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EFFECTIVE
APR - 2 2001
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

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ARTICLE 5: Agreement Authority.

5.1 Vessels and Strings.

(a) The Parties shall operate two initial strings under this Agreement, as follows:

(i) Pacific South West ("PSW") string, calling at ports in California and ports in New Zealand, Australia, Fiji and Mexico. The PSW string initially shall utilize seven (7) vessels of approximately 1,100 to 1,500 TEU capacity (based on 14 tonnes per TEU), two of which will be provided by PONL and five of which will be provided by ANZDL.[2]

(ii) Pacific North West ("PNW") string, calling at ports in California, the Pacific North West, Hawaii, New Zealand, Australia, Fiji and Tahiti. The PNW string initially shall utilize eight (8) vessels of approximately 1,100 to 1,500 TEU capacity (based on 14 tonnes per TEU), three of which will be provided by Columbus, three of which will be provided by FOML and two of which will be provided by ANZDL.

(b) The vessels to be contributed under Article 5.1(a) shall have suitable characteristics with regard to size, speed, configuration and power points for temperature-controlled units, and shall only be introduced after agreement with the other Parties, such agreement not to be unreasonably withheld. However, so long as any Party is able to provide slots to the other Parties (including power

[2] Initially, calls by the PSW service in Fiji will alternate fortnightly with calls by that service in Mexico. Initially, calls by the PNW service in Fiji will alternate fortnightly with calls by that service in Tahiti and the PNW service will call Hawaii on a monthly basis only.

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points) pursuant to the terms of this Agreement, and the pro-forma schedules are maintained, any Party may introduce, withdraw or substitute vessels on the strings as it sees fit, subject to providing a minimum of 90 days notice of change or, if not practical, then as soon as possible thereafter and in any case no later than 30 days prior to the intended substitution.

(c) It is understood that vessels presently operated by the Parties in the Trade covered by this Agreement or substitute vessels will be contributed to provide an adequate, economic and efficient shipping service in the Trade to maintain the Minimum Capacity and Service Levels negotiated as required with designated shipper bodies in Australia. Vessels presently deployed in the Trade not necessary to be so contributed to the services to be operated hereunder shall be redelivered, redeployed, chartered or sub-chartered as this Agreement is implemented. Subject to the Minimum Capacity and Service Levels, the redelivery or redeployment of vessels contemplated by this Article 5.1(c) are expected to result in a reduction in capacity of approximately 26,000 TEUs (calculated on the basis of 14 tonnes per TEU) per annum in the southbound trade. When agreed, Minimum Capacity and Service Levels shall be set forth in Appendix A to this Agreement. It is also understood that in order to provide such an adequate, economic and efficient shipping service in the Trade to maintain the Minimum Capacity and Service Levels, it is necessary for the Parties' vessel utilizations to be maximized. Accordingly, except as provided in Appendix B or with the unanimous consent of the other Parties, no Party or any parent, subsidiary or affiliate of a Party may operate any direct, relay or

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transshipment service between the United States Pacific Coast and Australia and/or New Zealand that competes with a service operated hereunder. Each Party agrees to provide the other Parties with advance notice of any potentially competitive service in the Pacific Islands or trans-Tasman trades which may be entered into by that Party or any of its parents, subsidiaries or affiliated companies.

(d) Each Party will be responsible for the costs of its vessel(s), including, but not limited to, vessel charter hire, fuel, port charges and port agency vessel husbanding expenses. The Parties shall be responsible for their own initial phase in and phase out costs and shall discuss and agree on the treatment of any subsequent phase in and phase out costs associated with any restructuring of the service. Each Party also will be responsible for any fees, taxes, penalties, charges, or liabilities, assessed against the vessel, by virtue of its flag or otherwise, by any governmental authority.

(e) The Parties shall agree on a long-term pro-forma schedule for the service. Such schedule may be changed from time to time as the Parties

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mutually agree and shall incorporate periods required for programmed maintenance and repair including periodic dry docking which shall be advised at least three (3) months in advance. The Parties will agree on string co-ordinators who shall maintain the long term sailing schedule and shall use maximum efforts to remedy any failure to comply. The Parties are authorized to discuss and agree upon rules for remedial actions and financial consequences in cases of non-performance.

(f) The Parties are authorized to charter vessels to/from one another or jointly from third parties.

5.2 Slot Allocations and Use of Slots.

(a) The initial weekly allocation of slots on vessels operated under this Agreement, which are valid for a period of approximately six (6) months and are

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southbound and northbound. The Parties commit to the payment for the slots at the prevailing slot rates on a used/unused basis one way.

(d) Any unused slots within a Party's entitlement may be sold or sub-chartered ad hoc to any vessel operating common carrier (VOCC), always provided that there is prior consultation with the other Parties, and that the other Parties will have first refusal of such unused slots. The Party with unused slots may sell space to VOCCs only on an ad hoc basis if the other Parties have failed to exercise their "first refusal" option within one business day notification by e-mail or fax. An ad hoc sale shall be deemed to be a sale of slots on a single voyage occurring within a one week period. Space charters or vessel sharing arrangements of a more permanent nature with non-party VOCCs that utilize the vessels operated under this Agreement are not permitted. Notwithstanding the immediately preceding sentence, any Party that has a pre-existing space charter or vessel sharing agreement with one or more non-party VOCCs operating within the scope of this Agreement that is outside the portion of the Trade between the United States Pacific Coast and Australia and/or New Zealand, and which is identified in Appendix C hereto, shall be permitted to continue to make space available to such non-party VOCCs on vessels operated under this Agreement. In the event a Party proposes an addition to Appendix C covering a new space charter or vessel sharing agreement in any portion of the Trade outside that between the United States Pacific Coast and Australia and/or New Zealand which would utilize vessels operating under this

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to apply to all vessels in the service based on a formula provided by the Parties. Each time a chartered vessel enters or exits the service or the charter of a vessel remaining in the service is renewed, the chartering Party shall provide the ITP with the relevant charter hire so that the ITP may recalculate the slot charter hire based on the updated information. In addition, the Parties shall review the fuel reference price and port charge components of the slot charter hire every three (3) months and, if they deem necessary, provide the ITP with revised data for purposes of recalculating the slot charter hire. It is understood that nothing herein shall authorize the Parties to exchange vessel-operating cost data.

(k) Each Party shall be responsible for the non-fixed component costs of handling cargo moving under its bill of lading (e.g., stevedoring and other cargo handling costs).

5.3 Review and Revision of Vessels and Slot Allocations.

(a) It is understood that the provision of vessels set forth in Article 5.1 above and the allocation of space set forth in Article 5.2 are those that will initially apply under this Agreement for a period of approximately six (6) months. After this Agreement has become operational, it is understood that the Parties will review and revise the foregoing provisions as they may agree. Should any such revisions to the vessels and/or slot allocations require any amendments to this Agreement, such amendments will be filed with the Federal Maritime Commission and otherwise as required by applicable law.

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5.4 Terminals.

The Parties are authorized to jointly negotiate ocean terminal and stevedoring agreements. Subject to such criteria as the Parties may from time to time agree, the Parties shall work towards the establishment of the most efficient ocean terminal arrangement, which may include using one ocean terminal at each port of call. In selecting an ocean terminal, preference will be given to ocean terminals owned/leased/operated by Parties or their subsidiary or associated companies and consideration shall be given to the fulfillment of Parties' existing ocean terminal contracts. It is understood, however, that the selection of an ocean terminal shall be based on all input, including cost, comparative service and all other relevant factors (such as other services calling at the terminal). To the extent this Article 5.4 relates to outwards or inward liner cargo shipping services in Australia, it is limited to the extent permitted under Part X of the Trade Practices Act (Cth) 1974.

5.5 Membership in Other Agreements.

The Parties may discuss and agree upon their respective memberships in any conference, rate agreement, discussion agreement, stabilization agreement, or other type of agreement in the Trade, provided that each Party shall retain the unilateral right to join or withdraw from any such agreement in accordance with the terms of such agreement.

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5.6 Feeder and Transshipment Vessels.

The Parties are authorized to discuss and agree upon the chartering, hiring, establishment, use, scheduling and coordination of feeder and transshipment services in conjunction with the strings operated under this Agreement.

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5.7 Equipment

The Parties are authorised to discuss and agree upon standards for, and may interchange, purchase, pool, lease, sublease, maintain and repair, or otherwise co-operate in connection with containers, chassis and other equipment utilized in the Trade as among themselves as they may from time to time agree, including the establishment of joint container and chassis pools, depots, container yards and container freight stations.

5.8 Inland Transportation.

To the extent permitted by the Shipping Act of 1984, as amended, Part X of the Australian Trade Practices Act (Cth) 1974, or the applicable law of any other relevant jurisdiction, the Parties are authorized to jointly negotiate and agree with one or more motor carriers and/or railroads with respect to rates, terms, conditions and services charged or provided by such inland carriers to the Parties in the United States or other countries within the scope of this Agreement.

5.9 Liabilities.

The Parties are authorized to discuss and agree upon their respective liabilities hereunder, including the terms and conditions of the Parties respective bills of lading issued to cargo interests or of memorandum bills of lading that they may issue to one another or to any sub-charterer.

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5.10 Separate Commercial Identities.

Each Party shall retain its separate identity and shall have separate sales, pricing and marketing functions. Each Party shall issue its own bills of lading. This Agreement does not create and shall not be interpreted as creating

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any partnership, joint venture or agency relationship among the Parties, or any joint liability under the law of any jurisdiction.

5.11 Working Procedures.

The Parties are authorized to enter into written agreements or otherwise agree on working and administrative procedures that implement the authority contained herein, including procedures for the booking of cargo in slots allocated hereunder; the acceptance and accommodation of dangerous cargoes, out-of-gauge cargoes and reefer cargoes; terminal operations; usage of containers, chassis and other equipment; and all other routine, operational and administrative matters.

5.12 Further Agreements.

Pursuant to 46 C.F.R. §535.407, any further agreement contemplated by this Agreement, except to the extent such further agreement relates to routine operational and administrative matters, shall be filed with the FMC and become effective under the Shipping Act of 1984, as amended, prior to being implemented. To the extent this Article 5.12 relates to outwards or inwards liner cargo shipping services in Australia, it shall be subject to Part X of the Trade Practices Act (Cth) 1974.

ARTICLE 6: Officials of the Agreement and Delegations of Authority.

(a) This Agreement shall be administered and implemented by decisions, memoranda and communications between the Parties to enable them to effectuate the purpose of this Agreement. The Parties are authorized to

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establish such standing or temporary committees and sub-committees as they may deem appropriate from time to time.

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unanimously of the opinion that the result may be materially detrimental to the service operated under this Agreement, or that sums may be owed by the Affected Party to any other Party or Parties and may not be paid in full or their payment may be delayed, then, by unanimous decision of the other Parties, any further participation of the Affected Party in the Agreement or any part thereof may, with immediate effect, either be terminated or suspended for such period as the other Parties, in their sole discretion, deem appropriate.

ARTICLE 8: Voting.

Decisions on all issues concerning this Agreement shall be reached by unanimous agreement of the Parties.

ARTICLE 9: Duration and Termination of the Agreement.

This Agreement shall remain in full force and effect until the parties unanimously agree to its termination or until all but one of the parties has withdrawn from the Agreement in accordance with Article 7 hereof. Notwithstanding anything to the contrary in this Agreement, the Parties shall not implement this Agreement prior to February 3, 2001 or later if required by applicable law.

ARTICLE 10: Arbitration and Governing Law.

(a) This Agreement shall be governed by and construed in accordance with the laws of England and each Party hereby submits to the jurisdiction of the English courts.

(b) All disputes or differences arising under this Agreement which cannot be amicably resolved shall be referred to arbitration in England in

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accordance with the Arbitration Act 1996 together with London Maritime Arbitration Association (LMAA) terms.

(c) The Parties agree to appoint a single arbitrator within 21 days of any Party seeking an appointment. If any Party should so request, a panel of three arbitrators shall be appointed. In the event there is no agreement on the appointment within the said 21 days, then the LMAA shall appoint a single arbitrator or a panel of arbitrators (as the case may be) at the request of any Party. The Parties further agree where the amount in dispute is US$ 200,000 or less, the arbitration will proceed on a documents and written submission basis only. However, oral evidence will be allowed exceptionally and at the discretion of the arbitrator(s).

(d) Notwithstanding anything in Articles 10(a), (b) or (c) to the contrary, if the dispute or difference arises solely in relation to an outward liner cargo shipping service from Australia provided under this Agreement, then:

(i) The arbitration shall be held before a single arbitrator in Sydney, Australia and shall be conduced (to the extent that this Article makes no provision) in accordance with the UNCITRAL Arbitration Rules;

(ii) The appointing and administering body shall be the Australian Chamber of Shipping;

(iii) In determining the dispute or difference, the arbitrator shall apply the laws of New South Wales;

(iv) Except by agreement of the parties to the arbitration, there will be no pre-hearing discovery;

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(v) The arbitrator shall decide the matter only on the basis of evidence submitted to him, which evidence shall be supplied to the other parties to the arbitration, who shall be given the opportunity to submit evidence in rebuttal, explanation or mitigation, and to cross-examine any witnesses.

(vi) Any rights of appeal that a party would otherwise have under Part V of the Commercial Arbitration Act 1984 (NSW) shall be excluded to the full extent permitted by that Act.

(vii) This Article 10(d) does not apply:

(a) if the parties to the dispute or difference agree in writing that it is to be resolved by some other means; and

(b) if the Australian Minister administering the Trade Practices Act (Cth) 1974 also agrees in writing.

ARTICLE 11: Non-Assignment.

The rights and obligations of each Party under the Agreement shall not be assignable except to subsidiaries, parent companies or fellow subsidiaries or with the prior unanimous agreement of all Parties. Each Party shall warrant that any subsidiary or fellow subsidiary to which any assignment is made shall not be sold to a third-party that is not a Party.

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ARTICLE 12: Force Majeure.

(a) In circumstances such as but not limited to the event of war, whether declared or not, hostilities or the imminence thereof, act of public enemies, restraint of princes, rulers or people, or compliance with any compulsorily

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Appendix A

Minimum Capacity and Service Levels

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Appendix B

Competing Services Between the U.S. and Australia and/or New Zealand

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## Appendix C

Vessel Sharing Arrangements Authorized to
Utilize Space on Vessels Operated Hereunder

1. ANZDL arrangements with:

    a. Pacific Direct Line between Australia/New Zealand and Tahiti
    b. Neptune Shipping Services between Australia/New Zealand and Fiji
    c. Mediterranean Shipping Company between Australia/New Zealand

2. P&O Nedlloyd arrangements with:

    a. Mediterranean Shipping Company
    b. Contship
    c. Swire

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U.S. Pacific Coast-Oceania Agreement
FMC Agreement No. 011741-001

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have agreed this 16th day of February, 2001, to amend this Agreement as per the attached pages and to file same with the U.S. Federal Maritime Commission.

HAMBURG-SUDAMERIKANISCHE DAMPFSCHIFFFAHRTSGESELLSCHAFT KG

Name: WAYNE R. ROHDE
Title: ATTORNEY-IN-FACT

P&O NEDLLOYD LIMITED and P&O NEDLLOYD BV

Name: NEAL M. MAYER
Title: ATTORNEY-IN-FACT

AUSTRALIA-NEW ZEALAND DIRECT LINE

Name: WAYNE R. ROHDE
Title: ATTORNEY-IN-FACT

FESCO OCEAN MANAGEMENT LIMITED

Name: NEAL M. MAYER
Title: ATTORNEY-IN-FACT

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