

APPENDIX B

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

<u>Adjusted GAS</u>	<u>means</u>	<u>the GAS of HLC, ONE, and YML as a proportion of the aggregate GAS of HLC, ONE and YML.</u>
Banking Day	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
Contingency Contribution	means	for HMM, USD 25.000 million and in relation to each other Line, the following share of a total amount of USD 50m: HLC: 32.505772 % = USD 15.886 <u>16.253</u> million ONE: 47.368 <u>46.596</u> % = USD 23.684 <u>298</u> million YML: 20.860898 % = USD 10.44930 million or, except for HMM, such other share as may from time to time apply pursuant to clause 2.11A.
Contingency Fund Share	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.
Contingency Review Date	means	On or about every 1 April, starting from 1 April 2020.
Contingency Guarantee	means	a letter of credit from an institution reasonably acceptable to the Lines other than the Line providing it.
Global Allocation Share (GAS)	means	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.

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:

- (a) 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 created by the Lines pursuant to a deed (the "**Deed**"); and
- (b) At its option, either deposit a further sum into the Contingency Account ~~so that the total amount deposited by such Line equals the amount of its Contingency Contribution,~~ or procure a 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 or any combination of the two. For the avoidance of doubt, each Line may at its discretion determine how much of the balance of its Contingency Contribution minus USD 1 million shall be made up of deposits into the Contingency Account and how much shall be covered by a Contingency Guarantee or Contingency Guarantees.

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 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 Adjusted GAS of any Line at such Contingency Review Date has changed by more than 5% compared to its Adjusted 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 Adjusted GAS of each Line at such date as a proportion of USD 50m. Provided, however, that HMM's Contingency Contribution shall remain fixed and shall not be adjusted based on changes in GAS.
- 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~~ if the amount of the Line's Contingency Contribution has increased, provide the balance of its Contingency Contribution ~~minus USD 1 million~~ by either, at its option, depositing a further sum into the Contingency Account, or procuring 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 any combination of the two; or
 - (b) if the amount of that Line's Contingency Contribution has decreased, the Line may request a payment from the Contingency Account and/or replace one or more Contingency Guarantees in accordance with the provisions of Clause 2.17 below whether or not, at the time of giving a notice or notices under that Clause, that Line is an Affected Line ~~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

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 or part of such amount with a Contingency Guarantee or Contingency Guarantees and (ii) the original of such Contingency Guarantee(s), the Trustees shall send copies of the notice and Contingency Guarantee(s) 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 any of the Contency Guarantees, 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~~

THE Alliance Agreement
FMC Agreement No. 012439-0053
~~Original~~ First Revised Page No. B-8A

(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 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 total amount of its share in deposited by that Line to the Contingency Account plus the amount covered by a Contingency Guarantee or Contency Guarantees procured by that Line exceeds the amount of its Contingency Contribution, ~~or USD 1 million if one or more Contingency Guarantees are in force in respect of such Line,~~ (ii) the amount of such excess, ~~and~~ (iii) the amount by which the Line wishes its share of the Contingency Account to be reduced (being an amount that will leave at least a contribution to the Contingency Account from that Line of at least USD 1 million); and (iv) 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 one or more Contingency Guarantees because the amount covered by all Contingency Guarantees that it has provided exceeds the amount of its Contingency Contribution minus ~~USD 1 million~~ the total amount deposited by that Line to the Contingency Account and that it is not an Affected Line, and (ii) the original of ~~a~~ one or more replacement Contingency Guarantees, together with any other Contingency Guarantees already procured by that Line covers that Line's Contingency Contribution minus the total amount deposited by that Line to the Contingency Account, the Trustees shall send copies of the notice and any 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(s), 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);~~

Guarantee(s) 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(s) and return the Contingency Guarantee(s) that is/are 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(s) provided pursuant to that clause is/are 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;