

BALTIC EXCHANGE OTC FFA MASTER AGREEMENT

1. AGREEMENT

1.1 This Agreement constitutes and incorporates by reference the provisions of the 1992 ISDA® Master Agreement (Multicurrency – Cross Border) (without Schedule) (the **Master Agreement**) as if they were fully set out in this Agreement and with only the following specific modifications and elections:

- (a) Section 2(c)(ii) shall not apply so that a net amount due will be determined in respect of all amounts payable on the same date in the same currency in respect of two or more Transactions;
- (b) Seller is the Calculation Agent except where the Seller is the Defaulting Party in which event Buyer is the Calculation Agent;
- (c) the most current published set of ISDA® Commodity Definitions and ISDA® Definitions shall apply;
- (d) Credit Event Upon Merger is applicable to both parties;
- (e) for the purposes of payments on Early Termination, Loss will apply and the Second Method will apply;
- (f) Automatic Early Termination will apply to both parties;
- (g) the Termination Currency is United States dollars;
- (h) the Applicable Rate shall mean []%, reset daily and compounded monthly;
- (i) unless otherwise stated in a Confirmation, the places specified for the purposes of (a) in the definition of "Local Business Day" shall be all of (i) the locations of each of the bank accounts specified in Clause 14 and (ii) New York;
- (j) such other modifications as shall be necessary for such incorporation; and
- (k) references to "this Master Agreement", "this Agreement", "herein" and other like expressions shall be construed as being references to this Agreement incorporating such provisions,

and this Agreement, including such incorporated provisions, shall govern each Transaction entered into between the parties under a Confirmation which references this Agreement.

2. PROCEDURE FOR ENTERING INTO CONFIRMATIONS

2.1 In order to enter into a Confirmation, the parties shall agree the terms of such Confirmation. Each party shall then, according to the agreement between the parties either:

- (a) print out and sign the Confirmation and send a scanned copy of the same to the other party; or
- (b) sign the Confirmation using an agreed electronic signature service and exchange copies of the Confirmation using that service.

2.2 Each Confirmation shall be substantially in the form annexed to this Agreement.

3. SETTLEMENT SUM

- 3.1 The "**Settlement Rate**" for any Confirmation and Contract Month is the unweighted average of the values of the Index as published by the Baltic Exchange for each date during the Contract Month on which a value of the Index is so published, subject to Clause 3.3. For this purpose the "**Index**" shall be the Index specified in the Confirmation (which shall be one of those listed in the Index Schedule annexed to this Agreement), and references to publication by the Baltic Exchange include publication by or through any agent which it appoints for this purpose.
- 3.2 The "**Settlement Sum**" for any Confirmation and each Contract Month indicated in that Confirmation is the difference between the Contract Rate and the Settlement Rate multiplied by the Quantity by Contract Month. If the Settlement Rate is greater than the Contract Rate, the Seller shall pay the Buyer the Settlement Sum. If the Settlement Rate is less than the Contract Rate, the Buyer shall pay the Seller the Settlement Sum.
- 3.3 If for any reason the Baltic Exchange cannot or does not publish any value for any date (such date a "**Missed Date**") on which a value for an Index is normally published, then the following shall apply:
- (a) either party may no later than [] days after the end of the Contract Month request the Baltic Exchange to provide a value for the Index for the Missed Date;
 - (b) any value for the Index for the Missed Date provided by the Baltic Exchange on request under Clause 3.3(a), or which the Baltic Exchange provides to the parties without any such request, in either case within [] days after the end of the Contract Month, shall be final and binding on the parties, and shall be applied in calculation of the Settlement Sum;
 - (c) if the Baltic Exchange has not provided a value for a Missed Date, the Missed Date shall not be taken into account when calculating the Settlement Sum;
 - (d) if the Baltic Exchange provides a value for a Missed Date after the Settlement Sum has been paid (but not more than [] days after the end of the Contract Month), the Settlement Sum shall be recalculated and a balancing payment made between the parties; and
 - (e) as between the parties, each party shall have a right of contribution against the other party in respect of any indemnity payment made under Clause 3.4, so that their respective liabilities pursuant to that paragraph shall be equal.
- 3.4 the Baltic Exchange shall be under no obligation or liability in relation to or in connection (i) with any provision of a value of the Index by the Baltic Exchange under Clauses 3.3(a) and 3.3(b), or any other provision or failure to provide or publish a value for the Index or (ii) with this Agreement or any Confirmation. Both parties agree jointly and severally to indemnify and hold harmless the Baltic Exchange against all actions arising out of (i) or (ii), including but not limited to all claims, demands, liabilities, damages, costs and expenses both from the two parties and any third party.

4. PAYMENT PROCEDURE AND OBLIGATIONS:

- 4.1 Payment of each Settlement Sum is due on the later of two (2) [Local Business Days] after presentation of payee's invoice (with complete payment instructions) or five (5) Local Business Days after the Settlement Date. If not otherwise specified in the invoice, payment shall be made to the account specified for the payee in Clause 14.
- 4.2 Payment of the Settlement Sum shall be made telegraphically, in full, in United States dollars. The costs incurred in effecting payment shall be for the account of the payor. Payment may

only be effected directly between the parties. The Settlement Sum shall be paid without any deduction or set-off except as permitted under the Master Agreement or otherwise as agreed by the parties in writing.

5. **ADDITIONAL REPRESENTATIONS AND UNDERTAKING**

5.1 In addition to the representations contained in Section 3 of the Master Agreement, each party represents to the other party on the date on which a Transaction is entered into that:

- (a) it has the power to execute, deliver, and perform the Transaction and its Confirmation;
- (b) all governmental and other consents that are required to have been obtained by it with respect to the Transaction and its Confirmation have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (c) in the event that a party is a person organized under, domiciled in, or having its principal place of business in, the United States, each party represents to the other party that it is an "eligible contract participant" as defined in § 1a(18) of the Commodity Exchange Act (7 U.S.C. § 1a(18), as amended).

The Seller represents to the Buyer on the date each a Transaction is entered into, that it holds a valid Baltic Exchange data settlement licence, and undertakes to maintain such licence in force until such time as all liabilities in relation to that Transaction have been discharged.

6. **RECORDING:**

Each party consents to the recording (audio or audiovisual) of conversations, whether conducted by telephone or any other form of remote communication, in connection with this Agreement.

7. **CHANGES TO AN INDEX**

Any change to an Index, including without limitation to its composition, method of calculation, regularity or manner of publication, terms of use or calculation agent, shall not discharge either party from its obligations under this Agreement or any Confirmation or Transaction, and their obligations under the foregoing shall apply to the Index as so changed.

8. **COMMISSION:**

Each of the parties agrees to pay commission to any broker (a "**Broker**") as agreed with such Broker.

9. **NON-ASSIGNABILITY:**

Except as provided in Section 7 of the Master Agreement, this Agreement and each Confirmation is non-assignable unless otherwise agreed in writing between the parties.

10. **PRINCIPAL TO PRINCIPAL:**

10.1 This Agreement and each Confirmation is a principal to principal agreement with settlement directly between the two parties.

10.2 Both parties agree that any Broker shall be under no obligation or liability in relation to this Agreement or any Confirmation. Both parties agree jointly and severally to indemnify and hold harmless any Broker against all actions, including but not limited to all claims, demands, liabilities, damages, costs and expenses both from the two parties and any third party.

10.3 Claims, demands, liabilities, damages, costs and expenses suffered or incurred are to be settled directly by or between the two parties.

11. LAW AND JURISDICTION:

11.1 This Agreement and each Confirmation (and any non-contractual obligations arising out of or in connection with them) shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the High Court of Justice in London, England.

11.2 Despite Section 12(a) of the Master Agreement, proceedings may be validly served upon either party by sending the same by ordinary post [and/or by fax][and/or by email] to the addresses [and/or email addresses][and/or fax numbers] for each party given in Clause 13.

12. ENTIRE AGREEMENT:

This Agreement and each Confirmation set out the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and each Confirmation and supersede all oral communication and prior writings with respect thereto.

13. NOTICES

13.1 The addresses for notices under Clause 12(a) of the Master Agreement are as follows:

Name of Party:		Name of Party:	
Address:		Address:	
Email address:		Email address:	
For the attention of:		For the attention of:	

13.2 Despite Clause 12(a) of the Master Agreement, telex, [facsimile] or electronic messaging systems other than email are not effective means of communication under this Agreement.

14. PAYMENT ACCOUNT INFORMATION:

For []:	For []:
Bank address:	Bank address:
Aba:	Aba:
Swift address:	Swift address:
Account no.:	Account no.:
Sort code:	Sort code:

15. THIRD PARTY RIGHTS

15.1 Unless provided to the contrary in this Clause 15 or any Confirmation, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement or any Confirmation.

- 15.2 the Baltic Exchange shall have the right to enjoy the benefit of and enforce the terms of Clause 3.4.
- 15.3 Any Broker shall have the right to enjoy the benefit of and enforce the terms of Clause 8 and Clause 10.2.
- 15.4 Notwithstanding any term of this Agreement, the consent of any person, other than Baltic in relation to its rights under Clause 3.4, who is not a party to this Confirmation is not required to rescind or vary this Agreement.

16. **PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement or any Confirmation is or becomes illegal, invalid or unenforceable in any respect under any laws of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality or enforceability of the provision under the laws of any other jurisdiction will in any way be affected or impaired.

17. **ADDITIONAL DEFINITIONS**

- 17.1 Capitalised terms used in this Agreement and not otherwise defined, shall, in relation to each Confirmation, have the meaning ascribed to them in that Confirmation.
- 17.2 In this Agreement, the following additional definitions apply:

the Baltic Exchange	means []
Settlement Date	means []

As witness of which the parties have signed this Agreement.

Signed by [NAME] for and on behalf of [NAME OF PARTY]

.....
[insert description/job title]

Signed by [NAME] for and on behalf of [NAME OF PARTY]

.....
[insert description/job title]

Form of Confirmation

Trade Ref: [•]

Confirmation Date: [•]

This Confirmation is a Confirmation under a [] Master Agreement dated []. Under this Confirmation, the Seller and the Buyer (as named below) enter into a Transaction on the following terms:

Seller	
Buyer	
Index	
Contract Months	
Quantity by Contract Month	
Contract Rate	

Signed by [NAME] for and on behalf of BUYER

.....

[insert description/job title]

Signed by [NAME] for and on behalf of SELLER

.....

[insert description/job title]

Index Schedule

[here list the indexes which can be the subject of Confirmations under this Agreement.]