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COSCO SHIPPING/PIL SLOT EXCHANGE AGREEMENT – PNW/PSW

A SPACE EXCHANGE AGREEMENT

FMC Agreement No. 012470

EXPIRATION DATE: None.

This Agreement has not been published previously.

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1. Parties

The parties to this Agreement are

COSCO Shipping Lines Co. Ltd. ("COSCO SHIPPING")
378 Dong Da Ming Road
Shanghai, People's Republic of China 200080

Pacific International Lines (PTE) Ltd. ("PIL")
140, Cecil Street, #03-00, PIL Building
Singapore 069540

2. Definitions:

"Agreement"	means this COSCO SHIPPING/PIL SLOT EXCHANGE AGREEMENT – PNW/PSW.
"Party"	means either PIL or COSCO SHIPPING.
"Container(s)"	means any ISO standard container(s) with a maximum height of 9'6" including any reefer and/or other special containers, provided they meet ISO standards. For the purpose of this Agreement, one FEU shall be equal to 2 TEUs.
"Vessel(s)"	means a purpose built containership maintained in service by PIL or by COSCO SHIPPING, or the containership of another carrier which either PIL or COSCO SHIPPING is entitled to use and sub-charter pursuant to a space charter or similar agreement.
"Slot"	means the space occupied by 1 x 20" x 8" x 8'6" or 1 x 20' x 8' x 9'6" ISO container for the predetermined maximum average gross weight.
"The Loading Party"	means the Party on whose vessels (owned and/or operated) the containers are loaded.
"The Shipping Party"	means the Party who is shipping containers on the other Party's vessels.

3. Undertaking and Purpose

Subject to the terms and conditions hereinafter set forth, PIL and COSCO SHIPPING undertake to allow each other to exchange Slots on their Vessels for the carriage of Containers of the volume and on the terms hereinafter described.

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Each Party undertakes to meet its commitment and any excess slots will be resolved by adjusting the slots exchanged in the subsequent cycle as hereunder described.

Initially, each Party will provide space to the other Party as follows:

a. COSCO SHIPPING shall provide PIL each week (EB and WB) with (i) 300 TEUs (including 20 reefer plugs) on COSCO SHIPPING's service in the Trade currently known as the CEN, and (ii) 700 slots (including 50 reefer plugs) on COSCO SHIPPING's service in the Trade currently known as the AAC. PIL shall provide COSCO SHIPPING with 1000 TEUs (including 70 reefer plugs) each week (EB and WB) on PIL's service in the Trade currently known as the AAC3.

b. COSCO SHIPPING shall provide PIL each week (EB and WB) with (i) 150 TEUs (including 12 reefer plugs) on COSCO SHIPPING's service in the Trade currently known as the MPNW, and (ii) 350 TEUs (including 18 reefer plugs) on a COSCO SHIPPING service in the trade between Asia and Canada currently known as the CPNW.[1] PIL shall provide COSCO SHIPPING with 217 TEUs (including 20 reefer plugs) each week (EB and WB) on PIL's service in the trade between Asia and West Africa currently known as the SWS.[2]

c. The initial port rotations are set forth in Appendix A.

The number of slots in any of the above exchanges may be increased or decreased up to one hundred percent, the number of slots allocated to a particular service, and the service names may be changed, without amendment of this Agreement. The Parties may from time-to-time discuss and agree upon limitations on the availability and number of slots that may be loaded at particular ports or used between particular port pairs, as well as the Parties' respective responsibilities when port calls are omitted. The Parties may agree on any particular voyage to exchange, sell, or charter additional slots on an ad hoc basis.

4. Scope of the Agreement

This Agreement shall cover the eastbound and westbound transportation of cargo between ports in China (including Hong Kong), Korea, Japan, Singapore, Vietnam and Canada on the one hand and ports on the United States West Coast on the other. The foregoing geographic scope is hereinafter referred to as "the Trade."

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[1] Although the CPNW service does not currently call the United States, it does call Vancouver and so a U.S. call may be added on either an ad hoc or a long-term basis.

[2] References to the CPNW and SWS services are for informational purposes only and are not provided for the purpose of obtaining any antitrust immunity under the U.S. Shipping Act of 1984, codified at 46 U.S.C. 40101 et seq.

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5. Containers and Cargo

The Shipping Party will be allowed to ship only dry-cargo Containers, reefers and empty Containers meeting the definition mentioned in Clause 2 hereof. Loaded Containers shall be in a seaworthy condition, containing lawful merchandise of any kind; including IMO cargo, properly packed and secured. Containers not meeting the above criteria may be refused for carriage. Notwithstanding the above, explosives and radioactive material shall not be accepted by the Loading Party.

6. Schedules

Each Party shall be allowed to utilize Slots available on each other's service and Vessels according their respective schedules and service arrangements.

Either Party may permanently change its schedule, ports of call, rotation and Vessels at any time, at its sole discretion, (provided this change does not materially change its service, in which case Article 12(b) shall apply), giving the other Party sixty (60) days' written notice of such change. The other Party has in such case the right to revise the Slot commitment in accordance with allocation/performance within the affected ports.

7. Terms of the Agreement

a) This Agreement shall commence on the Effective Date, which shall be the date of first loading on the first voyage hereunder, provided, which shall not take place before the Agreement has become effective under the U.S. Shipping Act of 1984, as amended. It shall continue indefinitely until terminated by either Party upon not less than three (3) months' written notice. The first notice may not be served prior to nine (9) months after the Effective Date. This Agreement may be terminated at any time by mutual agreement of the Parties.

b) If one Party commits any one of the following situations, the other Party has the right, by giving written notice, to terminate this Agreement immediately without prejudice to any already accrued rights and obligations.

a) Commencement of dissolution procedure;
b) Filing of bankruptcy or insolvency procedure; or
c) Making a general assignment for composition with its creditors.

Notwithstanding the foregoing, this Agreement shall continue in force to the extent that each Vessel should complete its cargo discharge at the last port of her final voyage which commenced prior to the respective termination.

8. Booking Procedure

The Parties will book their requirements with each other's booking centers as may be designated from time to time. In all instances delivery closing dates, booking and documentation procedures of the loading Party shall be adhered to.

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9. Delivery of Containers and Terminal Operations

The shipments of Containers under this Agreement shall be done under FIO terms. Delivery of the Containers and acceptance thereof shall be when the Containers are loaded on board and redelivery shall be effected and accepted once discharge operation of each Container commences. The Shipping Party shall be directly responsible for all payments relating to its Containers to the stevedores, terminals and the port, if any, including royalties and assessments in USA ports, and they shall be independently debited for all such operations, and shall settle all payments independently and separately from the Loading Party. Therefore, the Parties must, prior to commencement of this Agreement, reach separate agreements independent of each other with all of the other Party's stevedores and terminals within the scope of the Agreement. However, in ports where, because of local regulations and/or customs of the port direct settlements as described above are not possible, the Loading Party shall debit the Shipping Party for all such payments and the Shipping Party shall settle such payments either through its local agent or if such payments are not immediately settled, then these payments shall be made together with the payments mentioned in Clause 11 hereunder.

10. Slot Exchange

The Parties agree to structural slot exchanges involving slots in the services mentioned in Clause 3.

11. Documentation and Liability

(a) The Parties shall agree on the terms of issuance of documentation for cargo moving hereunder, the terms and conditions contained in that documentation and the procedures to be followed with respect to the issuance and processing of such documentation. The Parties are also authorized to agree on their respective liabilities with respect to damage to cargo (including general average) and/or equipment and the procedure to be followed in handling claims for such damages.

(b) Each Party shall be responsible for insurance for its Vessels.

12. Force Majeure and Termination of Agreement

(a) If circumstances arise, such as war or warlike activities, civil commotion, riots, invasion, rebellion, hostilities, governmental and/or national regulations, boycott against one flag or a political ban against any party, strikes, restraints of Princes and Rulers or any other cause of a like nature the consequences of which have not been or could not have been considered and which are of a nature considerably influencing the terms of the Agreement, the Parties will, as far as possible, advise each other within 48 hours of such new circumstances and adopt the terms of this Agreement to the changed circumstances as far as possible.

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(b) PIL and/or COSCO SHIPPING may, at their absolute discretion, discontinue their services or materially alter their route, scheduling and ports of call. In such case, the Parties shall give a ninety (90) days prior notice to this effect and this Agreement shall terminate with regard to the service affected on the date of the expiry of such notice. Neither Party shall have any claim against each other with regard or in connection with such termination.

13. Applicable Law and Arbitration

(a) This Agreement shall be governed by and interpreted in accordance with the Laws of England for the time being in force.

(b) Any dispute, claim or violation which may arise under this Agreement shall be settled by arbitration in London in accordance with the Laws of England and the Arbitration Act of 1979 or any statutory modification or reenactment thereof for the time being in force.

Unless the Parties in the dispute agree on the appointment of a single arbitrator, the matter in dispute shall be referred to the decision of two arbitrators, one to be appointed by the Party complaining and the other by the Party complained against, with the power to such arbitrators to choose an umpire. If the arbitrators cannot agree upon the umpire within four (4) weeks after their appointment, the umpire shall be nominated by the Chairman of the London Maritime Arbitrators Association unless otherwise agreed between the Party complaining and the Party complained against.

If either of the Parties fails to appoint an arbitrator within twenty-one (21) days after the other has given written notice of the appointment of its arbitrator, then the arbitrator appointed by such other party shall act as sole arbitrator.

The arbitrator(s) or umpire shall give his (their) decision in writing with utmost dispatch. The award given by the arbitrator(s) or umpire shall be final and binding upon all parties concerned.

(c) For disputes the sum of which does not exceed the amount of USD100,000.00, any Party shall be entitled to proceed by arbitration to be held in London according to the London Maritime Association Small Claims Procedures.

(d) The Parties shall keep confidential all awards made, together with all materials in the proceedings created for the purpose of the mediation, and all other documents produced by another Party in the proceedings not otherwise in the public domain – save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a court or other competent judicial authority.

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14. Notices

(a) All legal process, notices or other formal communications required by or in connection with this Agreement shall be in writing and sent by letter, or email/fax confirmed by letter as appropriate, or such other means as may be agreed, and addressed to the other Party at their official company address as follows:

COSCO Shipping Lines Co. Ltd.
378 Dong Da Ming Road
Shanghai, People's Republic of China 200080

Pacific International Lines (PTE) Ltd.
140 Cecil Street #03-00
PIL Building
Singapore 069540

(b) Any such notices, legal processes or other formal communications shall be deemed to have reached the person to whom it is addressed 48 hours after posting or when dispatched.

15. Non-Assignment

Neither Party shall assign its rights, including its rights to utilize the Container Slots, or delegate its duties this Agreement to any other person or entity without the prior written consent of the other Party. Notwithstanding the above, each of the Parties may on written notice to the other Party assign its rights or delegate its duties under this Agreement to a fully-owned subsidiary that is a vessel-operating ocean carrier within the meaning of the U.S. Shipping Act; provided that in the event of such an assignment the Party to this Agreement shall remain responsible for the due and punctual performance to this Agreement by such a subsidiary.

16. Amendment and Embodiment

This Agreement may not be amended, modified or rescinded except in writing and duly signed by authorized signatories of the Parties, and any amendment, addendum or appendix so signed shall constitute a part of this Agreement.

17. Further Agreements

The Parties are authorized to enter into further agreements with respect to routine operational and administrative matters to the extent necessary or desirable to implement the general provisions contained in this Agreement (including, but not limited to, those set forth in Clauses 11 and 12 hereof) without further amendment to this Agreement. 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 prior to being implemented.

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18. 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 each of the Parties; and
(ii) Legal counsel for each of the Parties.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have agreed to this Agreement this 27th day of February, 2017, and to file same with the U.S. Federal Maritime Commission.

COSCO SHIPPING LINES CO, LTD.

By: _____

PACIFIC INTERNATIONAL LINES (PTE) LTD.

By: _____

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APPENDIX A
(INITIAL PORT ROTATIONS)

CEN:	Xingang-Qindao-Shanghai-Long Beach-Oakland-Xingang
AAC:	Lianyungang-Shanghai-Ningbo-Long Beach–Seattle- Lianyungang
MPNW:	Yantian-Xiamen-Ningbo-Shanghai-Pusan-Seattle-Vancouver—Yokohama-Yantian
CPNW:	Singapore-Cai Mep-Hong Kong-Yantian-Ningbo-Shanghai-Vancouver-Qingdao-Ningbo-Shanghai-Pusan
AAC3:	Qingdao-Shanghai-Ningbo-Los Angeles-Oakland-Qingdao
SWS:	Asia/West Africa

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