

KYOWA/CNCo Pacific – Asia
Slot Charter Agreement
FMC Agreement No. _____

Original Title Page

KYOWA/CNCo Pacific – Asia
SLOT CHARTER AGREEMENT

FMC AGREEMENT NO. _____

A Space Charter Agreement

Expiration Date: None

TABLE OF CONTENTS

ARTICLE 1:	FULL NAME OF THE AGREEMENT	3
ARTICLE 2:	PURPOSE OF THE AGREEMENT	3
ARTICLE 3:	PARTIES TO THE AGREEMENT	3
ARTICLE 4:	GEOGRAPHIC SCOPE OF THE AGREEMENT	3
ARTICLE 5:	AGREEMENT AUTHORITY	4
ARTICLE 6:	AGREEMENT OFFICIALS AND DELEGATIONS OF AUTHORITY	5
ARTICLE 7:	VOTING	6
ARTICLE 8:	DURATION AND TERMINATION OF AGREEMENT	6
ARTICLE 9:	NON-ASSIGNMENT	8
ARTICLE 10:	APPLICABLE LAW AND JURISDICTION	8
ARTICLE 11:	SEPARATE IDENTITY/NO AGENCY OR PARTNERSHIP	8
ARTICLE 12:	NOTICES	9
ARTICLE 13:	SEVERABILITY	9
ARTICLE 14:	AMENDMENT	9

SIGNATURE PAGE

ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this agreement is the Kyowa Shipping Company (Kyowa) / China Navigation Company (CNCo) Pacific – Asia, Slot Charter Agreement.

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize KYOWA to charter space to CNCo on certain vessels KYOWA operates and to authorize CNCo to charter space to KYOWA on certain vessels CNCo operates (as hereinafter defined) and to authorize the Parties to enter into cooperative working arrangements with respect to the chartering and purchase of such space.

ARTICLE 3: PARTIES TO THE AGREEMENT

The Parties to the Agreement (referred to herein as “Party” or “Parties”) are:

- **THE CHINA NAVIGATION COMPANY PTE LTD.** of 300 Beach Road, #27-01 The Concourse, Singapore 199555 (referred to as “CNCo”); and

- **KYOWA SHIPPING COMPANY, LTD.** of Hibiya Building 4th floor, 1 - 1, Shimbashi 1 - Chome, Minato - Ku, Tokyo 105-0004, Japan (referred to as “Kyowa”).

KYOWA and CNCo are herein referred to individually as a “Party” and jointly as “Parties”.

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

4.1: The geographic scope of this Agreement shall cover the trade between South Korea, Japan, Taiwan and China on the one hand and Solomon Islands, Vanuatu, New

Caledonia, Fiji, Tonga, Western Samoa, French Polynesia, Kiribati, Marshall Islands and American Samoa on the other hand, as set forth herein ("Agreement Trade").¹ In the event that the Agreement Trade expands to include trade between American Samoa and the other Pacific Islands, the Parties will file an amendment hereto prior to such expansion.

ARTICLE 5: AGREEMENT AUTHORITY

5.1 (a) KYOWA shall charter to CNCo, and CNCo shall charter from KYOWA, space on a used or not used basis, on each sailing of KYOWA's South Pacific Service or CNCo Pacific North Asia Service based on the pro forma schedule agreed at the start of the Agreement. KYOWA will charter 300 teus to CNCo per voyage, and CNCo will charter 150 teus to KYOWA per voyage, each on a used/not used basis. The amount of teus chartered by each party may be adjusted up or down by up to 25%. Such space shall be made available at such slot charter hire and on such other terms and conditions as the Parties may agree from time to time. The Parties are authorized to discuss and agree on the terms and conditions applicable to the share and sale and purchase of space, including but not limited to the amount of slot charter hire. Additional slots may be chartered to CNCo by KYOWA or KYOWA by CNCo on an *ad hoc* basis, subject to space availability.

(b) For purposes of this Agreement, a 20-foot container shall be considered as 1 TEU, 40-foot container and 40HC as 2 TEUs.

(c) The Parties are authorized to discuss and agree on matters relating to terminal operators and stevedores, and to reach agreement on other issues relating to the loading and/or discharge of cargo.

(d) The Parties may discuss and agree upon the chartering, hiring,

¹ The inclusion of non-U.S. trades in this Agreement shall not bring such non-U.S. trades under the jurisdiction of the U.S. Federal Maritime Commission or entitle the parties hereto to immunity from the U.S. anti-trust laws with respect to such non-U.S. trades.

establishment, use, scheduling and coordination of transshipment, barge and feeder services in the Trade, in conjunction with linehaul vessel operations hereunder.

5.2 KYOWA or CNCo shall be entitled to use its slot allocation without any geographical restrictions regarding the origin or destination of the cargo, subject to such operational restrictions as the Parties may agree on from time to time.

5.3 KYOWA nor CNCo shall assign, charter, or sub-charter any slots that CNCo or KYOWA has chartered to it under this Agreement without the prior consent; provided, however, that KYOWA or CNCo may sub-charter space to its fully owned subsidiaries and affiliates.

5.4 The Parties are authorized to discuss and agree on such general administrative matters and other terms and conditions regarding the implementation of this Agreement as may be necessary or convenient from time to time, including but not limited to performance procedures and penalties, weight restrictions, stowage planning, record-keeping, responsibility for loss of/damage to cargo and/or containers, insurance, force majeure, the handling and resolution of claims and other liabilities, indemnification, documentation and bills of lading, and general average and salvage.

ARTICLE 6: AGREEMENT OFFICIALS AND DELEGATIONS 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 either Party; and
- (ii) Legal counsel for either Party.

ARTICLE 7: VOTING

Except as otherwise provided herein, all actions taken pursuant to this Agreement shall be by mutual agreement of the Parties.

ARTICLE 8: DURATION AND TERMINATION OF AGREEMENT

8.1 This Agreement shall enter into effect on the date it becomes effective under the U.S. Shipping Act of 1984 (the “Commencement Date”). The Agreement shall remain effective indefinitely following the Commencement Date unless terminated by either Party by providing a minimum 180 day written notice of termination to the other Party.

Notwithstanding the foregoing, this Agreement (a) may be terminated at any time by the mutual written agreement of the Parties and (b) will terminate automatically upon the expiry or termination of either CNCo’s Pacific North Asia Service or KYOWA’s South Pacific Island Service, in which case the terminating party will inform CNCo / KYOWA about the expiry or termination at least 180 days in advance of said termination. Unless otherwise agreed, this Agreement will remain in force until the completion of all the voyages in progress at the time such notice to terminate would otherwise have taken effect.

8.2 Notwithstanding Article 8.1 above, this Agreement may be terminated pursuant to the following provisions:

(a) If at any time during the term of this Agreement there shall be a change in control of a Party, then the other Party may, within three (3) months of becoming aware of such change, give not less than three (3) month’ notice of its intention to terminate this Agreement, which notice shall be given in writing.

(b) If at any time during the term of this Agreement, a Party is dissolved or becomes insolvent or makes a general assignment arrangement or composition with or for the benefit of its creditors or has a winding-up order made against it or enters into liquidation whether voluntarily or compulsorily or seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian, judicial manager, or other similar official for it or for all or substantially portion all of its assets or business (at least 30%) or is affected by any event or similar act under the applicable laws either of the jurisdiction in which it carries on business or a jurisdiction with an analogous effect or takes any action in furtherance of any of the foregoing acts or events (other than for the purpose of a consolidation, reconstruction or amalgamation), and the Party is reasonably believes that such event or occurrence is or may be materially detrimental to this Agreement or to payment of sums that may be owed, other than those that may be disputed in good faith, including but not limited to a reasonable belief that sums may not be paid in full or may be delayed in payment, then the other Party may give written notice terminating the Agreement with immediate effect or to suspend this Agreement or any portion of the Agreement for such period as the other Party deems appropriate in their reasonable discretion. Such termination shall be without prejudice to any accrued obligations arising hereunder prior to the provision of such written termination notice.

(c) In the case of a material breach (as defined by the Parties from time to time) by either Party, which is not corrected within 30 days from the date the breaching Party receives written notice of such breach from the other Party.

8.4 Any termination hereunder shall be without prejudice to any Party's respective financial obligations to the other as of the date of termination, and a non-defaulting Party

retains its right to claim against the defaulting Party for any loss and/or damage caused or arising out of the breach that prompted such termination.

ARTICLE 9: NON-ASSIGNMENT

Neither Party shall assign all or any part of its rights, or delegate all or any part of its obligations, under this Agreement to any other person or entity without the prior written consent of the other Party.

ARTICLE 10: GOVERNING LAW AND JURISDICTION

10.1 The interpretation, construction, and enforcement of this Agreement, and all rights and obligations between the Parties under this Agreement, shall be governed by the laws of England.

10.2 All disputes or differences arising out of or in connection with or under this Agreement which cannot be amicably resolved shall be referred to the law and jurisdiction of High Court of Justice in London. However any dispute relating to loss or damage to cargo or container carried under either Party's bill of lading shall be referred to the law and jurisdiction mentioned in the bill of lading of that Party.

10.3 Either Party may at any time call for mediation of a dispute under the auspices of the LMAA. Unless agreed such mediation shall not otherwise interfere with or affect anything else including the time bars and Court procedure. If a Party calls for mediation and such is refused, the Party calling for mediation shall be entitled to bring that refusal to the attention of the Court.

ARTICLE 11: SEPARATE IDENTITY/NO AGENCY OR PARTNERSHIP

Nothing in this Agreement shall give rise to or be construed as constituting a

partnership for any purpose or extent. For purposes of this Agreement and any matters or things done or not done under or in connection herewith, neither Party shall be deemed the agent of the other.

ARTICLE 12: NOTICES

All notices required to be given in writing, unless otherwise specifically agreed, shall be sent by registered mail or courier service to the addresses listed in Article 3.

A copy of notices sent to CNCo should be provided to the following addresses:

**THE CHINA NAVIGATION COMPANY PTE LTD of 300 Beach Road, #27-01 The
Concourse, Singapore 199555 (referred to as “CNCo”); and**

A copy of notices sent to KYOWA should be provided to the following addresses:

**KYOWA SHIPPING COMPANY, LTD. of Hibiya Building 4th floor, 1 - 1, Shimbashi 1 -
Chome, Minato - Ku, Tokyo 105-0004, Japan (referred to as “Kyowa”).**

ARTICLE 13: SEVERABILITY

Should any term or provision of this Agreement be held invalid, illegal or unenforceable, the remainder of the Agreement, and the application of such term or provisions to persons or circumstances other than those as to which it is invalid, illegal or unenforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid, legal and enforceable to the full extent permitted by law.

ARTICLE 14: AMENDMENT

Any modification or amendment of this Agreement must be in writing and signed by both Parties and may not be implemented until filed with the FMC and effective under the Shipping Act of 1984, as amended.

SIGNATURE PAGE

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

Kyowa Shipping Company, Ltd.

The China Navigation Co. Pte Ltd

By:_____

By:_____

Name:

Name:

Title:

Title: