effective as of the Transition Date, all references in this Agreement to NYK shall be read as references to ONE.