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Yang Ming/COSCO Shipping Slot Exchange Agreement

FMC Agreement No. 012472

A Cooperative Working Agreement

Expiration Date: See Article 9.

FMC Agreement No.: 012472-002 Effective Date: Thursday, August 9, 2018
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ARTICLE 1: NAME OF AGREEMENT

The name of this agreement is the Yang Ming/COSCO Shipping Slot Exchange Agreement (the "Agreement").

ARTICLE 2: PURPOSE OF AGREEMENT

The purpose of this Agreement is to authorize the parties to exchange slots on their respective services in the Trade (as hereinafter defined) and to authorize the parties to enter into cooperative working arrangements in connection therewith.

ARTICLE 3: PARTIES TO AGREEMENT

The parties to the Agreement are:

1. Yang Ming Marine Transport Corp.
   271 Ming De 1st Road
   Cidu District, Keelung 20646
   Taiwan
   and
   Yang Ming (UK) Ltd.
   2nd Floor, 210 South Street,
   Romford, Essex, England, RM1 1TR, UK
   (collectively referred to as Yang Ming and operating as one party for all purposes hereunder)

2. COSCO Shipping Lines Co. Ltd. (COSCO Shipping)
   Ltd. 378, Da Ming Road (East)
   Shanghai, PRC

Yang Ming and COSCO Shipping are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

ARTICLE 4: GEOGRAPHIC SCOPE

This Agreement covers the trades between ports in China and Japan on the one hand and U.S. ports in the Pacific coast range on the other hand (hereinafter, the "Trade").

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ARTICLE 5: AUTHORITY

A. The Slot Exchange

1. On such terms and conditions as the Parties may agree from time to time, the Parties may exchange slots on their respective services in the Trade. Initially, it is expected that Yang Ming shall provide to COSCO Shipping space for 300 TEUs on the service referred to as the PS2 and operated under THE Alliance Agreement (FMC Agreement No. 012439), in exchange for which COSCO Shipping shall provide to Yang Ming space for 150 TEUs on the service referred to as the CEN and operated under the OCEAN Alliance Agreement (FMC Agreement No. 012426), and 150 TEUs on the service known as the AAC3 and operated under FMC Agreement No. 012460,[1] as those services may be renamed or otherwise modified from time to time, for cargo moving between ports in the Trade. The number of slots to be exchanged, or the services on which slots will be exchanged, may be modified by the Parties without amendment to this Agreement; provided, however, that a change in the number of slots for either party above a maximum of 500 slots or below a minimum of 100 slots shall require an amendment to this Agreement. In addition, either Party may sell additional slots to the other Party on an ad hoc, per voyage, as available, as needed basis, on such terms and conditions as the Parties may agree from time to time.

2. Neither Party shall subcharter slots made available to it hereunder to any third parties without the prior written consent of the other Party, which shall not be unreasonably withheld.

3. The Parties may confer on operational matters relating to the PS2 and CEN services, including the vessels to be used, scheduling and port rotations, port calls, transit times, speed and adjustments to vessel speed (such as slow steaming), vessel stowage planning, issues relating to intermodal connections, and selection and use of terminals.

4. The Parties shall be entitled to use the exchanged slots without any geographical restrictions regarding the origin or destination of the cargo

[1] Effective August 27, 2018, the AAC service operated under the OCEAN Alliance will be replaced by both the CEN service operated by the OCEAN Alliance and the AAC3 service operated under FMC Agreement No. 012460. As of that date, space shall be provided on both the CEN and AAC3 services, and all references to the CEN service in this Agreement shall be deemed references to the CEN and AAC3 services.

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subject to operational restrictions and efficiency targets as the Parties may adopt from time to time, and subject to the concurrence of the vessel operator in the case of hazardous, breakbulk, or noncontainerized cargo. There shall be no priorities for either full, empty, wayport/interport or breakbulk cargo.

B. General Provisions

1. The Parties may consult and may agree upon the chartering, hiring, establishment, use, scheduling and coordination of transhipment, barge, and feeder services, in conjunction with the linehaul operations of any of the services covered by this Agreement. The Parties may also discuss, and may agree, on, the interchange of equipment between Yang Ming and COSCO Shipping.

2. Each Party shall be responsible for marketing its own interests in the Trade.

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3. The Parties are authorized to discuss and agree on their respective rights, fair and reasonable allocation of liabilities among the Parties, apportionment of damages, satisfaction of claims, procurement of insurance and claims thereunder, and indemnities for activities under this Agreement, such as matters pertaining to cargo loss or damage; damage or loss to containers or other equipment; schedule or delivery delays; loss of or damage to a vessel; accidents; hazardous, breakbulk, or oversized cargoes; loss or damage caused by cargo; damage to persons or property; failure to perform; force majeure; general average; and any liability to third parties. The Parties may also discuss and agree on all matters relating to the terms and conditions of charter parties pertaining to the operation and use of vessels/space/cargo subject to this Agreement, participation in voluntary government programs concerning security, safety, or similar matters (such as C-TPAT), and sequestration of all or portions of vessels, or other Flag State use of vessels, including pursuant to the U.S. government's Voluntary Intermodal Sealift Agreement Program.

4. Nothing in this Agreement shall be understood to preclude a Party or Line from: (i) continuing to operate any existing services within the geographic scope of the Agreement; (ii) modifying any such existing services as it may decide from time to time, or (iii) commencing a new service in the Trade.

5. Pursuant to 46 C.F.R. §535.408, any further agreements contemplated by this Agreement which are required to be filed under the Shipping Act of 1984, as amended, shall not be implemented until an appropriate amendment to this Agreement has been filed and become effective.

ARTICLE 6: ADMINISTRATION AND DELEGATION OF AUTHORITY

6.1 This Agreement shall be implemented and administered by meetings and other written and oral communications among the Parties. The Parties are authorized to adopt written procedures and policies with respect to the day-to-day operational requirements of the service, as well as with respect to communications among themselves.

6.2 Counsel for either Party is hereby authorized to file this Agreement and any amendments thereto with the U.S. Federal Maritime Commission, execute this Agreement and any amendments hereto, and to otherwise act on behalf of the Parties with respect thereto.

ARTICLE 7: MEMBERSHIP

Membership is limited to the Parties, unless otherwise unanimously agreed by the Parties.

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ARTICLE 8: VOTING

Except as otherwise provided herein, decisions on matters as to which the Parties are required or authorized to reach agreement shall be reached by mutual agreement of the Parties.

ARTICLE 9: DURATION AND RESIGNATION

9.1 This Agreement shall be effective as of the date it becomes effective under the U.S. Shipping Act of 1984, as amended, and shall be implemented on or about April 1, 2018 or such later date as the Parties may otherwise agree. Such date of implementation shall be referred to hereinafter as the "Commencement Date". The Agreement shall continue for a minimum duration of twelve (12) months and indefinitely thereafter, with a minimum notice of termination from either Party of three (3) months. Such notice of termination shall not be given prior to nine (9) months after the Commencement Date.

9.2 Notwithstanding Article 9.1, if at any time during the term of the Agreement either Party should become bankrupt or declare insolvency or have a receiving order made against it, suspend payments, or continue its business under a receiver for the benefit of any of its creditors, or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding-up of the Party (otherwise than for the purposes of and followed by a resolution previously approved in writing by the other Party), or any event similar to any of the above shall occur under the laws of the Party's country of incorporation (the Party so affected being referred to, in this Article 9.2 only, as the "Affected Party") and the other Party is of the opinion that the result may be materially detrimental to the Service, or that sums may be owed by the Affected Party to the other Party and may not be paid in full or their payment may be delayed, then, the other Party may, with immediate effect, either terminate or suspend this Agreement for such period as the other Party, in its sole discretion, deems appropriate.

9.3 In the event of the termination of this Agreement, the Parties shall continue to be liable to one another in respect of all liabilities and obligations accrued and due prior to termination and shall consult between themselves in relation to the completion of all contracts of carriage outstanding at the date of termination.

ARTICLE 10: NON-ASSIGNMENT

The rights and obligations of each Party under this Agreement shall not be assignable except with the prior written agreement of the other Party.

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ARTICLE 11: LAW AND ARBITRATION

11.1 This Agreement shall be governed by and construed in accordance with the laws of England and shall otherwise by subject to the U.S. Shipping Act of 1984, as amended.

11.2 Any dispute or difference arising out of or in connection with this Agreement which cannot be amicably resolved shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Article 11. The arbitration shall be conducted in accordance with the London Maritime Arbitration Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

11.3 The reference shall be to three arbitrators. Any Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party, requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice, and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if the arbitrator had been appointed by agreement. Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

11.4 In cases where neither the claim nor any counterclaim exceeds the sum of US$100,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when arbitration proceedings are commenced.

ARTICLE 12: FORCE MAJEURE

If due to circumstances beyond the control of the Parties hereto, such as but not limited to war, whether declared or not, hostilities or the imminence thereof, act of public enemies, restraint of princes, rulers or people, compliance with any compulsorily applicable law or governmental directive, boycott against flag, political ban, terrorist acts, civil commotion (or civil war), invasion, rebellion, sabotage, blockade, strikes, lockouts, labor disputes, nuclear accidents, unusually severe weather, fire, perils of the sea, closure to or obstacles in any canal, acts of God, or other events which render performance

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of this Agreement wholly or substantially impracticable, the Agreement shall not thereby be terminated, but (subject always to the various provisions for termination of this Agreement) the performance thereof shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities and obligations accrued at the date of suspension.

ARTICLE 13: COMPLIANCE WITH LAW

The Parties shall, individually and collectively, conduct their operations under this Agreement in compliance with laws and regulations applicable to one or both of the Parties, including but not limited to applicable regulatory compliance and trade sanctions, anti-boycott, anti-corruption and bribery, environmental, labor, competition, and privacy laws.

ARTICLE 14: NOTICES

Any notice hereunder shall be made by courier service or registered mail, or in the event expeditious notice is required, by e-mail or fax confirmed by courier or registered mail, to the addresses shown in Article 3 hereof.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this amended Agreement to be executed by their authorized representatives as of this 7 day of August, 2018.

Signed for and on behalf of **Yang Ming Marine Transport Corp. And Yang Ming (UK) Ltd. (operating as one party)**	Signed for and on behalf of **COSCO Shipping Lines Co. Ltd.**
_____	_____

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this amended Agreement to be executed by their authorized representatives as of this 9th day of August, 2018.

Signed for and on behalf of
Yang Ming Marine Transport Corp. And Yang Ming (UK) Ltd. (operating as one party)

Signed for and on behalf of
COSCO Shipping Lines Co. Ltd.

Name: Robert K. Magovern
Title: Attorney-in-Fact

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