

Maersk/MSC/SML Cooperative Working Agreement

FMC Agreement No. \_\_\_\_\_

A Cooperative Working Agreement

Expiration Date: March 31, 2023

This Agreement has not been published previously.

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**ARTICLE 1: FULL NAME OF THE AGREEMENT**

The full name of this Agreement is the Maersk/MSC/SML Cooperative Working Agreement (“Agreement”).

**ARTICLE 2: PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to authorize the parties to engage in vessel sharing, slot chartering, and slot exchange activities in the Trade (as hereinafter defined) as set forth in Article 5 hereof.

**ARTICLE 3: PARTIES TO THE AGREEMENT**

The parties to the Agreement are:

1. Maersk A/S (“Maersk”)  
Esplanaden 50  
1098 Copenhagen K  
Denmark
2. MSC Mediterranean Shipping Company SA (“MSC”)  
12-14 Chemin Rieu  
1208 Geneva  
Switzerland
3. SM Line Corporation (“SML”)  
22 Chungjang-daero 5beon-gil  
Jung-gu, Busan  
Korea

Maersk, MSC, and SML are sometimes referred to individually as a “Line” and jointly as “Lines.” Maersk and MSC are sometimes referred to jointly as the “2M Lines.”

**ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT**

The geographic scope of the Agreement shall extend to the trades between ports on the Pacific Coast of the United States on the one hand and ports in the People's Republic of China and the Republic of Korea on the other hand. All of the foregoing is hereinafter referred to as the "Trade."

**ARTICLE 5: AGREEMENT AUTHORITY**

5.1 Vessel Sharing. The Lines shall operate a string to be known as the USWC3, initially utilizing six (6) vessels, each with a capacity of approximately 11,500 TEUs. Four (4) of the vessels shall be provided by the 2M Lines and two (2) of the vessels shall be provided by SML. Without further amendment hereto, the Lines are authorized to increase the number of vessels deployed in the USWC3 service to eight (8), and to increase the capacity of such vessels to approximately 15,000 TEUs. Space on the USWC3 service shall be allocated to the Lines in proportion to the provision of vessel capacity (i.e., two-thirds to the 2M Lines and one-third to SML), subject to adjustments pursuant to Article 5.2 below.

5.2 Slot Exchange.

(a) SML shall exchange space for 867 TEUs on each round-trip voyage of the USWC3 service for an equal amount of space on each round-trip voyage of the 2M Lines' USWC2 service at the ratio of 1 TEU for 1 TEU.

(b) SML shall exchange space for 900 TEUs on each westbound sailing of the USWC3 service for an equal amount of space on each westbound voyage of the 2M Lines'

USWC2 service at the ratio of 1 TEU for 1 TEU.

(c) MSC shall exchange space for 800 TEUs per week on the USWC2 service (roundtrip) with an equivalent number of slots on SML's PNS service at the ratio of 1 TEU for 1 TEU.

5.3 Slot Charter.

(a) The 2M Lines shall sell, and SML shall purchase, space for 433 TEUs (round-trip) on each weekly sailing of the USWC2 service.

(b) Any Line may buy slots from and/or sell slots to any other Line in the Trade on an ad hoc basis. Such sale shall not require approval of the Line not involved in the sale/purchase, but such Line shall be notified of the sale.

5.4 General Provisions Relating to Vessel Operations.

(a) Each Line shall retain full responsibility for the operation of its vessels, including the provision of crew, equipment and supplies (and all husbandry tasks), and maintenance.

(b) The Lines are authorized to discuss and agree on provisions relating to non-performance by a vessel provider, including for events such as port omissions and force majeure.

(c) The 2M Lines (with respect to the USWC2 and USWC3 services) and SML (with respect to the PNS service), have the right to introduce permanent changes to the schedule of the service, provided that such change is communicated in writing to the other Lines at least 3 months in advance. If the proposed change is material, the Line not operating the service will have the right to change its slot allocation on the affected service. If a change communicated by the 2M Lines under this provision means that any

of the Yantian, Ningbo, Shanghai, Qingdao or Busan port calls are discontinued, then the 2M Lines shall offer SML an alternative direct connection between these ports and the U.S. West coast on other services to the extent the 2M Lines continue to offer such direct connections. Furthermore, the 2M Lines acknowledge SML's preference that vessels operated by SML call Busan, which will be taken into consideration by the 2M Lines in connection with future service changes for USWC3.

5.5 General Provisions Relating to Use of Space.

(a) The average weight per TEU will be 9 metric tons. Slot allocations shall be available in TEUs or by weight, whichever is used first. In the case of slot allocations counted by weight, any remainder short of 9 metric tons shall count as one (1) TEU.

(b) Slots are allocated whether used or not, and unused slots cannot be rolled forward from one week to the next.

(c) No containers of third party carriers will be carried in the vessel strings covered by this Agreement, except containers of a carrier that is wholly owned or controlled by a Line may be carried in which case these containers will form part of that Line's capacity allocation.

(d) SML and the 2M Lines may use up to a maximum of 20% of their slot allocations as coastal moves between ports in China and Korea, westbound on the USWC2 and eastbound on USWC3 respectively, for the carriage of cargo and containers (full or empty), provided that where such intra-regional moves are for cargo and full containers it shall be for the purpose of linking origins and destinations otherwise not directly covered on any of the strings on which the Party has been allocated slots. Excess

intra-regional loading above the 20% limit is subject to space availability, operational feasibility and the approval of the vessel provider, not to be unreasonably withheld, and an agreed slot cost per TEU shall be paid by the slot user. Notwithstanding anything otherwise provided for in this Article 5.5(d), intra-regional moves in the U.S. shall not be permitted. Other than as set out in the foregoing, intra-regional loadings of cargo and containers (whether full or empty) shall not be permitted on any string.

(e) SML and the 2M Lines will receive 10 reefer plugs for every 100 slots (at each bound) which it is allocated under the arrangements described above.

#### 5.6 Terminals.

(a) The Line or Lines operating the service shall determine the terminals called by the vessels in that service.

(b) Each Line shall be responsible for payment of all terminal costs related to the handling and storage of its cargo and containers in accordance with its individual contracts with the terminal operators utilized by the Line(s) providing the vessels on which such cargo/containers are transported. Upon request of any Line, the Line or Lines providing the vessels in any service covered by this Agreement shall endeavor to facilitate discussions between the requesting Line and the terminal operator(s) utilized by the Line or Lines providing vessels.

#### 5.7 General and Miscellaneous Matters.

(a) The Lines are authorized to discuss and agree on the amount to be paid for slots chartered hereunder and/or reefer plugs utilized, and payment terms and conditions.

(b) No Line shall have a lien on the vessels under the ownership or control of any

other Line as a result of obligations or liabilities arising out of this Agreement.

(c) No U.S.-flag vessels employed by Maersk which are within the Agreement, or any slots on such vessels, shall be used, other than by Maersk, for the carriage of cargoes reserved to U.S.-flag vessels pursuant to the cargo preference laws of the United States (including, but not limited to, Public Resolution Number 17, sections 901(b) and 901b of the Merchant Marine Act, 1936, as amended, and the Military Cargo Preference Act of 1904); provided, however, that nothing herein shall prevent the Parties from using Maersk-employed U.S.-flag vessels or any slots thereon for the carriage of that portion of preference cargoes that is not reserved to U.S.-flag vessels.

(d) Each Line shall retain its separate identity and shall have fully separate and independent sales, pricing and marketing functions.

(e) No information which is commercially sensitive may be exchanged hereunder directly or indirectly between any of the Lines other than as strictly necessary for the proper functioning of the Agreement.

(f) The Lines are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time. Such implementing matters include procedures relating to decisions by a Party to add or omit a port of call, to blank a sailing, to drydock or upgrade a vessel; record-keeping; cargo acceptance, handling and stowage; responsibility for loss or damage; general average; salvage; insurances; the handling and resolution of claims and other liabilities (including liabilities to third parties arising out of the act, neglect or default of one or more Lines and liability for failure to provide space or load containers); indemnification;



documentation and bills of lading; the acceptance of dangerous, break bulk and out-of-gauge cargoes, and force majeure. In the event of a conflict between this Agreement and any implementing agreement, this Agreement shall govern.

#### **ARTICLE 6: AGREEMENT ADMINISTRATION**

##### 6.1 Administration.

This Agreement shall be administered by meetings and communications between representatives of the Lines. The Lines are authorized to enter into such agreements as may be necessary or desirable for the implementation of this Agreement, such as working procedures and a charter party.

##### 6.2 Delegation 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 a Line; and
- (ii) Legal counsel for a Line or for the Agreement.

#### **ARTICLE 7: VOTING**

Except as otherwise provided herein, all decisions hereunder, including amendments to this Agreement, shall require unanimous agreement of the Lines.

#### **ARTICLE 8: DURATION AND TERMINATION OF AGREEMENT**

8.1 This Agreement shall become effective on the date it is effective under the U.S. Shipping Act of 1984, as amended, or such later date as may be agreed by the

Parties in writing (the “Effective Date”), and shall continue until March 31, 2023.

8.2 This Agreement may be terminated by SML or the 2M Lines (as the case may be) giving the other Line(s) not less than six (6) months’ written notice of termination; provided, however, that such notice may not be given prior to 18 months after the Effective Date.

8.3 Notwithstanding anything to the contrary herein:

(a) The duration of this Agreement will not exceed the duration of the Maersk/MSC Vessel Sharing Agreement, including if the Maersk/MSC Vessel Sharing Agreement terminates other than by expiry of its term, save that this Agreement shall not have the benefit of any extension of the Maersk/MSC Vessel Sharing Agreement, unless the 2M Lines so agree. If the Trade or a portion thereof ceases to be part of the Maersk/MSC Vessel Sharing Agreement, the 2M Lines shall notify SML as soon as possible and in any event not later than 14 days after the 2M Lines’ agreement to do so, or the notification of such termination has been given.

(b) If at any time during the term of this Agreement there shall be a Change of Control of a Line, then such Line, or one of the other Lines may, when becoming aware of such Change of Control, give notice in writing to terminate this Agreement. In the case of a Line whose control has not changed, the notice period will be not less than 6 months. In the case of a Party whose control has changed, the notice period will be not less than 12 months. For the purposes of this Article 8.3(b), “Change of Control” of a Line shall include (other than as presently exists): (i) the possession, direct or indirect by any person or entity, of the power to direct or cause the direction of the management and policies of the parent or the Line, whether by the ownership and rights of voting

shares, by contract or otherwise; or (ii) the ownership by the parent falling below 50% of the equity interest or voting power of such Line, save that the transfer of any shares in a Line or its direct or indirect parent between close members of the same family or between affiliates shall not constitute a Change of Control.

(c) If at any time during the term of this Agreement, any Line (the “affected Line”):

- (i) is dissolved;
- (ii) becomes insolvent or unable to pay its debts as they fall due;
- (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (iv) has a winding-up order made against it or enters into liquidation, whether voluntary or compulsorily;
- (v) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;
- (vi) is affected by any event or act similar or under which the applicable laws of the jurisdiction where it is constituted has an analogous effect to any of those specified in sub-clauses (i) through (v) above; or
- (vii) takes any court action in furtherance of any of the foregoing acts (other than for the purpose of the consolidation, reconstruction or amalgamation or previously approved in writing by the other Lines).

then SML (in the event one of the 2M Lines is the affected Line) or the 2M Lines (in the event SML is the affected Line) may give written notice to the affected Line terminating this Agreement with immediate effect.

(d) Where sums that are owed (other than those that would be considered disputed in good faith) may not be paid or have not been paid in full or the payment of which may be delayed, the Line owed the sum due shall serve 30 days' notice to pay in writing on the Line owing the sum. Failing payment within the notice period the Line owed the sum due shall be entitled, but not obliged, to serve written notice of immediate termination of the Agreement on the other Lines. Any forbearance given in respect of sums owed shall not act as a waiver in respect of future sums owed, irrespective of whether written notice to pay was served.

(e) The Agreement may also be terminated if: (i) a Line repeatedly fails to comply with law or commits a further violation after notice of its failure to comply with law from another Line; or (ii) a Line commits a material breach of the Agreement where such breach has not been remedied to the reasonable satisfaction of the terminating Line within a reasonable period of time, after receipt by the defaulting Line of written notice from the terminating Line requiring such remedy; or (iii) a competitor of any business of a Line or any of its respective subsidiaries has the power to exercise, or actually exercises, material influence in respect of the business decisions of that Line.

(f) Should the entire performance of this Agreement be suspended due to force majeure circumstances for a period exceeding one (1) calendar month from the date of commencement of such suspension, any non-affected Party will have the right to terminate this Agreement. Upon the occurrence of an event of force majeure, the Line seeking to rely upon it shall as soon as reasonably practicable after the occurrence of the

event but in any event within 24 hours give notice to the other Lines specifying the nature of the force majeure event and its effect upon the performance of this Agreement. Any Line claiming an event of force majeure shall take all reasonable steps to minimise the consequences of such event on the performance of this Agreement.

(g) In the event the Lines do not finalize any document(s) setting forth commercial and/or operational details of the arrangements covered by this Agreement within a reasonable time after this Agreement has been implemented, then any Line may terminate this Agreement with immediate effect by providing written notice of termination to the other Lines.

8.4 Any termination of this Agreement shall be without prejudice to, and shall not affect any rights, remedies, obligations or liabilities of any Line that have accrued prior to the date of such termination.

8.5 The Federal Maritime Commission shall be notified of the termination of this Agreement.

#### **ARTICLE 9: APPLICABLE LAW AND DISPUTE RESOLUTION**

9.1 This Agreement is to be governed by and construed in accordance with English law provided, however, that nothing herein shall relieve the Lines of their obligation to comply with the U.S. Shipping Act of 1984, as amended.

9.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three.

The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

**ARTICLE 10: MISCELLANEOUS**

10.1 No Line may assign or transfer its rights or obligations under this Agreement in part or in full to any third party, company, firm or corporation without the prior written consent of the other Lines, which consent may be withheld for any reason.

10.2 If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational, then said provision(s) shall cease to have effect among the Lines, but only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

10.3 No variation or waiver of any of the provisions of this Agreement and no agreement concluded pursuant to any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Lines.

10.4 Communication of all written notices required pursuant to this Agreement (other than notice of termination, which will be sent by registered mail) shall be sent by e-mail, fax or letter to the following addresses or as otherwise advised:

Line	Address	E-mail address
Maersk	50 Esplanaden 1098 Copenhagen Denmark Attn: Lars Mikael Jensen Phone: 45-3363-5464	Lars.mikael.jensen@maersk.com

Line	Address	E-mail address
MSC	12-14 Chemin Rieu 1208 Geneva Switzerland Attn: Caroline Becquart Phone: 41-22-703-8888 With a copy to: CH001-corporatelegal.notices@msc.com	caroline.becquart@msc.com
SML	SM R&D Center, 78, Magokjungang 8-ro, Gangseo-gu, Seoul Korea Attn: SVP Brian J.H. You Phone: 822-3770-6370	brianjhyou@smlines.com

Any notice given under this Agreement shall be effective upon receipt.

10.5 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

10.6 Nothing in this Agreement shall give rise to nor shall be construed as constituting a partnership for any purpose or extent. No Line shall be construed or constituted as agent of the other unless expressly stated or constituted as such by the terms of this Agreement.

10.7 The Lines do not intend that any term of this Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

10.8 This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

**ARTICLE 11: COMPLIANCE**

11.1 Each Line agrees to comply with all applicable laws, rules, regulations, directives and orders issued by any authorities having jurisdiction in relation to the rights and obligations of each Line under this Agreement.

11.2 Any Line that violates applicable U.S., EU or Swiss sanctions laws in connection with its performance under this Agreement shall indemnify and hold the other Lines harmless to the full extent of any loss, damage, cost, expense and liability, including reasonable lawyers' fees and court costs and direct loss of profits.

11.3 Each Line warrants that it is not identified on the U.S. Treasury Department's Office of Foreign Asset Control ("OFAC") list of Specially Designated Nationals and Blocked Persons, any other similar list maintained by the Council of the European Union and the State Secretariat for Economic Affairs of Switzerland ("SECO") or otherwise targeted by the U.S., EU or Swiss trade sanctions, whether designated by name or by reason of being included in a class of persons ("Restricted Party"). Goods and/or containers transported under this Agreement will not be transported on a vessel (i) owned and/or operated by any Restricted Party or (ii) otherwise restricted from trading in the U.S., including but not limited to vessels that have called a port in North Korea in the previous 180 days and vessels that engaged in a ship-to-ship transfer with such a vessel in the previous 180 days. The SDN list can be accessed via following link: <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.

11.4 In line with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act 2010 and other applicable anti-corruption laws, each Line shall implement policies and procedures prohibiting corruption, active and passive bribery, including but not limited



to offer, promise, pay or authorize the payment of money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means to any public official or any other private individual to influence the decision of such person in the performance of his duties. For the purpose of this provision, "Public Official" means: (i) serving with, employed by or acting as an agent of any agency or entity of the national, state or municipal governments of any country; (ii) serving with, employed by or acting as an agent of any public international organization; (iii) working in any government owned or government-controlled commercial enterprise; (iv) family members of any such persons identified above. The Lines shall conduct regular trainings of their employees in relation with anti-corruption and anti-bribery.

**ARTICLE 12: TEMPORARY SLOT CHARTER/EXCHANGE**

12.1 Due to reduced demand resulting from the Covid-19 pandemic, the 2M Lines and SML have suspended their USWC3 service from mid-April through the end of June. Accordingly, from the date of this Amendment No. 1 through June 30, 2020 (or such other date as the Lines may agree), the Lines shall not implement the arrangements described in Articles 5.1, 5.2, and 5.3(a) of this Agreement. Instead, on a temporary basis, the Lines shall implement the following arrangements:

(a) The 2M Lines shall charter to SML, and SML shall purchase from the 2M Lines, space for 1,750 TEUs on each round-trip voyage of the USWC2 service and space for 1,250 TEUs on each round-trip voyage of the USWC1 service.

(b) MSC shall exchange space for 800 TEUs per week on the USWC2 service (roundtrip) with an equivalent number of slots on SML's PNS service at the ratio of 1 TEU for 1 TEU.

12.2 The Lines shall notify the FMC in advance of the termination or extension of the temporary arrangements described in this Article 12.

[SIGNATURE PAGE FOLLOWS]

Maersk/MSC/SML Cooperative Working  
Agreement  
FMC Agreement No. 201332-001

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have agreed this \_\_\_ day of April, 2020 to  
amend this Agreement as per the attached pages.

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Maersk A/S  
Name:  
Title:

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MSC Mediterranean Shipping  
Company S.A.  
Name:  
Title:

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SM Line Corporation  
Name:  
Title: