CENTRAL AMERICA DISCUSSION AGREEMENT

FMC Agreement No. 203-011075-082
(3rd Edition)

A Cooperative Working Agreement

Expiration Date: None
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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of the Agreement is the Central America Discussion Agreement (the “Agreement”).

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of the Agreement is through authorization of discussion, consultation and development of consensus to foster commerce, service and stability in the trade while maintaining the parties’ freedom of competitive action.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter referred to individually as a “Member” and jointly as the “Members”) are listed in Appendix A hereto.

ARTICLE 4: GEOGRAPHICAL SCOPE OF THE AGREEMENT

The geographic scope of this Agreement shall extend, via direct service or transshipment, to the trade between Atlantic, Gulf and West Coast ports of the United States and inland or coastal points in the United States served via such ports, on the one hand and ports in Costa Rica, Honduras, Guatemala, Nicaragua, Panama, El Salvador, the Dominican Republic and Haiti and inland or coastal points in the aforementioned countries served via such ports, on the other hand (the “Trade”).

ARTICLE 5: AGREEMENT AUTHORITY

5.01. The Members are authorized, but not required, to meet, exchange information or otherwise discuss their separate tariffs, rates, service items, rules and service contracts, in the Trade, and to reach consensus or agreement thereon but shall, despite any agreement, have no obligation under this Agreement to adhere, other than voluntarily, thereto. The authority of the Members includes, but is not limited to, consideration of and, subject to Article 5.03 hereof, agreement on all aspects of transportation and service in the Trade, including rates, charges, classification, practices, terms, conditions and rules and regulations applicable to transportation of cargo within the Trade and to service provided in connection therewith, notice periods for changing rates, service items, port-to-port rates, overland rates, minilandbridge rates, interior point intermodal rates, proportional rates,
through rates, inland portions of through rates, joint rates, minimum rates, surcharges, arbitraries, volume rates, time/volume rates (including the aggregation of cargo under time/volume rates published in their respective tariffs), project rates, freight-all-kinds rates, volume incentive programs, loyalty arrangements or fidelity commission systems conforming to the anti-trust laws of the United States, consolidation, consolidation allowances, rates on commodities exempt from tariff filing, absorptions, equalization, substituted (alternate port) services, allowances, freight forwarder compensation, brokerage, the conditions determining such compensation or brokerage and the payment thereof, receiving, handling, storing, and delivery of cargo, designation of base ports and points, pick up and delivery charges, free time practices, detention, demurrage, container freight stations, port and inland container yards and container depots, terminals and other points of cargo receipt, vanning, devanning, furnishing equipment to or leasing equipment from shippers/consignees/ inland carriers/others, collection agents at destination, maintaining and distributing information and data and statistics and all other practices, rules, regulations, and matters ancillary to transportation of cargo moving within the scope of this Agreement, rules regarding the time and currency in which the Members collect their rates and charges, credit conditions, suspension and restoration of credit privileges, handling of delinquent accounts and interest thereon. The Members will, to the extent required by law or as determined by them, publish and file their own separate tariff or tariffs.

5.02. The Members or any two or more of them are authorized to collect, exchange and discuss information relevant to the Trade or any portion thereof including, but not limited to, economic forecasts; past, present or expected future conditions in all or any portion of the Trade; their revenues, costs, profits and losses (including any specific revenue and/or cost items or elements); and information about rates or other terms by being offered by carriers in the Trade.

5.03. This Agreement does not authorize any common tariffs. All Members collectively, or any two or more Members separately, may jointly enter into service contracts for cargo moving in the Trade and the Agreement may adopt voluntary, non-binding guidelines relating to the terms and procedures of a Member’s or Members’ service contracts which shall be submitted to the Federal Maritime Commission confidentially. The Members are not required hereunder to agree upon, or if they do agree, to adhere to any uniform rates, charges, practices, conditions of service, or other decisions. Each Member shall designate a point or points of entry for receipt of all inter-party communications in connection with the operation of this Agreement.

5.04. The Members, or any two or more of them, are authorized to discuss, agree upon, enter into, amend, and terminate one or more contracts with third-party vendors for the provision of services to such Members, including collection of detention, demurrage, equipment damage, or other charges. Notwithstanding any
contracts entered into pursuant to this Article 5.04, and in keeping with the voluntary, non-binding nature of this Agreement, each Member shall remain free to determine the amount of any charges to be collected on its behalf by a third-party vendor, as well as all terms and conditions relating to the application of such charges.

5.05. The Members, or any two or more of them, may meet in person, by telephone or by other electronic means and exchange information, discuss and reach non-binding agreement with respect to any matter authorized by Article 5 hereof.

5.06. Any two or more Members may agree among themselves upon the terms and conditions pursuant to which any of them may charter space on the vessel(s) of another Member on an ad hoc, emergency or interim (i.e., not to exceed 90 days) basis, for the transportation of cargo in the Trade. Any on-going space charter arrangement involving two or more of the Members shall be authorized by a separate agreement filed with the FMC. The Agreement shall submit reports to the FMC on a quarterly calendar year basis reflecting all chartering arrangements effected between or among the Members pursuant hereto and specifying, for each such arrangement, (i) the names of the chartering and underlying Members; (ii) the amount of space chartered expressed in twenty-foot equivalent units (TEUs); (iii) the commencement and termination dates; and (iv) ports of loading and discharge.

5.07 Nothing in this Agreement authorizes the Members to negotiate and/or contract jointly for “certain covered services” as that term is defined by the Shipping Act of 1984, as amended, with respect to a vessel operated by an ocean common carrier within the United States.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATION OF AUTHORITY

(a) The Chairman of the Agreement shall serve as the Secretary and shall be responsible for taking minutes of meetings and filing any reports with the Federal Maritime Commission as may be required. The Members may appoint a Secretariat to provide administrative and housekeeping functions in connection with the operation of this Agreement, delegate such authority to persons performing those services as may be necessary for that purpose and apportion any expenses in connection with administration of the Agreement between or among them.

(b) The persons authorized to file the Agreement or any subsequent modifications thereto with and submit associated supporting materials to the Federal Maritime Commission are Cozen O’Connor, Attorneys-At-Law, or such other persons as the Members may hereafter designate in writing.
ARTICLE 7: MEMBERSHIP

(a) Any ocean common carrier or conference of such carriers (as defined in the Shipping Act of 1984) which is regularly engaged as an ocean common carrier in the Trade, directly or by transshipment, or which furnishes evidence of ability and an intention in good faith to institute and maintain a regular service in the Trade, may hereafter become a party to this Agreement by signing the Agreement or a counterpart copy thereof and furnishing the same to the Executive Director and paying an admission fee of $2,000.00 (U.S.). Prompt notice of admission to membership shall be furnished to the Federal Maritime Commission and no admission shall be effective prior to the date a Member’s admission is effective in accordance with the regulations of the Federal Maritime Commission.

(b) A Member which is a joint venture or consortium of two or more ocean common carriers but operated as a single entity shall be treated as a single Member for all purposes under this Agreement.

(c) Any Member may resign without penalty from the Agreement effective not less than thirty (30) days after filing a written notice with the Agreement office, which shall promptly serve the notice on the other Members. Provided, however, that the payment of outstanding obligations hereunder shall not be considered as a penalty. Notice of the resignation of any Member shall be furnished promptly to the Federal Maritime Commission by amendment to this Agreement.

(d) The filing of a notice of resignation shall not, until the resignation becomes effective, relieve a Member of its obligations under this Agreement, but a Member shall not, after filing of a notice of resignation, be entitled to privileges on any Agreement rate, charge, rule or service contract which is to become effective after the date of its resignation, or on any amendment of this Agreement.

(e) Computation of outstanding obligations of any resigning Member, unless otherwise agreed to by the remaining Members, shall include all financial obligations entered into by the Agreement at the time the Member became a party to the Agreement and subsequent thereto up to the effective date of the Member’s resignation. The resigning Member shall also be responsible for its share of the current year’s administration fee, plus the next three (3) months fee towards any financial obligations that the Agreement undertook while it was a Member or to which the Agreement became a party while it was a Member.
(f) No Member may be expelled against its will from the Agreement except for failure to maintain an ocean common carrier service within the scope of this Agreement (said failure to be determined according to the minimum sailing requirements set forth in paragraph (j) below) or for failure to abide by the terms and conditions of this Agreement. Expulsion must be authorized by unanimous vote of all Members entitled to vote, excluding the Member whose expulsion is at issue.

(g) No expulsion shall become effective until a detailed statement setting forth the reasons therefore has been furnished to the expelled Member and a copy thereof has been submitted to the Federal Maritime Commission.

(h) In the event that a Member shall fail to have a sailing within the scope of this Agreement during any period of ninety (90) consecutive days, strikes and force majeure excepted, such Member shall thereupon not be entitled to privileges on any and all Agreement matters, and the right to vote shall be restored only after such Member has loaded cargo and sailed vessel in the Trade. Failure to have a sailing within the scope of the Trade during any period of one hundred twenty (120) consecutive days, strikes a force majeure excepted, shall constitute cause for expulsion.

(i) In the event that a Member has failed to pay an expense invoice issued by the Agreement within sixty (60) days from the date it is issued, it shall lose all privileges under this Agreement. The Member shall not have its privileges reinstated until it is current in its financial obligations.

(j) In the event a resigning Member defaults on its financial obligations under Article 7(e) above, or a Member defaults on its financial obligations hereunder due to insolvency, cessation of operations, or any other reason, the remaining Members agree that they shall each contribute an equal portion of the unfulfilled obligations of the defaulting member in order to enable the Agreement to satisfy its financial obligations to third parties. This Article 7(j) shall not constitute a defense for the defaulting Member to any claim(s) for reimbursement from Member(s) that contributed to the satisfaction of the unfilled obligations of the defaulting Member.

ARTICLE 8: VOTING

Except as otherwise provided in Articles 7 and 10 hereof, there is no voting under this Agreement. Any consensus or agreement reached by some or all Members hereunder shall be a matter of voluntary adherence by those Members choosing to so agree.
ARTICLE 9: DURATION AND TERMINATION OF THE AGREEMENT

This Agreement shall enter into force, and may be implemented, as of the first day it becomes effective pursuant to the Shipping Act of 1984. This Agreement shall continue in effect indefinitely until cancelled by the Members. Any Member may terminate its membership in the Agreement by giving thirty (30) days written notice to the other Members. Notice of withdrawal of a Member shall be promptly furnished to the Federal Maritime Commission.

ARTICLE 10: AMENDMENTS AND EXECUTION

This Agreement may be modified by unanimous agreement of the Members and any modification hereto shall be executed in writing. If it is executed by separate counterparts, each such counterpart shall be deemed an original, and all of which together shall constitute a single instrument.

ARTICLE 11: CIVIL PENALTIES

In the event civil penalties are imposed on the Agreement as a result of:

(a) the failure of one or more Members to prepare and arrange for the filing of minutes of any discussion conducted or agreement reached outside of a regularly scheduled or convened meeting of the Agreement; or

(b) the failure of one or more Members to submit in a timely manner the data necessary to complete the quarterly monitoring reports of the Agreement;

such penalties and all costs associated therewith (including but not limited to attorneys’ fees) shall be the responsibility of the Members that participated in such meeting(s) or failed to provide the monitoring report data, and said Members shall be liable to non-participating Members (with respect to minutes) or compliant Members (with respect to monitoring reports) for any civil penalties and all costs associated therewith (including but not limited to attorneys’ fees) such non-participating or compliant Members may be required to pay as a result of the conduct described in this Article 11. In the event the offending Member(s) cannot be clearly identified, any such civil penalties shall be shared equally by all Members.
Central America Discussion Agreement  
FMC Agreement No. 203-011075-082  
(3rd Edition)

SIGNATURE PAGE

IN WITNESS WHEREOF, the Members of Agreement No. 011075 hereby agree this 12th day of October, 2021, to amend the Agreement as per the attached page and to file same with the U.S. Federal Maritime Commission.

KING OCEAN SERVICES LIMITED

By:_________________________
Name: Wayne Rohde
Title: Attorney-in-Fact

SEABOARD MARINE, LTD.

By:_____________________________
Name: Wayne Rohde
Title: Attorney-in-Fact

GREAT WHITE FLEET CORP.

By:_________________________
Name: Wayne Rohde
Title: Attorney-in-Fact

DOLE OCEAN CARGO EXPRESS, LLC

By:_____________________________
Name: Wayne Rohde
Title: Attorney-in-Fact

CROWLEY LATIN AMERICA SERVICES LLC

By:_________________________
Name: Wayne Rohde
Title: Attorney-in-Fact

TROPICAL SHIPPING & CONSTRUCTION COMPANY LIMITED, LLC

By:_________________________
Name: Wayne Rohde
Title: Attorney-in-Fact
Members of the Agreement

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