Tripartite Agreement

FMC Agreement No.

A Joint Service Agreement

Expiration Date: See Article 7
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ARTICLE 1: FULL NAME OF THE AGREEMENT

1.1 The full name of this Agreement is the Tripartite Agreement (hereinafter referred to as the “Agreement”).

ARTICLE 2: PARTIES TO THE AGREEMENT

2.1 The Parties to the Agreement are:

Kawasaki Kisen Kaisha, Ltd. (“K” Line)
Iino Building, 2-1-1
Uchisaiwai Cho
Chiyoda-ku
Tokyo 100-8540, Japan

Mitsui O.S.K. Lines, Ltd. (“MOL”)
1-I Toranomon 2-Chome
Minato-ku, Tokyo 105-8688, Japan

Nippon Yusen Kaisha (“NYK”)
3-2 Marunouchi 2-Chome
Chiyoda-ku, Tokyo 100-0005, Japan

(each hereinafter referred to individually as a “Party,” and collectively as “the Parties”).

ARTICLE 3: PURPOSE OF THE AGREEMENT

3.1 Following receipt of necessary regulatory approvals, the Parties will create a fully integrated joint venture whereby their previously separate ocean carrier containership operations will be combined into one new, ocean common carrier. In light of the foregoing, the purpose of the Agreement is to authorize and set forth the terms for the Parties to jointly establish a new carrier in the trade and to transition their separate containerized liner businesses to a new carrier.

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

4.1 The new carrier established by the Parties under the Agreement shall provide a liner service for the transportation of containerized cargo, whether moving in all-water or intermodal service, under port-to-port or through bills of lading, direct or
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by transshipment, between ports and points worldwide, on the one hand, and ports and points in the United States, on the other (the “Trade”).\(^1\)

\(^1\) References in this Agreement to trades outside of the foreign commerce of the United States are for informational purposes only and are not intended to confer jurisdiction over such trades under the Shipping Act.
ARTICLE 5: AGREEMENT AUTHORITY

The authority of the Parties shall be as follows:

5.1 The Parties shall establish, operate, and maintain a fully integrated liner shipping service operating as an ocean common carrier under such trade name or names as they may determine (the “Joint Service”). The Joint Service will operate in the Trade, as provided hereunder, and other trades worldwide. The Joint Service shall operate as a single carrier which shall incorporate the prior separate vessel operating common carrier containerized liner services in the Trade that were operated separately by each of the Parties. As provided by Article 8 hereof, the Parties agree not to operate competing containerized ocean common carrier services in the Trade following the commencement of the Joint Service hereunder.

5.2 (a) The Parties are authorized to establish one or more legal entities under such name as the Parties may agree to own or operate the Joint Service (each a “Joint Service Entity” and collectively, the “Joint Service Entities”). The parties are authorized to discuss and agree upon all matters relating to the formation, corporate governance, and operation of the Joint Service Entities as permitted by the laws of the jurisdiction of formation including percentage of ownership of each of them, required representations or warranties by the Parties, initial investments and other capital contribution requirements, management, control, restrictions on disposition of capital stock, shareholder voting rights, board composition, employee compensation, indemnity terms as between the Parties and/or a Joint Service Entity, wind-up and termination provisions, and to memorialize agreements on such matters of corporate governance in a shareholders’ agreement or other similar corporate governance document.

(b) Initially, the Parties shall establish the following Joint Service Entities:

(i) The Integrated Holding Company (“HoldCo”). The Parties shall make such investment in HoldCo as they may agree and will each become a shareholder of HoldCo at the following levels:

<table>
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<th>Line</th>
<th>%</th>
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<tbody>
<tr>
<td>&quot;K&quot;</td>
<td>31</td>
</tr>
<tr>
<td>MOL</td>
<td>31</td>
</tr>
<tr>
<td>NYK</td>
<td>38</td>
</tr>
</tbody>
</table>

Initially, each Party shall be entitled to designate two (2) members of the HoldCo Board of Directors for a total of six (6) members.
(ii) The Integrated Operating Company ("OpCo"). OpCo shall operate as a vessel operating common carrier offering containerized liner services. The Parties shall make such investment in OpCo as they may agree and will each become a holder of preferred stock in OpCo at the following levels:

<table>
<thead>
<tr>
<th>Company</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>&quot;K&quot; Line</td>
<td>31%</td>
</tr>
<tr>
<td>MOL</td>
<td>31%</td>
</tr>
<tr>
<td>NYK</td>
<td>38%</td>
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</table>

Such preferred stock shall not carry any voting rights at OpCo shareholders meetings. HoldCo shall be the holder of 100% of the ordinary stock of OpCo and shall hold all shareholder voting rights at OpCo shareholders meetings. Initially, there shall be four (4) members of the OpCo Board of Directors. Each Party shall be entitled to designate one (1) member and OpCo’s Board of Directors shall designate one (1) additional member who shall also serve as the CEO of OpCo. OpCo shall be added as a Party hereto following formation.

(c) The above structure, as may be adjusted from time to time by the Parties, is intended to delegate the operation of the Joint Service to OpCo’s independent decisions and to have HoldCo handle matters relating to the adjustment of ownership, financial, and governance interests among the shareholders.

5.3 In connection with the operation of the Joint Service by OpCo, the Parties are authorized to:

(a) Operate the Joint Service as an ocean common carrier by water in the Trade and other liner trades worldwide utilizing either its own bill of lading or such other bill of lading form as may be agreed by the Parties.

(b) Have the Joint Service become a member of, and resign or withdraw from, any lawful alliance, space charter, vessel sharing agreement, rate agreement, or other cooperative working agreement in the Trade. The Joint Service shall act as a single member or party to such other agreements. Without limitation, the Parties have agreed that the foregoing shall include THE Alliance Agreement, FMC Agreement No. 012439.

5.4 The Parties or any Joint Service Entity are authorized to discuss, agree upon, negotiate and implement decisions and/or agreements relating to: the use of one or more trade names; advertising; the location and staffing of offices; purchase, rental or sale of intermodal or other equipment; sale, purchase and/or charter of
vessels or space to/from any Party on the one hand and a Joint Service Entity on the other (it being understood that any agreement between any Party and a Joint Service Entity shall be on arm's length commercial terms acceptable to all of the Parties) or with any third party; scheduling of port calls and sailings, port rotations, additions and withdrawal of vessels, and vessel deployments; formation or appointment of agents and sub-agents (including formation of commonly-owned agents and all matters of corporate governance of such agents as permitted by corporation laws of the jurisdiction of incorporation); purchase, lease, or interchange of containers; terminal and/or stevedoring services agreements; contractual arrangements with feeder, tugs, barge, and inland carriers; contractual arrangements with other vendors of goods or services; bill of lading terms, documentation, insurance and related matters (including without limitation, cargo and hull claims, pollution, through transit liabilities, indemnification, general average, salvage, collision, hazardous materials, dangerous cargo), and all other matters relating to the operation of a Joint Service and the business of an ocean common carrier.2

5.5 The Parties are authorized to discuss, establish, maintain and modify for the Joint Service, or to delegate to an Joint Service Entity, the authority to establish, maintain and modify: rates, rules, prices, charges, surcharges, credit terms, forwarder and broker compensation, and all terms, conditions and practices (hereafter collectively “rates and terms”) of an ocean common carrier covering any and all cargo moving in the Trade, to exchange information regarding same, and to publish one or more tariffs containing any such Joint Service rates and terms. The Parties also are authorized to discuss and agree upon the authority to negotiate and establish the rates and terms of service contracts to be entered into and executed by the Joint Service with shippers for the movement of cargo in the Trade.

5.6 The Parties, acting directly or through a Joint Service Entity, are authorized to discuss, agree upon, and share information regarding: economic forecasts; past, present or expected future conditions in all or any portion of the Trade and freight, rate or other market trends; standard port charges; third party costs including vendor, terminal, and bunker costs and consumptions, cargo carryings, vessel and equipment utilization; supply and demand and vessel utilization forecasts/projections; operational data on vessels and terminals, intermodal/rail moves, dwell times, dry-dock plans, liftings and port pair information; customer information and volume and service requirement forecasts and analysis; and marketing and market share information; whether prepared by a Party or Parties or obtained from outside sources.

2 For the avoidance of doubt, the authority of the Parties hereunder to negotiate contracts with shoreside service providers, as well as tug, feeder, and barge service providers, shall extend only to contractual negotiations for the purposes of OpCo’s single carrier services on or after April 1, 2018.
5.7 Prior to commencement of the operation of the Joint Service as an ocean common carrier, in order to enable the Parties to prepare for implementation of and to assist in the smooth transition from the Parties’ respective individual ocean common carrier services to the Joint Service, the Parties acting directly or through a Joint Service Entity, are authorized to share information, discuss, agree upon, and engage in any of the activities described in Articles 5.4, 5.5, and 5.6 with respect to their
respective individual liner services for the transportation of containerized cargo and all other matters relating to the transition from three separate liner services to the Joint Service.\(^3\) In furtherance of and in addition to the foregoing, the Parties acting directly or through a Joint Service Entity, are authorized to discuss, agree upon, share information, and take actions necessary to effectuate the transition to the Joint Service regarding:

(a) The scheduling of the Parties’ respective port calls and sailings, port rotations, additions and withdrawal of vessels, and vessel deployments in order to coordinate transition to the Joint Service;

(b) The terms of the Parties’ respective contracts, charter parties, agreements, leases, and other arrangements with customers, vendors, vessel owners, terminals, equipment or service providers, providers or charterers of space or vessels to or from any of the Parties, or employees, in order to coordinate transfer of same to the Joint Service or to otherwise coordinate activities as part of the transition to the Joint Service;

(c) Continuing, termination, modification, assignment or assumption of the Parties’ respective contracts with vendors, suppliers, customers, and other entities or persons.

5.8 Prior to commencement of the operation of the Joint Service as an ocean common carrier, shares or ownership interests in marine terminal operating entities owned by a Party or its subsidiary will be transferred to OpCo. In order to facilitate a smooth operational transition relating to same, the Parties are authorized to discuss and share information regarding marine terminal operating entities in which shares or other ownership interest is owned by a Party or its subsidiary, including: corporate and financial data of such entities and other information customarily necessary to conduct due diligence associated with the transfer of such an entity to OpCo; investment plans relating to infrastructure, equipment, and systems development; and other matters relating to the operating capabilities of such entities. The Parties shall also jointly arrange the transition of their respective contracts with affiliated U.S. marine terminal entities to the Joint Service as provided for under this Article 5 under such terms as may be agreed.

\(^3\) For the avoidance of doubt, the authority of the Parties hereunder to exchange information relating to the terms of contracts for the lease of containers or chassis shall be used solely for contractual negotiations for the purposes of OpCo’s single carrier services on or after April 1, 2018. This Agreement does not alter any contractual confidentiality obligations of any Party. This Agreement does not authorize the sharing of any information relating to the terms of contracts for the lease of containers or chassis with any ocean common carrier that is not a party to this Agreement.
5.9 The Parties may discuss and agree among themselves and with the Joint Service Entities on the terms and conditions of joint development, implementation, and interchange of documentation, data systems, information, data and other operating systems, and computerization and joint communication, including any joint negotiations, leasing or contracting relating thereto.

5.10 The authorities set forth in this Article 5 may be exercised by the Parties, the Joint Service Entities, or their respective agents or designees.
ARTICLE 6: ADMINISTRATION AND VOTING

6.1 The Parties may, but need not, employ administrative personnel, attorneys and other persons to perform services in connection with this Agreement and otherwise provide for administrative and housekeeping arrangements.

6.2 The Parties, or attorneys designated by the Parties, will file this Agreement and any modifications to this Agreement with the Federal Maritime Commission.

6.3 The Parties may implement this Agreement by decisions made or actions taken at meetings or by telephone, fax, e-mail, or exchange of other writing or electronic communication.

6.4 All actions under this Agreement, including modifications to the Agreement, are to be taken only in accordance with unanimous vote of the Parties. This Agreement may only be modified by the unanimous agreement of the Parties.

ARTICLE 7: DURATION AND TERMINATION OF AGREEMENT

7.1 This Agreement shall be effective as of the date it becomes effective under the U.S. Shipping Act of 1984, as amended, and shall continue in effect indefinitely or until otherwise terminated by the Parties pursuant to the terms of this Article 7 or as the Parties may otherwise agree. Notwithstanding the foregoing, this Agreement may be terminated at any time by unanimous agreement of the Parties.

7.2 Notwithstanding the foregoing and subject to Article 7.3 below, the Agreement may be terminated with respect to one or more of the Parties if:

(a) A Party breaches this Agreement and such breach remains uncured for a period of four (4) weeks following a request by another Party;

(b) In the event that a ruling for the commencement of bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, special liquidation or other insolvency proceedings similar to the foregoing has been given with respect to any Party, or a Party has filed a petition for any of such proceedings;

(c) In the event that a Party has suspended payments or become insolvent;

(d) In the event that a Party is dissolved other than through merger, or any cause for its dissolution arises;
(e) In the event that there is a change in control of a Party and the other Parties have engaged in good faith discussions with the relevant Party. A change in control shall include:

(i) a third party has acquired the majority of all voting rights represented by the issued shares of a Party;

(ii) another ocean common carrier has acquired (1) one-third of all voting rights represented by the issued shares of a Party or (2) the number of directors nominated by such ocean common carrier becomes one-third or more of the total number of all directors of the Party and such acquisition or nomination is deemed to have a material adverse effect on the Agreement; or

(iii) a third party is reasonably deemed to otherwise have control over a Party and such Party is provided notice to this effect;

(f) An approval at a general meeting of shareholders of a Party is rejected when such approval is required to effectuate the integration of the Parties’ respective container liner services or a Party’s shareholders adopt a resolution not to proceed with the integration of the Parties’ respective liner services;

(g) In the event that a Party fails to provide a guaranty, loan, or capital contribution to a Joint Service Entity as agreed to by the Parties;

(h) In the event that a Party fails to perform an obligation to indemnify the other Parties or a Joint Service Entity as agreed to by the Parties;

(i) Any representation or warranty of any of the Parties required in connection with the establishment of the Joint Service is not true and accurate in any material respect.

7.3 In the event one of the conditions described in Article 7.2 occurs, the Parties with respect to whom cause for termination described above has not occurred (the “Non-Breaching Parties”) may notify the Party with respect to whom cause for termination has occurred (the “Breaching Party”) of the Non-Breaching Parties’ intent to terminate this Agreement or to instead require the sale of the Breaching Party’s interest in the Joint Service Entities pursuant to procedures and on such terms as may be agreed by the Parties.

7.4 In the event this Agreement is terminated, the Parties shall meet with the Boards of the Joint Service Entities to agree on an amicable dissolution of the Parties’ cooperation, including the performance of commitments made by the Joint Service Entities and/or the Parties in connection with this Agreement.
ARTICLE 8: OBLIGATION OF THE PARTIES

8.1 Following commencement of the Joint Service operated hereunder, the Parties shall not compete with the Joint Service, either directly or indirectly, in the Trade.

8.2 Notwithstanding the foregoing, the Parties may reach agreement as to specific business activities that will not be prohibited under Article 8.1. Furthermore, nothing herein shall prevent any of the Parties from continuing to offer individual non-container vessel services with respect to cargo in the Trade or other trades.

ARTICLE 9: GOVERNING LAW AND ARBITRATION

9.1 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 Japan, provided, however, that nothing herein shall relieve the Parties from the applicable requirements of the U.S. Shipping Act of 1984, as amended.

ARTICLE 10: SEVERABILITY

10.1 If any provision of this Agreement is determined to be invalid or unenforceable for any reason, no other provisions of this Agreement shall become invalid or unenforceable, and in such case, the applicable provision shall be interpreted in a limited manner to the extent necessary to make such provision valid and enforceable.

ARTICLE 11: NON-ASSIGNMENT

11.1 Unless otherwise unanimously agreed to in writing by the Parties, no Party shall assign its rights or delegate its obligations under or pursuant to this Agreement to any other person or entity.

ARTICLE 12: NOTICE

12.1 Any notice of other communication which one Party hereto may be required to give or make to another Party under this Agreement shall, unless otherwise specifically provided herein, be written in English and sent by email with copy by mail or courier, to the other Parties at addresses to be provided by each Party to all other Parties.
ARTICLE 13: MISCELLANEOUS

13.1 Should any document, such as a related operating agreement, contain clauses and/or provisions that are or could be interpreted as being contrary to the terms of this Agreement, the terms of this Agreement shall prevail.