

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<sup>1</sup>  
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.  
Iino Building, 2-1-1  
Uchisaiwai Cho  
Chiyoda-ku  
Tokyo 100-0011, Japan

Mitsui O.S.K. Lines, Ltd.  
1-I Toranomom 2-Chome  
Minato-ku, Tokyo 105-8688, Japan

Nippon Yusen Kaisha  
3-2 Marunouchi 2-Chome  
Chiyoda-ku, Tokyo 100-0005, Japan

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<sup>1</sup> It is recognized that Hapag-Lloyd is in the process of acquiring ownership of United Arab Shipping Company (UASC). The transaction is expected to close well prior to the commencement date for operations under this Agreement. After closing, it may take some time for the assets of UASC to be integrated into the operations of Hapag-Lloyd, and UASC’s vessels may be operated separately under UASC bills of lading during a transition period. The Parties acknowledge and agree that both before and after closing of the Hapag-Lloyd/UASC transaction, the assets and services of UASC may be considered and discussed, and information relating thereto exchanged, in connection with Hapag-Lloyd’s participation as a Party to this Agreement, the services to be offered under this Agreement, and the other authorities provided for under this Agreement.

Yang Ming Marine Transport Corp.  
271 Ming De 1<sup>st</sup> Road  
Cidu District, Keelung 20646  
Taiwan

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

**ARTICLE 3: PURPOSE OF THE AGREEMENT**

3.1 The purpose of this Agreement is to authorize the Parties to charter and exchange space on one another’s vessels and to rationalize, coordinate and cooperate with respect to the Parties’ transportation services and operations in order to improve efficiency, save costs, and provide premium service to the shipping public in the Trade.

**ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT**

4.1 The geographic scope of this Agreement is the trade between ports in North Asia, South Asia, Middle East (including the Arabian Gulf and Red Sea Regions), Northern Europe, Mediterranean, Adriatic, and Black Sea, Egypt, Panama, Mexico, Canada, Central America and the Caribbean on the one hand, and ports on the East, Gulf, and West Coasts of the United States, by any route including via the Panama and Suez Canals or the Cape of Good Hope, on the other, as well as ports and points served via such U.S. and foreign ports (the “Trade”). The specific countries/regions that are within the geographic scope of this Agreement are listed in Appendix A hereto.

There shall be no geographic restrictions on the origin or destination of cargo carried on vessels employed in the services established pursuant to this Agreement. In other words, such cargo may originate from or be destined for ports or points outside the geographic scope of this Agreement. The inclusion of any non U.S. trades in this Agreement shall not bring such non U.S. trades under the jurisdiction of the U.S. Federal Maritime Commission or entitle the Parties hereto to immunity from the U.S. antitrust laws with respect to such non U.S. trades.

**ARTICLE 5: AGREEMENT AUTHORITY**

5.1 The Parties are authorized to meet together, discuss, reach agreement and take actions necessary to implement or effectuate agreements regarding sharing of vessels, chartering or exchange of space, rationalization and related coordination and cooperative activities pertaining to their operations and services, and related equipment, vessels and facilities in the Trade. It is initially contemplated that the Parties will jointly coordinate the operation and sharing of space on 151 container vessels in the Trade with nominal capacities ranging from 3,000-14,500 TEUs.

5.2 In furtherance of the authorities set forth in Article 5.1, the Parties are authorized to engage in the following activities, to the extent permitted by the applicable law of the relevant jurisdictions within the scope of this Agreement, and subject to any applicable filing requirements:

- (a) Consult and agree upon the type, capacity, speed, and total number of vessels to be used and contributed by each Party, including changes in the number and size of vessels provided by any Party, and substitution of vessels and the terms, conditions and operational details pertaining thereto, without the need to amend this Agreement, provided that the Parties are authorized to adjust the number of linehaul vessels to be used in connection with this Agreement up to a maximum of 180 with maximum capacity of 21,000 TEUs, with a maximum weekly capacity of 180,000 TEUs, and as few as 80 vessels, with a minimum weekly capacity of 70,000 TEUs. The Parties shall conduct regular reviews of the services to be offered under this Agreement, and where necessary agree to make changes in accordance with Article 6. It is intended that the services operated hereunder will provide sufficient slots to cover the Parties' respective requirements for the movement of cargo in an expeditious and efficient manner;
- (b) Consult and agree upon the sailing patterns, ports to be called, port rotation, vessel itineraries, schedules, the number, frequency, and character of sailings at ports, transit times, adjustment of the speed of vessels (including slow steaming of vessels), performance criteria and consequences for a Party failing to adhere to the established schedule and/or to load cargo in accordance with its obligations hereunder, and all other matters related to the scheduling and coordination of vessels and services;
- (c) Consult and agree upon the exchange or allocation of space, on such terms as they may agree from time to time. Allocation of space will generally be based on the principle that the Parties' basic slot allocation ("BSA") will be equivalent to contribution. That principle may be applied, and agreements based, in whole or in part, as the Parties may agree, on consideration of multiple factors, including provision/allocation in multiple U.S. and/or non-U.S. trade lanes;
- (d) Consult and agree upon terms and conditions, including the amount of advance notice required prior to a Party's withdrawal of a vessel(s), as well as the allocation of any costs associated therewith; or introduction of additional, substitute, or replacement vessels in the Trade and the characteristics (including but not limited to size, capacity, speed, configuration, and delivery date) of such vessels;

- (e) Consult, agree upon, negotiate and contract (individually and/or jointly, including any two or more of the Parties) for the chartering, hiring, establishment, use, scheduling, coordination and/or operation of transshipment, barge and/or feeder services, in conjunction with linehaul vessel operations hereunder, provided however that the Parties may only jointly contract for any such services outside the United States;
- (f) Consult and agree to negotiate and contract for the chartering of vessels by one or more Parties for use in operations hereunder and to agree upon the size, capacity, speed, configuration, and delivery date of such vessels, and to nominate one of the Parties to charter and/or operate such vessels;
- (g) Consult and agree to accept and carry loaded or empty containers (including containers which they own, lease, control or receive from third parties) and noncontainerized cargo, on their own vessels and on one another's vessels (including owned or chartered vessels). The Parties may also discuss and agree on the carriage of breakbulk, noncontainerized, and hazardous cargo, subject to the concurrence of the vessel operator. The Parties are further authorized to charter and subcharter space to and/or from each other, on such terms as they may agree from time to time. Under this paragraph, the Parties are authorized to charter up to the maximum available space (as may be agreed by the Parties) on their vessels operated hereunder, including space beyond standard operating capacities, when operating conditions permit;
- (h) Consult and agree on vessel maintenance and repair matters, drydocking schedules, and the provision of temporary replacement or substitute tonnage;
- (i) Consult, meet, and discuss, amongst themselves or with one more operators of container or chassis pools, container or chassis lessors or providers, or other third parties regarding financial, operational, and liability terms for the shared or individual use, interchange, lease, sublease, purchase, or provision of containers, Alternative Marine Power devices, chassis, or related equipment, or goods or services that may be required in connection with the use, interchange, lease, or sublease of containers or chassis; the Parties may also agree on common standards for containers, chassis, and other intermodal equipment used in the Trade;
- (j) Discuss and agree upon joint contracting for the purchase, lease, or operation of equipment, facilities (inland terminals, equipment depots, warehouses, container yards, container freight stations), and any

services provided by such facilities, provided that they are procured outside the United States.

- (k) Discuss and agree upon joint contracting for inland transportation services (land, or rail); provided however, that any joint negotiations/contracts with common carriers by air, rail, or motor carriers or a group of such carriers with respect to services to be provided within the United States shall be subject to the U.S. antitrust laws;
- (l) Discuss and agree upon the joint contracting with tug operators or other providers or suppliers of other vessel-related goods and services, provided they are procured outside the United States; and
- (m) Discuss and agree upon joint contracting for the purchase of bunker and other fuels and environmental services, provided they are procured outside the United States;
- (n) Establish and maintain such standing or ad hoc committees as the Parties deem necessary or appropriate to consider, review, make, and implement administrative, operational and policy decisions relating to matters within the scope of the Agreement. The Parties may also establish and maintain an alliance coordination center, referred to as THE Alliance Coordination Center ("ACC"), to maximize the efficiency of the services operated hereunder. The ACC established by the Parties shall be authorized to perform day-to-day management, administrative, data/information collection, and/or service coordination functions pertaining to issuing, updating and coordinating vessel schedules, allocating space among the Parties in accordance with sub-clause 5.6 hereof, monitoring of vessels deployed under the Agreement, ensuring service quality and schedule integrity, supporting the Parties in their financial settlement with respect to shared vessels of slots, communicating with providers or suppliers of vessel-related goods and services, monitoring bunker consumption of the vessels operated hereunder, reviewing terminal operations and equipment and intermodal activities, preparing and distributing a cargo acceptance policy and hazardous cargo procedures, and assisting in stowage planning, on behalf of the respective Parties.

5.3 (a) The Parties shall be entitled to obtain, compile, maintain, and exchange among themselves information, records, statistics, studies, compilations, consultancy reports, and forecasts/projections related to their joint operations in the Trade and pertaining to 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, vessel cascading plans and information, schedule performance, dry-dock plans, liftings, length of port/terminal stays, productivity, port pair information, and marketing and market share information, whether prepared by a Party or Parties or obtained from outside sources. The Parties may use any such information to jointly make projections and plans relating to current or future vessel capacity and service structure to be offered in the Trade under this Agreement.



(b) Nothing in subparagraph (a) herein authorizes the Parties to exchange information on freight rates, prices, tariff items, confidential service contract terms or conditions, individual customer lists, individual marketing plans or proposals, or individual bids.

5.4 Each Party shall be entitled to use freely the assets owned by it, including slots allocated to it. Every Party shall be entitled to use its slot allocations without any geographical restrictions regarding the origin or destination of the cargo, subject to such operational restrictions as they may agree on from time to time.

5.5 The Parties may agree on the treatment of full, empty, wayport/interport, or breakbulk cargo. The Parties may establish criteria for the calculation of slot usage, for high cube and 45-foot containers, as well as lost slots due to out of gauge cargoes, on such terms as they may agree from time to time. The Parties may also separately establish sub-allocations for reefer containers and reefer plugs.

5.6 The Parties are authorized to make and implement agreements relating to the procedures, terms, and conditions of the allocation, exchange, sale and use of capacity, slots and associated equipment (including reefer plugs) on the vessels used in connection with this Agreement. Such agreements, procedures, terms and conditions may include the number of slots each Party commits to provide to the other Parties and the Parties' BSA which each Party is allocated and responsible to utilize on particular vessels, loops or loop segments; adjustments to a Party's BSA or other accommodations as the Parties may agree in case of changes to pro forma schedules or other operational changes; deadweight allocations and restrictions associated with slot allocations, including a fair and reasonable process for adjustments; principles, procedures, terms and conditions to govern the release, buying, selling and/or allocation to Parties of unused or excess slots within Party's BSA or not included in the Parties' BSAs; monetary or other consideration for slots used and provided; principles and procedures for establishing and adjusting slot allocations; adjustments of BSAs and related matters during the phasing in or phasing out of a loop or substitution of vessels, or in the event of operational contingencies including but not limited to vessel breakdown; casualty or loss, or an underperforming vessel; and accounting principles and procedures for determining and settling accounts related to slots provided, used, exchanged and sold.

5.7 (a) In the event that a Party has certain unused slots from its allocation on any sailing on any voyage or portion thereof, the Party shall first make such space available to the other Parties in such proportions as the Parties may from time to time agree. In the event the other Parties have failed to exercise their first right of refusal to charter those slots according to procedures mutually agreed by the Parties, then those unused slots within a Party's entitlement may be sold or sub-chartered on an ad hoc basis (which shall mean not more than one voyage at any one time) to any third party vessel-operating common carrier (VOCC), meaning an ocean common carrier subject to the Shipping Act. The slot sale to any third party VOCC on a more permanent basis shall require the unanimous written consent of the other Parties, not to be

unreasonably withheld or unduly delayed. Provided, however, that any sale or assignment of space by a Party to a subsidiary or affiliate shall be permitted and not subject to any consent requirement.

(b) Except to the extent that the Parties agree otherwise in writing, a Party subchartering space to a third party VOCC shall remain responsible for all obligations and liabilities arising under the Agreement (and/or under any agreement among the Parties made pursuant to this Agreement) in respect of the slots subchartered by that Party.

(c) The Parties may discuss and agree on operational matters necessary to the handling or carriage of cargo, such as the type, nature, weight, volume, or dimensions of the commodities being shipped, documentation requirements with respect to the cargo, special handling or equipment considerations, delivery instructions or status updates, or contact information for the parties involved in the shipment, with any entity who is not a Party and from whom they receive or to whom they provide slots indirectly through another Party's agreement with such entity.

5.8 The amount to be charged for slots shared under this Agreement shall be as agreed by the Parties, in order to effectuate a fair and equitable method of sharing the costs of providing and operating the vessels employed in any services being coordinated under this Agreement. The Parties shall settle financial obligations to each other under this Agreement at such intervals as they may agree.

5.9 If a Party needs additional space in connection with any sailing or on a more permanent basis, it shall, except as the Parties otherwise agree, first seek such additional space from the other Parties. If such space is not available from the other Parties, or if there is insufficient time to consult with the other Parties without losing opportunities to obtain cargo, the Party needing additional space may charter space, on an ad hoc or more permanent basis, from a third party. The Parties further consent to any such charter arrangement(s) existing at the time this Agreement becomes effective, including with respect to strings subject to this Agreement and/or on which the Parties are vessel operators.

5.10 (a) The Parties may discuss and agree upon the terminal(s) to be called by the vessels operated hereunder as well as the stevedore(s) that will service such vessels, and/or the volume of cargo to be handled by such terminals or stevedores. The Parties shall negotiate independently with and enter into separate individual contracts with marine terminal operators and stevedores (except where the marine terminal operator is agreeable to a joint contract with the Parties, in which case a joint contract would be authorized); provided, however, that whether contracting on a joint or individual basis, the Parties are authorized to discuss, exchange information, and/or coordinate negotiations with marine terminal operators or stevedores relating to operational matters such as port schedules and berthing windows; availability of port facilities, equipment and services;

contract duration; adequacy of throughput; and the procedures of the interchange of operational data in a legally compliant matter.

(b) The Parties may agree on the use of one ocean terminal or stevedore at each port of call where feasible and appropriate, provided that nothing herein shall authorize the Parties to jointly operate a marine terminal in the United States. The Parties may establish objective operational criteria for the joint or individual selection and use of stevedoring and terminal service providers, including taking into account any affiliation and/or financial interest of a Party in a terminal. The Parties may agree

on the fair and reasonable allocation of common terminal charges. However, each Party shall bear all terminal costs incurred in connection with its containers.

5.11 If a Party wishes to introduce a new service falling within the geographic scope of this Agreement, and the Parties have not agreed by unanimous agreement to include such service as a service under this Agreement, the Party introducing the new service shall offer space on the new service to the other Parties with right of first refusal. To the extent the other Parties do not make use of their right of first refusal, or the other Parties take some space on the new service but in a lower proportion than the space offered by the Party introducing the new service, then such space may also be offered to third party operators. In such an event, the tonnage and capacity comprising this non-Agreement service shall not be counted as a contribution of tonnage or capacity to the Agreement, nor shall the use of such non-Agreement service by a Party be counted as use of its allocation under the Agreement.

5.12 The Parties may discuss and agree to implement temporary capacity adjustments in the Trade, including void and blanks sailings, to respond to changes in seasonal demand, periods of expected reduced utilization, or other changes in the Trade. In the case of a Party carrying out a void/blank sailing, the Parties are authorized to agree to a financial compensation scheme as they may agree from time to time.

5.13 Except as otherwise agreed, each Party shall bear all expenses for the vessels it operates in the Trade. The Parties may periodically render accounts to each other on such terms and with such adjustments as they may agree for services, space, equipment, and facilities provided or exchanged hereunder. The Parties may share or apportion any such costs as they may agree from time to time.

5.14 The Parties are authorized to discuss and agree on their respective rights; fair and reasonable allocation of liabilities among the Parties; apportionment of damages; satisfaction of claims; procurement of insurance and claims thereunder; and indemnities for activities under this Agreement; matters pertaining to cargo loss or damage, damage or loss to containers or other equipment, schedule or delivery delays; loss of or damage to a vessel, accidents, hazardous, breakbulk, or oversized cargoes; loss or damage caused by cargo; damage to persons or property, failure to perform, force majeure, general average, and any liability to third parties. The Parties may also discuss and agree on all matters relating to the terms and conditions of charter parties pertaining to the operation and use of vessels/space/cargo subject to this Agreement, participation in voluntary government programs concerning security, safety, or similar matters (such as C-TPAT), and sequestration of all or portions of vessels, or other Flag State use of vessels, including pursuant to the U.S. government's Voluntary Intermodal Sealift Agreement Program.

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), 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 If at any time during the term of the Agreement there is a material change in ownership or control of a Party ("material change" being defined, subject to such exceptions as the Parties may agree, as a change in 50% or more of the controlling stock of the Party or its ultimate parent company), and the other Parties are unanimously of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion, operation or viability of the Agreement, the other Parties shall have the right, within six (6) months of the effective date of such change, to either:

- (a) unanimously agree to terminate that Party's participation in the Agreement by giving not less than six (6) months written notice to that Party; or

- (b) if that Party's participation is not terminated under subparagraph (a) above, individually withdraw from this Agreement by giving not less than six (6) months written notice to the other Parties, within six (6) months of the change.

7.4 (a) 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 Parties), or any event similar to any of the above (collectively, an "insolvency event") shall occur under the laws of the Party's country of incorporation (the Party so affected being referred to in this sub-clause 7.4 only as the Affected Party) and the other Parties are unanimously of the opinion that the result may be materially detrimental to the Service, or that sums may be owed by the Affected Party to any other Party or Parties and may not be paid in full or their payment may be delayed, then, by unanimous decision of the other Parties, 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 Parties, in their sole discretion, deem appropriate. In particular, but without limitation thereto, the operation of the adjusting payments mechanism in respect of the Affected Party may be suspended. Such termination or suspension may include, as the Parties other than the Affected Party may determine to be reasonably necessary, removal of all or some of the Affected Party's vessels from service, suspension of the Affected Party's right to load cargo aboard vessels of the other Parties, or a requirement to discharge cargo of the other Parties at alternate locations. Any termination under this sub-clause 7.4(a) shall be effective as to the Affected Party and any space made available to third parties under the terms of this Agreement, provided that such termination shall be delayed as to the carriage of cargo on behalf of third parties to the extent necessary to allow for the discharge of such cargo at the intended port of discharge or at an alternative location within the schedule route as directed.

(b) In the event of a termination or suspension under paragraph 7.4(a) hereof, in order to facilitate, to the extent possible, the onward movement of cargo on board vessels operated by the Affected Line or the other Parties, the Parties are authorized to make financial or operational arrangements directly with shippers, providers of vessels or space to the Affected Line in use under this Agreement, agents, service providers, and sub-contractors of the Affected Line; and agree on the establishment of financial guarantees or other financial safeguards by the Parties to protect against the impacts of insolvency, procedures for obtaining the release of cargo from vessel operators or terminal operators and for payment of financial obligations to terminal operators or other service providers by the Affected Line or other Parties, and other measures necessary to maintain continuity of operations and to minimize disruption or congestion caused by any action as referred to in paragraph 7.4(a).

7.5 (a) Any Party may, as hereinafter provided, and following written demand to cure a claimed breach, withdraw from this Agreement for a breach by another Party of the withdrawing Party's rights under this Agreement which has a material adverse effect upon the withdrawing Party and which shall not be cured by any remedial action. The Parties shall, upon the giving of such demand for cure, promptly endeavor in good faith to resolve their differences or to cure such claimed breach. If, within sixty (60) days of such demand, the Parties, acting in good faith, shall fail to resolve their dispute, or there shall have been no cure effected, the Party having made demand for cure may withdraw from this Agreement upon not less than ninety (90) days prior written notice given after expiry of such sixty (60) day cure period.

(b) For purposes of the immediately preceding paragraph (b), a breach of a Party's obligations under this Agreement having a material adverse effect on another Party shall include a failure to comply with agreed capacity, operational and/or financial commitments that results in a material reduction in the benefits that the other Party could reasonably have expected to achieve from this Agreement.

7.6 In the event of termination of this Agreement for whatever cause in relation to one or more of the Parties, the Parties, including the terminated Party, shall continue to be liable to one another with respect to all liabilities and obligations accrued prior to termination. For the period subsequent to the termination, the remaining Parties will consult to determine what if any adjustments in their rights and obligations are required.

#### **ARTICLE 8: FORCE MAJEURE**

8.1 In such circumstances as the event of war, whether declared or not, hostilities or the imminence thereof, act of public enemies, acts of God, arrest or restraint of princes, rulers, or people, or compliance with any compulsorily applicable law or government directive, search and rescue operations, boycott against flag, political ban, terrorism, civil commotion, labour disputes, lock-outs, or strikes or other events beyond the control of a Party which render this Agreement, a Service, Loop or Voyage, as the case may be, partially or wholly impracticable (a "Force Majeure Event"), the Agreement, the Service, Loop or Voyage, as the case may be, shall not thereby be terminated, but (subject to the provisions for termination set forth in Article 7) the performance thereof shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities, and obligations accrued at the date of suspension. Should the Force Majeure Event wholly suspend this Agreement, the Service, Loop or Voyage, as the case may be, for a period of six (6) calendar months running continuously from the date of commencement of the Force Majeure Event, the Agreement, the Service, Loop or Voyage, as the case may be, shall terminate unless the Parties otherwise agree.



8.2 In the event that a Party considers that any cause, happening, or event not within its control substantially impairs its ability to enjoy its rights or carry out its or other Parties' obligations under this Agreement then, at its request, the Parties shall meet together with all reasonable dispatch in order to consider such adjustment of the terms of this Agreement as may be mutually acceptable.

**ARTICLE 9: CONFIDENTIALITY**

9.1 Except as required by law or any regulatory or government authority, activities under this Agreement shall be regarded as confidential to the Parties and no Party acting for itself or on behalf of its employees, agents, and subcontractors shall divulge any non-public information concerning the business and affairs of the other Parties that it shall have obtained or received as a result of this Agreement or any discussions under it or leading to its formation without the prior written approval of the other Parties.

**ARTICLE 10: GOVERNING LAW AND ARBITRATION**

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

10.2 Without prejudice to a Party's right to seek relief in the courts the Parties shall use reasonable efforts to negotiate in good faith and settle amicably any dispute or difference that may arise out of or relate to this Agreement (a "Dispute"). If a Dispute cannot be settled through negotiations by appropriate representatives of the Parties involved, a Party may give to the other Party(s) a notice in writing of the Dispute and request the Dispute to be resolved between the senior management of the relevant Parties (a "Dispute Notice"). Within seven (7) days of the Dispute Notice being given the relevant Parties shall each refer the Dispute to a member of senior management nominated by the Party who shall meet in order to attempt to resolve the Dispute. If the Dispute is not settled by agreement in writing between the Parties within fourteen (14) days of the Dispute Notice being given, regardless of whether a meeting has taken place it shall be resolved in accordance with sub-clause 10.3 below.

10.3 Any Dispute arising out of or in connection with this Agreement which cannot be resolved amicably shall be referred to arbitration in London (unless varied with the unanimous consent of the Parties involved) in accordance with the Arbitration Act of 1996 or any statutory modification or reenactment thereof. The arbitration shall be conducted in accordance with the LMAA (London Maritime Arbitration Association) terms current at the time when the arbitration proceedings are commenced.

10.4 In the case of a Dispute involving only two Parties, the tribunal shall consist of three (3) arbitrators. In such instances, the Party referring the matter to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party, and requesting that such Party appoint an arbitrator within 14 days. After appointment of an arbitrator by the second Party, the two appointed arbitrators shall appoint a third. The arbitrators shall have no financial or personal interest whatsoever in or with any Party and shall not have acquired a detailed prior knowledge of the matter in dispute. If the other Party does not appoint its own arbitrator and give notice that it has done so within the 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.

10.5 Where there are only two Parties to the Dispute and where the amount in dispute does not exceed US\$100,000, the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

10.6 If a Party wishes to refer a Dispute to arbitration where there are three or more Parties involved in the Dispute, the referring Party shall request that the President of the LMAA for the time being appoint the three arbitrator tribunal.

10.7 Without prejudice to the tribunals' power under the LMAA Terms to order concurrent hearings, where two or more arbitrations appear to raise common issues of fact or law, the tribunals may direct that the arbitrations shall be consolidated. Where such an order is made, the tribunals may give such directions as the interests of fairness, economy and expedition require, including:

- (a) that any directions previously given shall be revoked;
- (b) that the documents which have been disclosed by the Parties in one arbitration shall be made available in the other arbitration upon such conditions as the tribunals may determine;
- (c) that the evidence which has been given in one arbitration shall be received and admitted in the other arbitration, subject to Parties being given a reasonable opportunity to comment upon it and subject to such other conditions as the tribunals may determine.

10.8 If an order for consolidation is made hereunder and the membership of the tribunals is not identical, the consolidated arbitration shall, after the date of consolidation, be heard and determined by the tribunal first appointed.

10.9 The arbitrators' decision, including the written findings of fact and conclusions, shall be final and conclusive; judgment may be entered on the award and the award shall be enforceable in any court of competent jurisdiction.

**ARTICLE 11: SEVERABILITY**

11.1 If any provision of this Agreement, as presently stated or later amended or adopted, is held to be invalid, illegal, or unenforceable in any jurisdiction in which this Agreement is operational, then this Agreement shall be invalid only to the extent of such invalidity, illegality, or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

**ARTICLE 12: COMPLIANCE WITH LAW**

12.1 The Parties shall, individually and collectively, conduct their operations under this Agreement in compliance with laws and regulations applicable to any one or more of the Parties, including but not limited to applicable regulatory compliance and trade sanctions, anti-boycott, anti-corruption and bribery, environmental, labor, competition, and privacy laws.

**ARTICLE 13: NON-ASSIGNMENT**

13.1 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, except to subsidiaries, parent companies, or fellow subsidiaries that are VOCCS. Each Party warrants that any subsidiary or fellow subsidiary to which any assignment is made shall not be sold to another party so long as such assignment continues in existence, and shall make no further assignment except with unanimous consent of all Parties.

**ARTICLE 14: NOTICE**

14.1 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 15: MISCELLANEOUS**

15.1 Each Party shall retain its own separate identity, shall have its own sales, pricing and marketing functions and organizations, and shall be responsible for marketing its own interests in the Trade. Each Party will issue its own bills of lading, handle its own claims and will be fully and solely responsible for all expenses, obligations and liabilities applicable to it pursuant to this Agreement.

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.

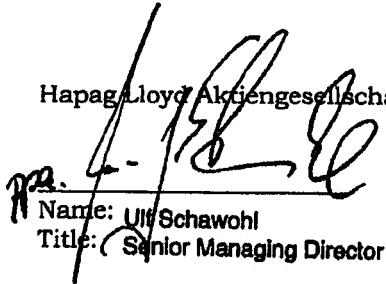
15.4 Should any document, such as a related operating agreement, contain clauses and/or provisions that are or could be interpreted as being contrary to the terms of this Agreement, the terms of this Agreement shall prevail.

THE Alliance Agreement  
FMC Agreement No. \_\_\_\_\_

Signature Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed  
by their authorized representatives as of this 4th day of November, 2016.

Hapag-Lloyd Aktiengesellschaft and Hapag-Lloyd USA LLC (operating as one party)

  
Name: Ulf Schawohl  
Title: Senior Managing Director

  
Name: Axel Lüdeke  
Title: Senior Director

Kawasaki Kisen Kaisha, Ltd.

\_\_\_\_\_  
Name:  
Title:

Mitsui O.S.K. Lines, Ltd.

\_\_\_\_\_  
Name:  
Title:

Nippon Yusen Kaisha

\_\_\_\_\_  
Name:  
Title:

Yang Ming Marine Transport Corp.

\_\_\_\_\_  
Name:  
Title:

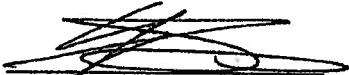
Signature Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be  
executed by their authorized representatives as of this 4<sup>th</sup> day of November, 2016.

Hapag Lloyd Aktiengesellschaft and Hapag-Lloyd USA LLC (operating as one party)

\_\_\_\_\_  
Name:  
Title:

Kawasaki Kisen Kaisha, Ltd.



Name: Yasushi Shigeno  
Title: General Manager

Mitsui O.S.K. Lines, Ltd.

\_\_\_\_\_  
Name:  
Title:

Nippon Yusen Kaisha

\_\_\_\_\_  
Name:  
Title:

Yang Ming Marine Transport Corp.

\_\_\_\_\_  
Name:  
Title:

THE Alliance Agreement  
FMC Agreement No. \_\_\_\_\_

Signature Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed  
by their authorized representatives as of this 4<sup>th</sup> day of November, 2016.

Hapag Lloyd Aktiengesellschaft and Hapag-Lloyd USA LLC (operating as one party)

\_\_\_\_\_  
Name:  
Title:

Kawasaki Kisen Kaisha, Ltd.

\_\_\_\_\_  
Name:  
Title:

Mitsui O.S.K. Lines, Ltd.



\_\_\_\_\_  
Name: Toshihiko Sato  
Title: Assistant Vice President, Network Planning

Nippon Yusen Kaisha

\_\_\_\_\_  
Name:  
Title:

Yang Ming Marine Transport Corp.

\_\_\_\_\_  
Name:  
Title:

THE Alliance Agreement  
FMC Agreement No. \_\_\_\_\_

Signature Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be  
executed by their authorized representatives as of this 4<sup>th</sup> day of November,  
2016.

Hapag Lloyd Aktiengesellschaft

\_\_\_\_\_  
Name:  
Title:

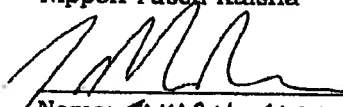
Kawasaki Kisen Kaisha, Ltd.

\_\_\_\_\_  
Name:  
Title:

Mitsui O.S.K. Lines, Ltd.

\_\_\_\_\_  
Name:  
Title:

Nippon Yusen Kaisha

  
Name: TAKASHI MASUDA  
Title: GENERAL MANAGER  
NETWORK PLANNING  
Yang Ming Marine Transport Corp.

\_\_\_\_\_  
Name:  
Title:



THE Alliance Agreement  
FMC Agreement No. \_\_\_\_\_

Signature Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed  
by their authorized representatives as of this 4<sup>th</sup> day of November, 2016.

Hapag Lloyd Aktiengesellschaft and Hapag-Lloyd USA LLC (operating as one party)

\_\_\_\_\_  
Name:  
Title:

Kawasaki Kisen Kaisha, Ltd.

\_\_\_\_\_  
Name:  
Title:

Mitsui O.S.K. Lines, Ltd.

\_\_\_\_\_  
Name:  
Title:

Nippon Yusen Kaisha

\_\_\_\_\_  
Name:  
Title:

Yang Ming Marine Transport Corp.

  
\_\_\_\_\_  
Name:  
Title:

APPENDIX A

The following countries are within the geographic scope of the Agreement:

Belgium  
Canada  
Colombia  
Dominican Republic  
Egypt  
France  
Germany  
Hong Kong  
Italy  
Japan  
Malaysia  
Mexico  
Morocco  
Netherlands  
Panama  
People's Republic of China  
Singapore  
South Korea  
Spain  
Sri Lanka  
Taiwan  
Thailand  
United Arab Emirates  
United Kingdom  
United States  
Vietnam