

RECEIVED

23 JUN 20 PM 2:57

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

Original Title Page

NAME: NYK/HLAG VESSEL SHARING AGREEMENT

FMC NO.: 012153

CLASSIFICATION: A Cooperative Working Agreement

EXPIRATION DATE: See Article 9



TABLE OF CONTENTS

<u>ARTICLE</u>	<u>NAME OF ARTICLE</u>	<u>PAGE NO.</u>
Article 1	Name of Agreement	2
Article 2	Purpose of Agreement	2
Article 3	Parties to Agreement	2
Article 4	Geographic Scope	3
Article 5	Authority	3
Article 6	Administration and Delegation of Authority	6
Article 7	Membership	7
Article 8	Voting	7
Article 9	Duration and Resignation	7
Article 10	Non-Assignment	9
Article 11	Law and Arbitration	9
Article 12	Notices	10
Article 13	Counterparts	10

ARTICLE 1: NAME OF AGREEMENT

The name of this agreement is the NYK/HLAG Vessel Sharing Agreement (the "Agreement").

ARTICLE 2: PURPOSE OF AGREEMENT

The purpose of this Agreement is to authorize the Parties (as hereafter defined) to share vessels and vessel space in the Trade (as defined in Article 4) thereby improving efficiency, frequency of service and port coverage, lowering bunker consumption, benefitting the environment, and improving utilization of vessel capacity and equipment.

ARTICLE 3: PARTIES TO AGREEMENT

The parties to the Agreement are:

1. Hapag-Lloyd Aktiengesellschaft ("HLAG")
Ballindamm 25
20095 Hamburg Germany
2. Nippon Yusen Kabushiki Kaisha ("NYK")
3-2 Marunouchi 2-Chome Chiyoda-ku, Tokyo 100-0005, Japan

NYK and HLAG are sometimes hereinafter referred to individually as a "Party" and jointly as the "Parties."

ARTICLE 4: GEOGRAPHIC SCOPE

This Agreement covers the trades between ports on the West Coast of the United States, including California on the one hand, and ports on the West Coast of Mexico and Central America, including Guatemala, El Salvador, Nicaragua and Costa Rica, on the other hand (the "Trade").

ARTICLE 5: AUTHORITY

5.1 (a) The Parties are authorized to discuss and agree on the number, size, age and other characteristics of vessels to be operated hereunder, as well as the phasing-in, phasing out and substitution of vessels. The Parties are authorized, without further amendment, to operate up to three (3) vessels, each with an approximate nominal capacity of 2600 TEU, operating on a weekly service. Two of the vessels shall be contributed by NYK and HL shall provide one (1) vessel.

(b) Each Line shall be responsible for the costs of operating the vessel(s) it provides.

5.2 (a) The Parties are authorized to discuss and agree on the ports to be served, the port rotation to be followed, and the scheduling of vessels. Regular reviews, including operational efficiencies of the service, shall be conducted and changes shall be agreed and action taken where necessary, in order to maintain a high quality network covering the Parties' requirements.

(b) The Parties are authorized to discuss and agree upon matters relating to the use of any terminal or port facilities, and may jointly contract for stevedoring services, and

other related ocean and shoreside services. Nothing contained herein shall authorize the Parties to jointly operate a marine terminal in the United States.

(c) The Parties are authorized to discuss and agree on criteria for measuring the performance of the schedule established hereunder, the obligations of the Parties with respect to adherence to the schedule and their obligations to provide space hereunder, and remedial measures to be taken or followed in the event of non-performance with respect to any of the foregoing obligations.

5.3 The Parties may continue to operate existing services within the Trade and to modify such existing services from time to time. Where a Party wishes to introduce a new service or enter into any permanent slot charter or slot exchange agreement in the Trade, it may do so on the condition that it offers the other Party the opportunity of participating on terms as set out for the service hereunder. In the event the other Party does not exercise its right of first refusal, the Party wishing to introduce a new service may proceed and will not be prohibited from seeking possible third party cooperation to operate the new service.

5.4 (a) Space shall be divided on each vessel in accordance with the agreement of the Parties as follows. NYK will be allotted two-thirds (2/3) of the vessel's capacity and HL allotted one-third (1/3) of the vessel's capacity. Notwithstanding the foregoing and subject to availability, the Parties may sell/purchase space from their respective allocations in such amounts and on such conditions as they may agree from time to time. In all circumstances, the Parties agree to provide vessel capacity necessary to satisfy their overall respective share and

maintain level of service. Should a Party not be able to provide the agreed upon space to the other Party, such other Party shall have the right to withhold the provision of space to the other Party not providing the space.

(b) It is agreed that each Party's allocation entitlements, including but not limited to deadweight and reefer plugs, will be protected by the Party operating the vessel.

(c) Each Party shall be entitled to use its space allocation without any geographical restrictions regarding the origin or destination of the cargo, subject to operational restrictions and efficiency targets as the Parties may adopt from time to time. There shall be no priorities for either full, empty, wayport/interport or breakbulk cargo.

(d) The Parties are authorized to determine rules for unused capacities being made available to other ocean carriers who are not a party to this Agreement, including third party slot sales, and the respective reimbursement of the Party providing such capacity. No Party may sub-charter space on vessels operated under this Agreement to any third party without the prior consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, each Party may sub-charter space to its fully owned subsidiaries and affiliate companies without the consent of the other Party.

5.5 Each Party shall retain its separate identity and shall have separate sales, pricing and marketing functions, and shall issue its own bills of lading and handle its own claims. Each Party shall be responsible for marketing its own interests in the Trade.

5.6 The Parties are authorized to discuss and agree upon routine operational and administrative matters including, but not limited to, procedures for allocating space, forecasting, stevedoring and terminal operations, performance and payment procedures, recordkeeping, general average, war risk, force majeure, consequences of delay, responsibility for loss or damage, insurance, claims, liability and settlement procedures, financial settlement procedures, indemnification, treatment of dangerous and hazardous cargos.

5.7 Pursuant to 46 C.F.R. §535. 408, any further agreements contemplated by this Agreement which do not relate to routine operational or administrative matters and which are required to be filed shall not be implemented until an appropriate amendment to this Agreement has been filed and becomes 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 The following individuals shall each have authority to execute and file this Agreement and modifications to this Agreement with the Federal Maritime Commission, as well as authority to delegate same:

- (a) Any officer of each Party to the Agreement; and
- (b) Legal counsel for each Party to the Agreement.

ARTICLE 7: MEMBERSHIP

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

ARTICLE 8: VOTING

Decisions hereunder shall be reached by unanimous agreement of the Parties; provided, however, that if unanimous agreement cannot be reached on a common operational issue, the Party providing the vessel(s) in question shall decide on appropriate measures to ensure service integrity.

ARTICLE 9: DURATION AND RESIGNATION

9.1 This Agreement shall become effective on the date on the date which it becomes effective under the U.S. Shipping Act of 1984, as amended, or March 6, 2012 whichever date is later ("Effective Date") and shall have a minimum term of twelve (12) months following the Effective Date. Thereafter, this Agreement shall remain in effect until terminated by either Party as set forth herein.

9.2 Any Party may withdrawal from this Agreement by giving not less than three (3) months advance written notice to the other Party; provided however, that such notice may not be served before December 6, 2012.

9.3 Notwithstanding Article 9.2, if at any time during the term of the Agreement there shall be a change in the control or a material change in the ownership of any one Party (the Party so affected being referred to in this Article only as the "Affected Party") and the other Party is of the opinion arrived at in good faith that such change is

likely to materially prejudice the cohesion or viability of the service, then the other Party may within three (3) months of the coming into effect of such change, give not less than three (3) months' notice in writing to the Affected Party terminating the period of the Agreement in relation to that Party. For the purposes of this clause a change in the control or material change in the ownership of a Party shall not include (a) any public offering of shares in that Party or its holding company; or (b) any shareholder of such Party or its holding company who was a shareholder of such Party or holding company on the effective date of this Agreement acquiring control of such Party or holding company.

9.4 Notwithstanding Article 9.2, if at any time during the term of the Agreement any 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 (other 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 9.4 only as the "Affected Party") and the other Party are of the opinion that the result may be materially detrimental to the service, or that sums which may be owed by the Affected Party to any other Party may not be paid in full or their payment may be delayed, then, by unanimous decision of the other Party, any further participation of the Affected Party in the Agreement or any part thereof may, with immediate effect, either be terminated or suspended for such period as the other Party, in their sole discretion, deem

appropriate. In particular, but without limitation thereto, the operation of the adjusting financial settlement procedures in respect of the Affected Party may be suspended.

9.5 In the event of the withdrawal of a Party or termination of the Agreement with respect to a Party, the Parties shall continue to be liable to one another in respect of all liabilities and obligations accrued due prior to withdrawal or termination and in such other respects as the Parties shall determine to be fair as between themselves in relation to the completion of all contracts of carriage outstanding at the date of withdrawal or termination.

ARTICLE 10: NON-ASSIGNMENT

The rights and obligations of each Party under this Agreement shall not be assignable except to subsidiaries, parent companies or fellow subsidiaries or with the prior written agreement of the other Party. Each Party shall warrant that any subsidiary or fellow subsidiary to which assignment is made shall not be sold to another party.

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 be 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. A 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 notices 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 he 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 U.S. \$300,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when arbitration proceedings are commenced.

ARTICLE 12: NOTICES

Any notices hereunder shall be made by courier services 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.

ARTICLE 13: COUNTERPARTS

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute on and the same agreement. This Agreement may not be executed and delivered by exchange of facsimile copies or other electronic copy showing the signatures of each Party, and the original signatures of need not be affixed to the same copy.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be
executed by their duly authorized representatives as of this _____ day of _____, 2012.

HAPAG-LLOYD AG

By: _____

Name: Anthony J. Firmin Ulf Seiwahl
 Managing Director Senior Director
Title:

NIPPON YUSEN KABUSHIKI KAISHA

By: _____

Name: Jeremy Nixon

Title: Chief Operating Officer
Global Liner Management Division
NYK Group South Asia Pte Ltd
On behalf of Nippon Yusen Kaisha

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be
executed by their duly authorized representatives as of this ____ day of _____, 2012.

HAPAG-LLOYD AG

By: _____

Name:

Title:

NIPPON YUSEN KABUSHIKI KAISHA

By: _____

Name: Jeremy Nixon

Title: Chief Operating Officer
Global Liner Management Division
NYK Group South Asia Pte Ltd
On behalf of Nippon Yusen Kaisha