

THE Alliance Agreement  
FMC Agreement No. 012439

A Vessel Sharing 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 Alliance Agreement (hereinafter referred to as the “Agreement”).

**ARTICLE 2: PARTIES TO THE AGREEMENT**

2.1 The Parties to the Agreement are:

Hapag Lloyd Aktiengesellschaft  
Ballindamm 25  
20095 Hamburg, Germany  
and  
Hapag-Lloyd USA LLC  
399 Hoes Lane  
Piscataway, NJ, 08854 USA  
(operating as one party for all purposes hereunder)

~~Kawasaki Kisen Kaisha, Ltd. (until terminated pursuant to Article 16)  
Iino Building, 2-1-1, Uchisaiwai Cho, Chiyoda-ku, Tokyo 100-0011,  
Japan~~

~~Mitsui O.S.K. Lines, Ltd. (until terminated pursuant to Article 16)  
1-1 Teranomon 2-Chome, Minato-ku, Tokyo 105-8688, Japan~~

~~Nippon Yusen Kaisha (until terminated pursuant to Article 16)  
3-2 Marunouchi 2-Chome, Chiyoda-ku, Tokyo 100-0005, Japan~~

~~Ocean Network Express Pte. Ltd. (effective as of the Transition Date, as  
provided for in Article 16)  
240 Tanjong Pagar Road, #05-00 Keppel Towers 2, Singapore 088540~~

5.15 Any U.S. flag vessel may call at any U.S. port in connection with the carriage of U.S. military or other cargo reserved by law or contract with the United States of America for carriage by U.S. flag vessels. Notwithstanding any other provision of this Agreement, no Party shall have the right to use or make available space on the vessel of any other Party for the carriage of cargo reserved by the cargo preference laws of the country of registry of such vessel, including cargo reserved by United States law for vessels of the United States.

5.16 The Parties are authorized to enter into implementing arrangements, writings, understandings, procedures, and documents within the scope of the authorities set forth in this Article 5 in order to carry out the authorities and purpose hereof; provided that any specific agreements shall be filed with the Federal Maritime Commission to the extent legally required under the Shipping Act of 1984, as amended.

5.17 The Parties may discuss and agree 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, to the extent legally permissible and excluding sensitive information.

5.18 Any two or more Parties may discuss and formulate common positions on any matter within the scope of this Agreement. Except to the extent that this Agreement provides otherwise, this Agreement does not provide authority for fewer than all Parties to make and implement any agreement that would otherwise be required to be filed under the Shipping Act.

## **ARTICLE 6: ADMINISTRATION AND VOTING**

6.1 The Parties will establish a communications structure to jointly coordinate the day-to-day operational activities authorized under the Agreement. In furtherance of the foregoing, the ACC established hereunder is authorized to interchange information and documentation with the Parties' respective information technology systems, and may coordinate the communication among such systems.

6.2 Voting under this Agreement shall be based on one vote per Party. Actions taken on major issues, which shall mean those concerning the scope of the service cooperation, the commencement or termination of Loops, the introduction of new vessels in existing Loops, the slot allocation shares of each Party, the financial arrangements with respect to slot exchanges, the addition of a new party, or on any amendment of this Agreement, shall be reached by unanimous agreement of all Parties. On all other matters, i.e. on routine matters unless otherwise provided herein or otherwise agreed by the Parties, a majority decision shall prevail. A majority vote shall require more than 50% of outstanding votes (~~for a five Party agreement, a~~

~~majority vote shall require 3 or more votes;~~ (for a three Party agreement, a majority shall require 2 or more votes), provided that in the case of a split decision on routine operational matters, the vessel operator may make the decision based on the applicable established operating procedures of that vessel operator, with the basic guiding rule that vessels being on schedule and meeting their proforma windows shall take priority. The Parties may discuss and agree from time to time on other voting rules for specific decisions not otherwise set forth in this subparagraph.

6.3 The following persons are authorized to subscribe to and file this Agreement and any accompanying materials, as well as any subsequent modifications to this Agreement which may be adopted by the Parties:

- (a) Any authorized officer of each of the Parties; and
- (b) Legal counsel for the Parties collectively or individually.

6.4 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.

#### **ARTICLE 7: DURATION AND TERMINATION OF AGREEMENT**

7.1 This Agreement shall be effective as of the later of April 1, 2017 or the date it becomes effective under the U.S. Shipping Act of 1984, as amended, and shall continue in effect until April 1, 2022. Thereafter, the Agreement will be automatically renewed for additional one (1) year terms unless terminated by a Party or Parties according to the provisions of this Article 7, unanimous agreement of the Parties, or withdrawal of all but one of the Parties.

7.2 Any Party shall have the right to withdraw from this Agreement without financial or other penalty by giving twelve (12) months' written notice, provided that such notice may not be given prior to April 1, 2020.

7.3 [RESERVED]

15.2 This Agreement is not intended to create, and shall not be construed as creating, a partnership or joint liability under the law of any jurisdiction.

15.3 The Parties shall not be deemed to be a joint service as it may be defined in the Shipping Act of 1984, as amended, and/or the regulations of the Federal Maritime Commission, and shall maintain separate sales organizations. In addition, the Parties shall be independent contractors in relation to one another and, except as any two or more Parties may agree, no Party shall be deemed to be the agent of another.

15.4 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.

#### **ARTICLE 16: TRANSITION**

~~16.1 Effective April 1, 2018 (the "Transition Date"), the container liner operations of Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha (each individually a "3J Line" and collectively the "3J Lines") shall be combined into a new company known as Ocean Network Express Pte. Ltd. ("ONE"). In light of the foregoing, the Parties hereto agree as follows:~~

- ~~(a) Effective as of the Transition Date, this Agreement is hereby amended to add ONE as a Party.~~
- ~~(b) Subject to subparagraph (c) below, effective as of the Transition Date, each of the 3J Lines hereby transfers and assigns all its rights, obligations and liabilities under the Agreement to ONE and, subject to subparagraph (c) below, this Agreement shall automatically be terminated vis a vis and cease to apply or bind each of the 3J Lines, and with the same terms and conditions, automatically be effectuated to apply to and bind ONE. ONE hereby accepts above effectuation the transfer and assignment of, and agrees to assume, all of the rights, obligations and liabilities of each of the 3J Lines under the Agreement effective as of the Transition Date. The other Parties to the Agreement hereby consent to the herein described transfer and assignment.~~
- ~~(c) Notwithstanding subparagraph (b) above, each of the 3J Lines shall remain liable to the other Parties to the Agreement for its obligations under the Agreement with respect to the period prior to the Transition Date, as well as for any obligations arising out of or in connection with voyage legs which began prior to the Transition Date but which will not be completed until after the Transition Date and any cargo movements thereon. In this regard, it is understood and agreed by all Parties that ONE shall be responsible only~~

~~for those obligations arising out of or in connection with voyage legs and/or cargo movements being performed by it, and shall not be responsible for~~  
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~~voyage legs and/or cargo movements performed by any 3J Line. The obligations of the 3J Lines under this subparagraph (c) shall survive the termination of the membership of the 3J Lines in this Agreement.~~

~~(d) Subject to the last sentence of subparagraph (c) above, effective as of the Transition Date, the Agreement is hereby amended to delete each of the 3J Lines as a Party; provided, however, that notwithstanding said deletion, each of the 3J Lines shall remain a Party to this Agreement for purposes of completing voyage legs and for fulfilling all obligations arising out of or in connection with such voyage legs which began prior to the Transition Date but which will not be completed until after the Transition Date and any cargo movements thereon.~~

~~(e) Prior to the Transition Date, ONE is authorized to attend and participate in all decisions under this Agreement. Notwithstanding the foregoing, ONE shall have no voting rights under the Agreement until after the Transition Date.<sup>†</sup>~~

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~~<sup>†</sup>Notwithstanding ONE's participation in discussions under the Agreement prior to the Transition Date, no antitrust immunity shall be conferred upon ONE for discussions that occur prior to the Transition Date.~~

APPENDIX B

1. **Definitions.** The following definitions shall apply to this Appendix B:

<b>Banking Day</b>	means	a day (other than a Saturday or a Sunday) on which banks are open for general business in Tokyo, Taipei, Frankfurt, New York and Jersey
<u>Contingency Contribution</u>	<u>means</u>	<u>in relation to each Line, the following share of a total amount of USD 50m:</u>  <u>HLC: 31.772% = USD 15.886 million</u> <u>ONE: 47.368% = USD 23.684 million</u> <u>YML: 20.860% = USD 10.430 million</u>  <u>or such other share as may from time to time apply pursuant to clause 2.11A.</u>
<b>Contingency Fund Share</b>	means	A Line or former Line shall be deemed to have a Contingency Fund Share if it would be entitled to any amount from the Contingency Account if the Trust were dissolved on the date specified, as a result of termination of this Agreement in respect of all Lines.
<u>Contingency Review Date</u>	<u>means</u>	<u>On or about every 1 April, starting from 1 April 2019.</u>
<u>Contingency Guarantee</u>	<u>means</u>	<u>a letter of credit from an institution reasonably acceptable to the Lines other than the Line providing it.</u>
<u>Global Allocation Share (GAS)</u>	<u>means</u>	<u>Each Line's allocation of the total capacity within all trade lanes in THE Alliance services worldwide, which figure shall be reviewed on an annual basis.</u>



<b>Insolvency Event</b>	means	where a Line (i) is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger); (ii) becomes insolvent, unable to pay its debts, or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors or any class of them (other than pursuant to a solvent reorganisation, consolidation or amalgamation); (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy, protection pursuant to, or any other relief under, any bankruptcy, insolvency or similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation; (v) seeks or becomes subject to the appointment of an administrator, receiver, liquidator or other similar official for it or for all or substantially all its assets; (vi) has a secured party take possession of, or has any legal process enforced or taken against, all or substantially all its assets.
<b>Material Adverse Change</b>	means	the occurrence in relation to a Line of any event or circumstance which, in the reasonable opinion of all the other Lines, has or is reasonably likely to have a material adverse effect on the business, operations and/or financial condition of the affected Line. In forming such opinion the other Lines shall, without limitation, be entitled to take into account the affected Line's interim and/or annual financial reports.

- 2.9 If this Agreement is terminated in relation to any Line under this Clause 2 or if any Line withdraws from this Agreement (a) all Lines shall continue to be liable to one another in

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respect of all liabilities and obligations accrued prior to termination, and (b) this Agreement shall remain in force in relation to the remaining Lines. If this Agreement is terminated in relation to any Line under this Clause 2, the remaining Lines shall discuss in good faith and agree to any amendments to this Agreement necessitated by such termination.

- 2.10 Each Line hereby agrees that, if it becomes an Affected Line, it shall procure that containerships provided by it shall continue to make port calls in accordance with this Agreement, notwithstanding any risk that those containerships will be arrested or otherwise detained.

#### Contingency Account

##### *Parties' Rights and Obligations*

- 2.11 Each Line shall ~~within thirty (30) days of this Clause 2.11 and the Trust (as defined below) having become effective:~~

- (a) ~~Deposit~~ Save to the extent already deposited by that Line, deposit the sum of USD 1 million into an account (the "**Contingency Account**") held by the trustees (the "**Trustees**") of the Alliance Purpose Trust (the "**Trust**"), a trust ~~to be~~ created by the Lines pursuant to a deed (the "**Deed**"); and
- (b) At its option, either deposit a further sum ~~of USD 9 million~~ into the Contingency Account so that the total amount deposited by such Line equals the amount of its Contingency Contribution, or procure that the amount of its Contingency Contribution minus USD 1 million is covered by a Contingency Guarantee or Contingency Guarantees (which may include a Contingency Guarantee previously provided under this clause) for the total amount of its Contingency Contribution minus USD 1 million, or procure the provision of a letter of credit for the sum of USD 9 million, from an institution reasonably acceptable to the other Lines and in the form of a letter of credit (the "**Contingency Guarantee**").

The Contingency Account (including any funds therein) and any Contingency Guarantees shall be held by the Trustees on the terms of the Trust for all Lines and shall be applied in accordance with the terms of this Agreement and the Deed. As ~~shall be~~ further set out in the Deed, cash deposited by the Lines shall be held by the Trustees in a bank account or accounts as cash so as to be available within one Banking Day unless otherwise agreed by each Line and by each former Line that has a Contingency Fund Share at the time of such agreement.

- 2.11A Within 30 days after each Contingency Review Date, the Lines shall review, and if necessary adjust, without need to file an amendment to this Agreement, the amount of each Line's Contingency Contribution in accordance with this clause. If the GAS of any Line at such Contingency Review Date has changed by more than 5% compared to its GAS on the previous Contingency Review Date (or compared to the percentage set out in Clause 1 if there has not yet been a Contingency Review Date), the Contingency Contributions of the Lines shall be adjusted to reflect the GAS of each Line at such date.
- 2.11B Within 45 days after each Contingency Review Date, the Committee (acting unanimously) shall forthwith notify the Trustees of any adjustment to the Contingency Contribution of any Line(s) under clause 2.11A.
- 2.11C If a Line's Contingency Contribution changes pursuant to clause 2.11A, it shall within 60 days after the relevant Contingency Review Date:
- (a) procure that the amount of its Contingency Contribution minus USD 1 million is covered by a Contingency Guarantee or Contingency Guarantees (which may include a Contingency Guarantee previously provided and/or replacement of any existing Contingency Guarantee pursuant to Clause 2.17(ee)); or
  - (b) if the amount of that Line's Contingency Contribution has increased, deposit a further sum into the Contingency Account so that the total amount deposited by such Line equals the amount of its Contingency Contribution.
- 2.12 If the Committee, acting unanimously (as defined in Clause 2.12(d)), believes (i) that for the purpose of clauses 2.12-2.27 a Line ("the Certified Affected Line") has become an Affected Line, and (ii) that disbursements should be made from the Contingency Account:
- (a) The Committee, acting unanimously (as defined in Clause 2.12(d)) under this Clause 2.12 may give written notice(s) to the Trustees (a) certifying that the Certified Affected Line has become an Affected Line, (b) identifying the disbursements (with details of the

recipient(s) and amount(s)) that are required to be made from the Contingency Account, and (c) certifying that such disbursements comply with the provisions of Clause 2.12(b) of this Agreement.

- (b) The Committee, acting unanimously (as defined in Clause 2.12(d)), shall only require disbursements to be made from the Contingency Account:
- (i) To pay any costs, losses or liabilities reasonably incurred by the other Lines as a result of any breach of Clause 2.10 above; and
  - (ii) To advance such funds or make such payments (whether on behalf of the Certified Affected Line or otherwise) in respect of (a) the carriage, handling, storage and delivery of any containers shipped by the other Lines on board containerships provided by the Certified Affected Line (including, for the avoidance of doubt, operating costs of such containerships) and/or (b) any claims by third parties which lead or may otherwise lead to the arrest or detention of such containerships, in each case as may reasonably be required to ensure that such containers can be carried to and delivered at their intended discharge port without delay, or such earlier port in the loop rotation as may be required by the relevant container ~~operator~~operators;
  - (iii) To reimburse a Line in respect of funds paid or advanced by it where the Committee agree, by unanimous decision (as defined in Clause 2.12(d)), that such payments or advances fall into one or more of the categories listed in sub-clauses (i) and (ii) above and should be reimbursed to that Line.
- (c) The Trustees will not be obliged to check the accuracy of any notice under this Clause, which shall be conclusive as to its contents except in case of fraud.
- (d) For the purpose of this Clause 2.12, (i) the Committee acts unanimously if all Committee members, other than the Committee member appointed by the Certified Affected Line, agree and (ii) the Committee member appointed by the Certified Affected Line may not vote whether or not its voting rights have been suspended under Clause 2.5(a). For the avoidance of doubt, for the purposes of this Clause 2.12, the Committee may act unanimously without any prior notice to the proposed Certified Affected Line and without the participation of the Certified Affected Line in any related Committee meeting or meetings.

- 2.13 Within thirty (30) days of any funds being disbursed in accordance with Clauses 2.12 above (and Clause 2.17(a) below), the Lines shall pay into the Contingency Account the amount of such disbursements in accordance with their respective liability under this Agreement to pay for such amounts. For the avoidance of any doubt, this Clause applies to a Certified Affected Line as well as each Line that is not a Certified Affected Line in case such Line is liable under this Agreement in respect of the said disbursement amounts. On termination of this Agreement with respect to a Line pursuant to Clause 2.4, the provisions of this clause shall continue to apply to that Line for a period of three hundred and sixty (360) days after termination for all disbursements made during such period in connection with the Insolvency Event or Material Adverse Change for which such termination occurred.
- 2.14 Without prejudice to the obligations under Clause 2.13, if at any time the aggregate of (a) the total funds in the Contingency Account (excluding accrued interest or other proceeds of investment) and (b) the value of any Contingency Guarantees, falls below the equivalent of ~~USD 10 million~~ the Contingency Contribution for each Line that is not at that time a Certified Affected Line, and the time for any payment(s) to be made under Clause 2.13 has expired, then such Lines shall within thirty (30) days deposit in ~~equal shares proportion to the~~ Contingency Contributions the amount necessary to make good such shortfall. If a deposit is required under this Clause but the Contingency Contribution of such Line(s) is adjusted under Clause 2.11A before the time for making such deposit has expired, the amount (if any) to be deposited shall be re-calculated on the basis of the adjusted Contingency Contribution of such Line(s). For the avoidance of any doubt, this Clause applies only to each Line that is not at that time a Certified Affected Line even though such Line did not cause such shortfall.
- 2.15 The Committee (acting unanimously, as defined in Clause 2.12(d) above), shall as soon as is reasonably practicable notify the Trustees of (a) any amounts that are required to be paid pursuant to Clauses 2.13 and 2.14 above, (b) the Line(s) that are required to make such payment(s) and (c) the date(s) by which such payment(s) are due.
- 2.16 (a) If, under any Contingency Guarantee, an Issuer sends a non-extension notice to the beneficiary, the Line that procured the provision of such Contingency Guarantee shall procure either (a) the withdrawal of the non-extension notice or (b) the provision of a new Contingency Guarantee for the same amount or (c) deposit a sum ~~of USD 9 million~~ equivalent to the amount covered by such Contingency Guarantee into the Contingency Account, in each case by no later than thirty (30) days prior to the expiry date of the Contingency Guarantee. Where this Agreement is terminated with respect to a Line pursuant to Clause 2.4, this clause shall continue

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to apply to that Line for a period of three hundred and sixty (360) days following termination.

(b) If a Line provides a Contingency Guarantee, it shall by no later than ~~thirty (30) days or~~ twelve (12) months prior to the Expiry Date of the Contingency Guarantee, ~~depending on the terms of the Contingency Guarantee,~~ either (a) procure the provision of a new Contingency Guarantee for the same amount or (b) deposit a sum ~~of USD 9 million~~ equivalent to the amount covered by such Contingency Guarantee into the Contingency Account. Where this Agreement is terminated with respect to a Line pursuant to Clause

2.4, this clause shall continue to apply to that Line for a period of three hundred and sixty (360) days following termination.

(c) If a Line that has provided a Contingency Guarantee does not comply with the provisions of clause 2.16(b), the other Lines may by unanimous agreement give 11 (eleven) months' written notice to that Line to terminate this Agreement, together with any cross slot charterparty in force at the expiry of such notice, with respect to that Line.

*Payments out of the Contingency Account and Replacement of Contingency Guarantees*

2.17 The Lines hereby agree that funds shall be disbursed from the Contingency Account as follows:

- (a) Upon the Trustees' receipt of notice(s) in accordance with Clause 2.12 above, they shall pay the identified recipient(s) the amount(s) specified in the notice(s);
- (b) Upon the Trustees' receipt of (i) a written notice from a Line stating the amount of its share of the Contingency Account that exceeds USD 1 million, confirming that all disbursements that the Committee has required to be made under Clause 2.12 have been made, and requesting to replace such amount with a Contingency Guarantee and (ii) the original of ~~the~~ such Contingency Guarantee, the Trustees shall send copies of the notice and Contingency Guarantee to any Line or former Line that has a Contingency Fund Share at the time of receipt such notice. If within fourteen (14) days thereafter, the Trustees:
  - (i) Receive any objection(s) from any Line or any such former Line disputing the acceptability of the bank that has provided the Contingency Guarantee, or disputing that all disbursements that the Committee has required to be made under Clause 2.12 have been made at the date of the notice, no payment shall be made to the requesting Line pending either the withdrawal of the objection(s) or the publication of a final award or judgment as to the disputed matters (such award or judgment must be binding on all Lines, and must not be the subject of any appeal or be capable of being appealed);
  - (ii) Receive any objection(s) from any Line or any such former Line disputing the amount of the requesting Line's share exceeding USD 1 million as stated in the notice, the Trustees shall pay any

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undisputed amount to the requesting Line but defer any payment of the disputed amount pending either the withdrawal of the objection(s) or the publication of a final award or judgment as to the amount due to the requesting Line (such award or judgment must be binding on all Lines, and must not be the subject of any appeal or be capable of being appealed);



- (e) Upon the Trustees' receipt of a written notice from a Line stating (i) that the amount of its share in the Contingency Account exceeds ~~USD 10 million~~the amount of its Contingency Contribution, or USD 1 million if ~~a one or more~~ Contingency ~~Guarantee is~~Guarantees are in force in respect of such Line, ~~and~~ (ii) the amount of such excess, ~~and (iii) that it is not an Affected Line~~, the Trustees shall send copies of the notice to every Line and former Line that has a Contingency Fund Share at the time of receipt of such notice. If within fourteen (14) days thereafter, the Trustees:
- (i) Receive any objection(s) from any Line or any such former Line disputing the amount of such excess as stated in the notice, the Trustees shall pay any undisputed amount to the requesting Line but defer payment of the disputed amount pending either the withdrawal of the objection(s) or the publication of a final award or judgment as to the amount due to the requesting Line (such award or judgment must be binding on all Lines, and must not be the subject of any appeal or be capable of being appealed);
  - (ii) Do not receive any objection(s) from any Line or any such former Line, the Trustees shall pay the requesting Line the amount stated in the notice provided that the requesting Line is not an Affected Line.
- (ee) Upon the Trustees' receipt of (i) a written notice from a Line stating that it wishes to replace a Contingency Guarantee because the amount covered by all Contingency Guarantees that it has provided exceeds the amount of its Contingency Contribution minus USD 1 million and that it is not an Affected Line, and (ii) the original of a replacement Contingency Guarantee, the Trustees shall send copies of the notice and replacement Contingency Guarantee to any Line or former Line that has a Contingency Fund Share at the time of receipt of such notice. If within fourteen (14) days thereafter, the Trustees:
- (i) Receive any objection(s) from any Line or any such former Line disputing the acceptability of the replacement Contingency Guarantee, or disputing that all disbursements that the Committee has required to be made under clause 2.12 have been made at the date of the notice, the Trustees shall not accept the replacement Contingency Guarantee pending either the withdrawal of the objection(s) or the publication of a final award or judgment as to the disputed matters (such award or judgment must be binding on all Lines, and must not be the subject of any appeal or be capable of being appealed);

(ii) Do not receive any objection(s) from any Line or any such former Line, the Trustees shall accept the replacement Contingency Guarantee and return the Contingency Guarantee(s) that is being replaced to the issuer(s), provided that the Line that sent the written notice stating that it wishes to replace a Contingency Guarantee is not an Affected Line.

- (f) The Lines agree that they will not object unreasonably to any notice given under Clause 2.17. However any failure to comply with this requirement shall not make an objection invalid and the Trustees shall not be required to determine whether an objection is unreasonable.

*Calculation of Payments to Lines*

- 2.18 For the purposes of Clause 2.17(b), the requesting Line's share shall be the amount to which it would be entitled if this Agreement were terminated with respect to it (other than pursuant to Clause 2.4) on the date on which the original of the Contingency Guarantee ~~is provided to~~ pursuant to that clause is received by the Trustees.
- 2.19 For the purposes of Clause 2.17(c), where the termination of this Agreement with respect to the departing Line is not pursuant to clause 2.4:
- (a) The share of each Line (including the departing Line) shall be calculated at the date of termination (the "**Calculation Date**") as follows:
- (i) The aggregate of:
- any amounts deposited by that Line into the Contingency Account pursuant to Clauses 2.11-, 2.11C(b) and 2.14; ~~and~~

- any amounts received by the Trustees pursuant to demands for payment made under any Contingency Guarantee procured by that Line;
- (ii) Less:
- any amounts previously paid to that Line pursuant to Clause 2.17(b) or (e);
  - for disbursements made from the Contingency Account before the Calculation Date, any amounts which that Line should have deposited pursuant to Clause 2.13 but has not done so, or which it would have become liable to deposit pursuant to Clause 2.13 if the 30 day period in that Clause had expired before the Calculation Date; and
  - a share of the ordinary running costs of the Trust to be calculated on a pro rata basis by reference to the duration of that Line's membership of the Alliance, to the extent not already paid;
- (iii) Where the amount calculated under Clause 2.19(a)(i)-(ii) and (b) with respect to any Line(s) or former Line(s) is negative, then without prejudice to that Line's liability to make any deposits that are due, such amount shall, in equal shares, be deducted from the amounts calculated with respect to any other Lines or former Line(s).
- (b) The share of any former Line shall be calculated at the Calculation Date as the aggregate of:
- (i) any amount to which it is entitled but which has not yet been paid; and
  - (ii) if this Agreement was previously terminated in relation to such Line under Clause 2.4 but the three hundred and sixty (360) day period in Clause 2.20(a) had not expired at the Calculation Date, the amount calculated under Clauses 2.20(a) and 2.21 below, as if such period had expired at the Calculation Date.
- (c) After the date of termination, any Contingency Guarantee provided by the departing Line shall be returned by the Trustees to the issuer and no demands shall be made by the Trustees under it unless the amount calculated under subparagraphs (i) and (ii) of this Clause is negative, in which case the Trustees shall immediately demand payment in the amount of the shortfall from the departing Line and the departing Line shall make such payment within three Banking Days of receiving

the Trustees' demand. If the Trustees do not receive such payment, they shall immediately demand payment in full under ~~the any~~ Contingency Guarantee or Guarantees provided by the departing Line and remit any balance to the departing Line. If the departing Line has provided more than one Contingency Guarantee and it is not necessary to demand payment under all of them in order to pay the amount required by the Trustees, then the Trustees may at their absolute discretion select the Contingency Guarantee or Guarantees under which payment will be demanded.

2.20 For the purposes of Clause 2.17(c), where the termination of this Agreement with respect to the departing Line is pursuant to clause 2.4:

- (a) The departing Line's share of the Contingency Account (excluding accrued interest and investment proceeds) shall be calculated in accordance with Clause 2.19(a) except that the Calculation Date shall be three hundred and sixty (360) days following the date of termination;
- (b) After the expiry of three hundred and sixty (360) days following the date of termination, any Contingency Guarantee provided by the departing Line shall be returned by the Trustees to the ~~i~~ssuer and no demands shall be made by the Trustees under it, unless the amount calculated under sub-paragraphs (i) and (ii) of Clause 2.19 is negative, in which case the Trustees shall immediately demand payment in the amount of the shortfall from the departing Line and the departing Line shall make such payment within three Banking Days of receiving the Trustees' demand. If the Trustees do not receive such payment, they shall immediately demand payment in full under ~~the any~~ Contingency Guarantee or Guarantees provided by the departing Line and remit any balance to the departing Line. If the departing Line has provided more than one Contingency Guarantee and it is not necessary to demand payment under all of them in order to pay the amount required by the Trustees, then the Trustees may at their absolute discretion select the Contingency Guarantee or Guarantees under which payment will be demanded.

2.21 In addition to any sum calculated in accordance with Clauses 2.19 and/or 2.20 above, and at the same time as such sums are paid, the departing Line is also to be paid a share of any interest or other investment proceeds that have accrued at the time of termination, being in the same proportion as its share of the total funds in the Contingency Account (excluding accrued interest and investment proceeds) during the time(s) when such investment proceed(s) accrued.

2.22A For the purposes of Clause 2.17(d):

- (a) Each Line or former Line's share of any funds remaining in the Contingency Account shall be the aggregate of:
  - (i) for each Line, an amount calculated in accordance with Clauses 2.19(a) and 2.21 above, except that the Calculation Date shall be the date on which this Agreement was terminated with respect to all Lines;
  - (ii) for each Line or former Line, any amounts to which it is already entitled but which have not yet been paid;

- (iii) for each former Line in respect of which this Agreement was previously terminated under Clause 2.4 but the three hundred and sixty (360) day period in Clause 2.20(a) had not expired at the time of termination of this Agreement, any amounts to which it would be entitled under Clauses 2.20(a) and 2.21 above, if such period had expired at the time of termination of this Agreement; and
  - (iv) for each Line an equal share of any balance of funds in the Contingency Account following such distribution.
- (b) After the date of termination, any Contingency Guarantee provided by a Line shall be returned by the Trustees to the Issuer and no demands shall be made by the Trustees under it unless the amount calculated under sub-paragraph (a) is negative, in which case the Trustees shall immediately demand payment in the amount of the shortfall from that Line and that Line shall make such payment within three Banking Days of receiving the Trustees' demand. If the Trustees do not receive such payment, they shall immediately demand payment in full under ~~the any~~ Contingency Guarantee or Guarantees provided by the Line and remit any balance to the Line. If the departing Line has provided more than one Contingency Guarantee and it is not necessary to demand payment under all of them in order to pay the amount required by the Trustees, then the Trustees may at their absolute discretion select the Contingency Guarantee or Guarantees under which payment will be demanded.

2.22B For the purposes of Clause 2.17(e) the requesting Line's share shall be the amount to which it would be entitled under Clause 2.22A(a)(i) and (ii) if the Agreement were terminated in relation to all Lines at the time of the request.

*Operation of Contingency Account*

2.23 Funds shall only be disbursed pursuant to Clause 2.17(a) from the sums that (i) the Lines deposit into the Contingency Account or (ii) are received into the Contingency Account pursuant to any demands under any Contingency Guarantees, and not from any accrued interest or other proceeds of investment, which shall be accounted for separately.

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2.24 Within three Banking Days of any notice(s) being given to the Trustees pursuant to Clause 2.12, each Line in respect of which the Trustees are holding a Contingency Guarantee or Guarantees shall deposit the ~~sum of USD9 million amount covered by~~ such Contingency Guarantee(s) into the Contingency Account. If the Trustees:

- (a) receive such deposit from a Line as above, any Contingency Guarantee provided by that Line shall be returned by the Trustees to the Issuer and no demands shall be made by the Trustees under it;
- (b) do not receive such deposit from a Line as above, the Trustees shall immediately demand payment in full under any Contingency Guarantee provided by that Line.

2.25 (a) If:

(i) the Trustees receive a non-extension notice in respect of any Contingency Guarantee and the Trustees have not, by no later than fifteen (15) days prior to the expiry date, either received a notice from the ~~i~~Issuer withdrawing such non-extension notice or been provided with a new Contingency Guarantee by the relevant Line; or

(ii) a Line that has provided a Contingency Guarantee has not at least 15 days before its expiry date provided a new Contingency Guarantee to the Trustees;

the Trustees shall promptly demand that such Line deposits ~~USD9 million~~the amount covered by that Contingency Guarantee into the Contingency Account and the Line shall do so within three Banking Days of receiving the Trustees' demand.

(b) If the Line:

(i) makes such deposit as above, the Contingency Guarantee shall be returned by the Trustees to the ~~i~~Issuer and no demands shall be made by the Trustees under it;

(ii) fails to make such deposit as above, the Trustees shall immediately make a demand for payment in full under ~~the~~such Contingency Guarantee.

2.26 Any amounts which are to be paid to a Line pursuant to Clauses 2.17(b)-(e) above should be paid as soon as practicable.

2.27 If this Agreement is:

(a) terminated in relation to any Line by reason of that Line's breach (whether or not that Line is an Affected Line at that time); or

(b) terminated in relation to, rejected, or disclaimed by a Line, whether by operation of law or at the election of the Line (or any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, compulsory manager or other similar officer appointed to it or in respect of all or substantially all of its assets) in any insolvency, bankruptcy or analogous proceeding; then for the purposes of ~~Clause~~Clauses 2.11-2.26 such termination will be deemed to have occurred pursuant to Clause 2.4.