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# PACIFIC ISLANDS DISCUSSION AGREEMENT

FMC NO. 203-011574-002

A Cooperative Working Agreement

Restatement of Agreement

EFFECTIVE
SEP 2 4 1998
UNDER THE
SHIPPING ACT
OF 1984
Federal Maritime Commission

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ARTICLE 1 – FULL NAME OF THE AGREEMENT

The full name of this Agreement is the Pacific Islands Discussion Agreement.

ARTICLE 2 - PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to provide service, stability, and efficiency in the Trade (as defined in Article 4) by authorizing the parties to exchange information, to discuss matters of mutual interest and concern in the Trade, to reach non-binding consensus upon rates, rules, terms and conditions of common carrier service in the Trade, and to discuss and formulate cooperative service arrangements in the Trade.

ARTICLE 3 – PARTIES TO THE AGREEMENT

The names and addresses of the parties to this Agreement are set forth in Appendix A hereof.

ARTICLE 4 – GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement covers the trade (the "Trade") between (a) all U.S. Pacific Coast ports and interior and coastal points in the United States and (b) all ports and interior and coastal points in Cook Islands, Fiji, New Caledonia, Vanuatu, Western Samoa, Solomon Islands, Society Islands, Tonga, Kiribati, Tuvalu and Papua New Guinea.

ARTICLE 5 – OVERVIEW OF AGREEMENT AUTHORITY

5.1 The parties, or any of them, are authorized, but not required, to meet, exchange information and discuss and reach consensus or agreement upon uniform or differential transportation rates, charges, classifications, rules, service items including arranging or not arranging inland transport, freight forwarder compensation, credit and per diem terms and conditions, rates and terms of service contracts, practices and any other term or condition relating without limitation to any aspect of ocean transportation or common carrier service in the Trade, whether or not such rates, charges, classifications, etc. are required to be included in a tariff or a service contract. Matters subject to this authority include, but are not limited to, port-to-port rates, overland rates, volume rates, port area intermodal rates, through rates, interior point intermodal rates and minilandbridge rates for service in the Trade. The parties are not authorized to publish a

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common tariff. The parties shall have no obligation to adhere, other than voluntarily, to any consensus or agreement reached under the authority of this Article 5.1. If any party shall decide not to adhere to any such consensus or agreement, it shall endeavor to promptly notify each other party of such decision.

5.2 The parties, or any of them, are authorized to meet, exchange information, and to discuss, negotiate and agree upon the formulation of any lawful agreement permitting the rationalization of service, equipment or capacity in all or any part of the Trade, by joint service, or otherwise; provided that no such agreement may become effective until all governmental conditions required to be fulfilled prior to its effectiveness shall have been fulfilled.

5.3 The parties, or any of them, are authorized to charter space on their respective vessels in the Trade to/from each other at such rates as may be agreed to from time to time by a two-thirds vote of all parties. Other terms and conditions of such space charter arrangements shall be determined by the parties involved, unless two thirds of the parties vote to establish such terms and conditions, in which case they shall govern any such arrangements. The parties may also exchange, interchange and lease empty containers, chassis and other like equipment among themselves, at rates, terms and conditions as may be agreed to by the parties involved, unless two thirds of the parties vote to establish such terms and conditions, in which case they shall govern such arrangements. Provided, however, that nothing in this Agreement shall be construed to prohibit any party or parties from chartering space or exchanging equipment among themselves or with other parties under rates, terms, and conditions established pursuant to the Shipping Act of 1984, even if such rates, terms and conditions are different from those established pursuant to this Article 5.3. A maximum of six vessels, each with a capacity of up to 1200 TEUs, shall be utilized under this Agreement.

5.4 In furtherance of the foregoing, parties may meet together; may adopt administrative rules (including procedures for the conduct of meetings and the sharing of expenses incurred hereunder); may appoint committees with such authority as the parties shall delegate to them; may retain consultants or other third parties, may compile and

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distribute or exchange information relating to trade conditions, costs or revenues of the parties of other persons, or any other matter pertaining to the Trade; and may meet with shippers, shipper groups or other persons. Action under this Agreement (including adoption of any modification to this Agreement) may be taken at any meeting or by written or oral approval, but no modification of this Agreement may be adopted unless approval by all the parties hereto.

ARTICLE 6 – OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY

6.1 The parties may appoint a chairman and may employ administrative personnel, attorneys and other persons to perform service in connection with this Agreement and otherwise provide for administrative and housekeeping arrangements.

6.2 The following individuals each has the authority on behalf of the parties hereto to file this Agreement with the Federal Maritime Commission, and execute and file any modification to this Agreement agreed to by the parties and to submit any associated materials in support thereof, as well as the authority to delegate same.

Legal counsel for this Agreement and each of the carrier parties hereto.

ARTICLE 7 - MEMBERSHIP, WITHDRAWAL, READMISSIONS AND EXPULSION

(a) Any ocean common carrier providing service in the Trade may hereafter become a party to this Agreement by signing the Agreement or a counterpart copy thereof.

(b) No party may be expelled from this Agreement against its will or otherwise terminated as a party except for abandonment of service. No expulsion shall become effective until a detailed statement setting forth the reasons therefor has been furnished to the expelled party.

(c) Any party may withdraw from this Agreement at any time upon 10 days' written notice to the other parties.

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(d) No such change in membership shall become effective until the fulfillment of all governmental conditions required to be fulfilled prior to the effectiveness thereof.

ARTICLE 8 – VOTING

Each party shall have one vote under this Agreement.

ARTICLE 9 – DURATION AND TERMINATION OF THE AGREEMENT

This Agreement shall become effective upon the effectiveness hereof under the Shipping Act of 1984 and shall continue in effect indefinitely unless and until terminated by unanimous vote of the membership.

ARTICLE 10 – CONFIDENTIALITY

Except as may be duly required by governmental regulations, compulsory process of the law, or otherwise agreed, no party shall disclose to any person, except its own representatives and its own or this Agreement's attorneys, the view or position of any party on any matter considered under this Agreement.

ARTICLE 11 – RESERVATION OF RIGHTS; INDEPENDENT ACTION

Except for rates, terms and conditions agreed to by vote of the parties pursuant to Article 5.3 above, nothing in this Agreement is to be construed to (i) obligate any party to exchange information, participate in any activity, be or not be a party to any other agreement, or adhere to any position, without consent; (ii) require adherence by any party for any period of time to any consensus or agreement reached hereunder; or (iii) limit the right of any party to continue or alter any tariff it publishes or to which it otherwise adheres, any service it provides or any commercial practice in which it may engage; provided, however, that each party shall be liable for its share of the expenses incurred in carrying out this Agreement and assessed during the term of its membership.

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APPENDIX A

The parties to the Pacific Islands Discussion Agreement are as follows:

Carriers

P&O Nedlloyd Limited
One Meadowlands Plaza
12th Floor
East Rutherford, NJ 07073

Hamburg-Sudamerikanische
Dampfschifffahrts-Gesellschaft
Eggert & Amsinck d/b/a
South Seas Steamship Line
435 California Street, #850
San Francisco, CA 94104

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FMC Agreement No. 203-011574-002

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereby agreed this 24th day of September, 1998, to amend and restate the Agreement and to file same with the U.S. Federal Maritime Commission.

Marc J. Fink
Authorized to Execute pursuant to
Article 6.2 of the Agreement

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