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June 24, 2015

VIA CFTC PORTAL

Commodity Futures Trading Commission
Attention: Chris Kirkpatrick, Secretary
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: CEA Section 5c(c)(1) and CFTC Regulation 40.6(a) Certification:
Amendments to the Nodal Exchange Participant Agreement**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“Commission” or “CFTC”) Regulation 40.6(a), Nodal Exchange, LLC (“Nodal Exchange” or “Exchange”) is submitting amendments to the Nodal Exchange Participant Agreement (“Participant Agreement”), which is executed by all persons seeking access to Nodal Exchange in accordance with and subject to the Nodal Exchange Rulebook (“Rules”). The amendments to the Participant Agreement clarify the terms of access for clearing members that are futures commission merchants but who are not also trading participants on the Exchange (“FCM Clearing Members”), as discussed below. The Exchange intends to implement the amendments to the Participant Agreement in 10 business days on July 9, 2015.

An FCM Clearing Member that is not also a trading participant on the Exchange executes the Participant Agreement as “Participant” but, except as provided in Section 26 of the Participant Agreement, is not authorized to trade the Exchange’s contracts or otherwise access the trading facility or related trading services. Section 26 gives such an FCM Clearing Member access to the Exchange’s trading facility in order to liquidate positions in the account of a Participant that is in default or has otherwise failed to perform its obligations to the FCM Clearing Member or Nodal Exchange. As currently drafted, however, Section 26 could be read to imply that an FCM Clearing Member is not otherwise subject to the Participant Agreement or the Rules even though FCM Clearing Members access the Exchange for non-trading purposes. Nodal Exchange, therefore, is amending the Participant Agreement to remove any ambiguity about the rights and obligations of FCM Clearing Members.

In order to provide clearing related services to Participants for Exchange products, FCM Clearing Members access Nodal Exchange information and other materials related to trading activities and services on the Exchange ("Documentation"). Section 26 of the Participant Agreement is amended to explicitly recognize FCM Clearing Members as "Participants" when accessing Documentation. The definition of Documentation in Section 1 of the Participant Agreement is also amended for clarity. The Participant Agreement is also being amended for typographical errors in Sections 2.1, 16, and 17. The amendments are indicated in red on Exhibit A, attached hereto.

Exchange management has assessed the amendments to the Participant Agreement, and their compliance with applicable provisions of the Commodity Exchange Act ("CEA"), including the Commission's Regulations and the Core Principles. Nodal Exchange has identified that the amended Participant Agreement may affect the following Core Principles as follows:

Core Principle 2 - Compliance with Rules: Consistent with the Exchange's Rules, FCM Clearing Members are subject to the non-trading terms of the Participant Agreement, including the Rules. The amendments to the Participant Agreement assist FCM Clearing Members to comply with the Rules.

Core Principle 7 - Availability of General Information: The Exchange will post on its website (www.nodalexchange.com) the amended Participant Agreement.

Pursuant to Section 5c(c)(1) of the CEA and the Commission's Regulation 40.6(a), the Exchange certifies that the amendments to the Participant Agreement comply with the CEA and the Commission's Regulations thereunder. The Exchange is not aware of any opposing views expressed regarding these amendments. Nodal Exchange certifies that this submission has been concurrently posted on the Nodal Exchange website at www.nodalexchange.com.

If you have any question or need additional information regarding this submission, please contact me at 703-962-9835 or Herrera@nodalexchange.com.

Sincerely,



Anita Herrera
General Counsel & Chief Regulatory Officer

Attachments:

Exhibit A: Nodal Exchange Participant Agreement



NODAL EXCHANGE PARTICIPANT AGREEMENT

This Nodal Exchange Participant Agreement (this “**Agreement**”) dated as of _____, 20____ (the “**Effective Date**”), is by and between Nodal Exchange, LLC, a Delaware limited liability company (“**Nodal**”), and _____, a(n) _____ (“**Participant**”).

A. Nodal owns and operates a non-intermediated System (as defined below) for the execution of energy-related futures contracts and other financial instruments (“**Products**”).

B. Participant requests, and Nodal has agreed to provide, Participant access to the System and Services, subject to the terms and conditions set forth herein.

In consideration of the foregoing recitals and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Nodal and Participant (each, a “**Party**” and, collectively, the “**Parties**”) agree as follows:

1. **Definitions.**

“**Access Methods**” means one or more User IDs, passwords, certificates or other access methods provided by Nodal for accessing the System and Services.

“**Additional Services**” means such services as may be offered by Nodal from time to time in relation to the Products, in addition to those specified herein.

“**Documentation**” means any documentation or other materials relating to the System or Services as Nodal may provide to Participant (including an FCM Clearing Member) from time to time during the term of this Agreement.

“**Nodal Site**” means any website or other mechanism through which the Services or the System may be accessed, including the website located at www.nodalexchange.com.

“**Participant Technology**” means such methods of connectivity, personal computers, and other communication devices and technology, including firewalls, as the Participant may provide at its sole expense.

“**Person**” means an individual or a partnership, corporation, limited liability company, trust, joint venture, joint stock company, association, unincorporated organization, government agency or political subdivision thereof, or other entity.

“**Services**” means such services as Nodal provides hereunder, including access to the System, and the processing of Block Trades through specific accounts established by Participant’s Clearing Member for submission to the Clearing House on Participant’s behalf.

“**System**” means the Trading Platform owned and provided by Nodal, including all intellectual property associated therewith. The System provides Participant with the ability to execute Transactions from the interaction of multiple bids and multiple offers.

Capitalized terms used, but not otherwise defined, in this Agreement have the meaning ascribed to such terms in the Nodal Exchange Rulebook (“**Rules**”).

2. Exchange Services.

2.1 System and Services. Subject to the terms and conditions of this Agreement, Nodal hereby grants to Participant, for the term hereof, a non-exclusive, non-transferable, revocable right to access the System or Documentation, and to utilize any Services, through such procedures as Nodal may designate from time to time during the term of this Agreement, to trade as principal. Nodal reserves the right, in its sole discretion, to modify or change the System or Services at any time. As used in this Agreement, “System” and “Services” shall include any and all modifications thereof as Nodal may make available under this Agreement. Nodal shall provide Participant with written notice of any material changes to the System or Services that Nodal believes are reasonably likely to affect Participant’s use of the System or Services by posting such notice on the Nodal Site, by e-mail or by such other means as are permitted by **Section 15-14** hereof.

2.2 Jurisdiction; Compliance with Rules. Participant consents, on behalf of itself and its Authorized Users, to the jurisdiction of Nodal as set out in the Rules. Participant will comply with and be subject to, and shall cause its Authorized Users to comply with and be subject to, and agrees that Nodal shall have all of the rights and remedies set forth in, the Rules, which shall be part of the terms and conditions of every Transaction to which Participant is a Party. Participant shall continue to be subject to Nodal’s jurisdiction and to be bound by the Rules as to Transactions and as to all matters involving Participant, in either case occurring while the undersigned was a Participant.

2.3 Access Methods. Nodal shall provide to Participant, through such Participant’s Account Administrator(s), Access Methods for use by Participant’s Authorized Users. Participant shall notify Nodal of any change of Authorized Users or Account Administrators in accordance with the Rules. Participant shall not divulge, and shall not permit any other Person to divulge, any Access Methods to any Person other than an Account Administrator or an Authorized User. Participant is and shall remain fully responsible for (i) maintaining the confidentiality of Participant’s Access Methods, (ii) controlling and monitoring any use of any such Access Methods, (iii) all Transactions and other activities that occur through use of such Access Methods, and all charges resulting therefrom, whether or not such use is authorized by Participant, except to the extent that such unauthorized use is proximately caused by Nodal’s willful misconduct or negligence, and (iv) notifying Nodal immediately of any unauthorized use of Participant’s Access Methods or any other known or suspected breach of security relative to the System or the Services.

2.4 Connectivity. Participant shall be solely responsible for all costs and expenses associated with Participant’s access to and use of the System and Services. Without limiting the generality of the foregoing, Participant shall access the Services through the Nodal Site using Participant Technology. All such Participant Technology used to access the Services shall conform to any and all specifications therefor as Nodal may prescribe from time to time.

2.5 Restrictions on Use. Without Nodal’s prior written consent, except as otherwise expressly permitted under this Agreement, Participant shall not, and shall not permit any other Person to: (i) modify, reverse engineer, decompile, disassemble the System, the Services or other Nodal Property (as defined below) or create derivative works based on any Nodal Property; (ii) distribute, disclose, or otherwise furnish any Nodal Property (as defined below), including non-public pricing data from the System or Services, to any Person or for purposes of constructing or calculating the value of any index or indexed Products; (iii) reproduce, copy, display, access, download, print, store, transfer, assign, sell, lease, license, distribute or otherwise commercially exploit, or make available to any third party, the Services,

the System or other Nodal Property; (iv) remove or deface any notice of confidentiality or any trademark or other indicia of ownership that may be contained on or displayed through the System or the Services; (v) create any hyperlinks to password-protected portions of the Nodal Site, or frame or mirror any content contained in or accessible through, the Nodal Site, the Services or the System; (vi) misstate or omit information that Participant provides or is required to provide Nodal or to other users of the System or the Services; (vii) manipulate or attempt to manipulate prices, including by disseminating inaccurate information, reporting false transactions, posting bids or offers that are not bona fide, entering into or offering to enter into Transactions solely for the purpose of effecting prices, or otherwise performing any act designed or intended to manipulate prices; (viii) use the Services or the System to further any unlawful purpose or to otherwise undertake any activities that reasonably can be expected to be harmful to or otherwise interfere with the Services or the System, the use thereof by any other user, or any system, network or equipment of Nodal or any third party, including (a) intercepting or attempting to intercept any material transmitted over the System or the Services, (b) sending, either directly or by relaying, transmissions with the intent to impose a disproportionately large load on the System or the Services or otherwise impede the operation or other use of the System or Services, (c) posting or transmitting through the Services or the System information or material that infringes or otherwise violates any copyright, patent, trademark, trade secret or other proprietary right, or contains or embodies a virus, worm, Trojan horse or other contaminating or destructive feature, and (d) violating or attempting to violate the security of the System or the Services or interfere or attempt to interfere with Nodal's systems, networks, authentication measures, servers or equipment; or (ix) otherwise act in any manner detrimental to the interests, welfare or integrity of the System or Services, other Participants, or Nodal.

2.6 Suspension. Notwithstanding any provision of this Agreement or the Rules to the contrary, Nodal may, in its sole discretion, at any time, and with or without prior notice to Participant, modify the System or Services, or make certain Products temporarily or permanently unavailable, or temporarily or permanently suspend operation of the System or any Services or of access thereto by Participant or any of its Authorized Users.

2.7 Monitoring. Participant acknowledges and agrees that, in accordance with the provisions of the CEA and CFTC Regulations applicable to Nodal as a designated contract market, Participant and its Authorized Users will be subject Nodal's market surveillance program and monitoring of its and their access to, and utilization of, the System and Services.

3. Transactions.

3.1 Authorization. Participant acknowledges and agrees that all instructions issued by Participant through its Access Methods, including instructions or orders entered through the System or Services as conveyed by Authorized Users, are duly authorized and binding, and Nodal shall have no duty to investigate the accuracy thereof or the authenticity of authority thereby authorized. Participant further accepts full responsibility for: (i) any Transaction entered into by Participant in accordance with the Rules and the rules of the Clearing House; (ii) any use of the System or the Services made by Participant, its Account Administrators or its Authorized Users; and (iii) any Transaction effected in the name of Participant, notwithstanding that such Transaction may have been entered into (x) as a result of a failure of security controls and/or credit controls; or (y) by an unknown or unauthorized user employing a User ID assigned to an Authorized User, provided, however, that Participant shall not be responsible for any Transaction arising out of Nodal's gross negligence or willful misconduct. Without limiting the generality of the foregoing, if an Authorized Broker submits Block Trades on Participant's behalf in connection with the use of Services, Participant represents and warrants that such Authorized Broker is authorized to act on Participant's behalf and instructs Nodal to comply with any instructions submitted by such Authorized Broker on behalf of Participant.

3.2 Data Provided by Participant. Participant accepts sole responsibility (i) for the accuracy and adequacy of data entered into the System or Services by Participant or any other Person using Participant's Access Methods, and for all results obtained from use of the System or Services by Participant or any other Person using Participant's Access Methods; (ii) for implementing procedures external to the System or Services for reconstruction of data for purposes of re-entry in the event of a System or Services malfunction; and (iii) for implementation procedures external to the System or Services to enable Participant to comply with the Audit Trail requirements set out in the Rules. In the event Participant becomes aware of an error in Transaction data provided to Nodal or in any entry submitted through the System or Services by or on behalf of Participant, Participant shall promptly so notify Nodal; *provided, however*, that Participant shall be responsible for any such erroneous data or entry unless Nodal notifies Participant otherwise.

3.3 Settlement. Participant understands and agrees that all Transactions concluded on or through the System or Services are binding Transactions between Participant and its counterparty that must be settled between Participant and its counterparty in accordance with the rules of the Clearing House and, if applicable, Participant's agreements with its Clearing Member. In no event will Nodal be a counterparty, either directly or indirectly, to any posting or any Transaction or be responsible for delivery of or payment for any Product resulting from a Transaction. Participant agrees that executed Transactions shall be deemed to be "in writing" and to have been "signed" for all purposes and that all records of any such Transaction shall be deemed to be in "writing." Participant will not contest the legality, validity or enforceability of any Transaction based on the fact that such Transaction was effected electronically and expressly waives all rights it may have to assert any such claim.

4. Fees.

4.1 Exchange Fees. Participant shall, upon the execution of a Transaction, pay to Nodal fees in accordance with such service and pricing schedules as are determined by Nodal from time to time and posted on the Nodal Site (the "**Exchange Fees**").

4.2 Payment. The Clearing House shall, on Nodal's behalf, submit to Participant or to Participant's Clearing Member (as applicable), a monthly invoice setting forth any and all Exchange Fees, including any other applicable charges or taxes.

4.3 Taxes. Participant shall be responsible for any and all taxes, levies, duties or similar charges, however designated, that may be assessed by any international, federal, state, municipal or other jurisdiction, however designated, arising out of Transactions made by or on behalf of Participant or otherwise arising out of Participant's use of the Services, other than any such taxes assessed or levied on Nodal in respect of income earned by Nodal.

5. Term and Termination.

5.1 Term; Termination. The term of this Agreement shall commence upon the Effective Date and shall continue until and unless this Agreement is terminated by either Party, for any or no reason, upon thirty (30) days written notice to the other Party. In addition, Nodal may terminate this Agreement immediately upon written notice to Participant if (i) Participant commits a breach of any of its material obligations under this Agreement or violation of the Rules; or (ii) a change in law or actual or threatened legal action materially impairs the ability of Nodal to perform its obligations hereunder. Participant's right to access the System or Services shall cease immediately upon termination of this Agreement. Notwithstanding the foregoing, this Agreement will remain in effect with respect to any Transactions that were effected prior to the effective date of termination of this Agreement.

5.2 Consequences of Termination. Upon termination of this Agreement for any reason, Participant shall (i) cease immediately all uses of the Services, the System and any Access Methods provided to Participant hereunder, (ii) upon request by Nodal, destroy or return to Nodal all tangible materials (and all copies thereof) provided by Nodal (or its third party service providers) hereunder, and, in the case of electronic records, destroy all such records to the extent reasonably feasible, and (iii) upon request by Nodal, certify in writing to Nodal that such materials have been destroyed or returned and no portion thereof remain in Participant's possession or control. Notwithstanding the foregoing, (a) in the event retention of the materials and records described in clause (ii) above is required by Applicable Law or regulation or by a self-regulatory body with competent jurisdiction over Participant, Participant agrees to continue to hold such materials and records as Confidential Information pursuant to **Section 6** hereof and to destroy or return such materials and records to Nodal in compliance with this **Section 5.2** once retention is no longer required, and (b) with respect to any electronic records of Participant not reasonably feasible to destroy, as described in clause (ii) above, Participant shall continue to hold such records as Confidential Information pursuant to Section 6 hereof. The termination of this Agreement for any reason will not affect the accrued rights of the Parties or the right of either Party to sue for damages arising from a breach of this Agreement. Notwithstanding the termination of this Agreement, Participant shall remain liable to pay Nodal all Exchange Fees (if any) due or accruing on or prior to the effective date of such termination. Those provisions of this Agreement which by their terms would reasonably be expected to survive beyond the effective date of termination of this Agreement, shall remain in full force and effect following the effective date of termination of this Agreement, including **Sections 2.5, 3.1, 3.2, 3.3, 4, and 5** through **26**.

6. Confidentiality.

6.1 Confidential Information. Any and all non-public information, in any form, obtained hereunder by either Party arising out of or related to the provision or use of the System, the Services, or other Nodal Property shall be deemed to be "**Confidential Information.**" Without limiting the generality of the foregoing, Nodal's Confidential Information shall specifically include all source code of the System, and all trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto. Notwithstanding the foregoing, "Confidential Information" will not include any information that: (i) is in or becomes part of the public domain (other than by disclosure by the receiving Party or its directors, officers, employees, agents or contractors ("**Representatives**") in violation of this Agreement); (ii) was previously known to the receiving Party free of restriction; (iii) is independently developed by the receiving Party, without reference to the Confidential Information of the disclosing Party; or (iv) is lawfully obtained by the receiving Party from a third party having the right to furnish such information.

6.2 Nondisclosure. Each Party shall hold in strict confidence the Confidential Information of the other Party, shall use the same degree of care in protecting the confidentiality of the Confidential Information as it uses in protecting its own information of a similar type, and shall not disclose Confidential Information of the other Party to any third party or use Confidential Information of the other Party for any purpose not expressly permitted under this Agreement; *except that* a Party may disclose Confidential Information of the other Party solely to those of its Representatives who have a need to know such Confidential Information to facilitate performance of this Agreement. The receiving Party will inform its Representatives of the confidential nature of the Confidential Information, will be responsible for enforcing the terms of this Agreement as to its Representatives, and will take such action, legal or otherwise, as may be reasonably necessary to cause them to comply with the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information may be disclosed (i) by Nodal to the Clearing House and, if applicable, to Participant's Clearing Member; (ii) to the extent required by Applicable Law or regulation or the rules of a Self-Regulatory Organization of competent jurisdiction; (iii) by Nodal upon request by the CFTC or the Federal Energy Regulatory Commission; (iv)

by Participant upon request from any federal or state agency, any regulatory or self-regulatory body, or any other organization, in each case having competent jurisdiction over such Participant; and (v) pursuant to a subpoena or order of a court or legislative, regulatory or self-regulatory body of competent jurisdiction, provided that, in the case of clauses (iv) and (v) above, the disclosing Party shall, to the fullest extent permitted by law, immediately notify the other Party of such disclosure and cooperate with such Party to obtain appropriate confidential treatment of any Confidential Information to be so disclosed. Participant hereby releases Nodal from any and all liability by reason of disclosing such information.

7. Proprietary Rights.

As between Nodal and Participant, Nodal shall own and retain ownership of all rights, title and interest in and to (i) all information, data and content, including all Transaction data submitted to Nodal, displayed or distributed through the System or Services or submitted to the Clearing House related to Transactions or Additional Services; (ii) the Services and the System (including the Nodal Site and all algorithms utilized by the System), and all underlying technology and all materials provided by Nodal (or its third party service providers) in connection therewith, (iii) all updates, modifications, enhancements and new versions to or of the foregoing, and all derivative works based thereon; and (iv) all copyrights, patents, trade secrets, database rights and other intellectual property associated with the foregoing (collectively, the “**Nodal Property**”). Participant hereby waives any and all challenges to, or claims or defenses regarding, (a) Nodal’s rights in the System and the Services, and (b) Nodal’s right to revoke the rights of access granted to Participant herein.

8. Warranties.

8.1 Participant. Participant represents and warrants that: (i) it has the power and authority, corporate and otherwise, to execute and perform its obligations and exercise its rights under this Agreement, and all necessary action (corporate or otherwise) has been taken by Participant to enter into this Agreement; (ii) neither Participant nor any of its Authorized Users are subject to any trading prohibition by any Governmental Authority, whether under the CEA or otherwise, that could apply to Transactions; (iii) neither its execution of this Agreement nor the performance of its obligations or exercise of its rights under this Agreement will violate the Rules or any law, rule, regulation, order, tariff, rate filing or other agreement or obligation to which it is bound; (iv) there is no conflict or inconsistency between this Agreement or the Rules and Participant’s approved tariffs and rate filings, if any, on file with any Governmental Authority; (v) it will enter into Transactions solely as principal; (vi) it will comply with, and will procure that its Account Administrators and Authorized Users comply with, the Rules and with all applicable laws, rules and regulations relative to its and their use of the Services, the System, and other Nodal Property, including any such laws, rules and regulations pertaining to export controls; (vii) Participant and each of its Authorized Users has all required regulatory approvals and registrations to utilize Nodal, or is qualified to do business in those states and other jurisdictions where its business requires such registration or qualification, and will remain so registered or qualified at all times when utilizing the System or the Services; (viii) Participant has reviewed and understands the Rules and the rules of the Clearing House; (ix) Participant is either a Clearing Member or has entered into an agreement with a Clearing Member in accordance with the Rules; (x) all information provided to Nodal in connection with Participant’s application and the designation of Account Administrators and Authorized Users is and will at all times in the future be true, complete and accurate in all material respects; and (xi) for purposes of entering into Block Trades only, Participant is an Eligible Contract Participant. Participant shall immediately notify Nodal and cease all uses of the Services and the System if any of the foregoing representations or warranties ceases to be true.

8.2 Governmental Entities. If Participant is a governmental entity, Participant, in addition to the representations made in **Section 8.1**, represents and warrants to Nodal that: (i) it is an instrumentality,

agency or department of government of the United States or any state, or a political subdivision of a state; (ii) the execution and delivery by Participant of this Agreement and the performance of its obligations hereunder and under each Transaction, are in furtherance, and not in violation, of the municipal or other stated purposes for which Participant is organized pursuant to authorizing statutes, ordinances and orders; (iii) this Agreement and each Transaction do not constitute an investment or other act that is proscribed by the constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which Participant (or any of its officials in their respective capacities as such) or its property is subject; (iv) no authorizations, approvals or resolutions of the governing body or other authorized body of Participant limit or restrict in any regard the type, number, duration, quantity, price, or total value of Transactions to which Participant may be a party; and (v) Participant is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or assets (irrespective of their use or intended use) from (a) suit or arbitration, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment), or (e) execution or enforcement of any judgment or arbitration award to which it or its revenues or assets might otherwise be made subject to in any proceedings in the courts of any jurisdiction or in any arbitration and no such immunity (whether or not claimed) may be attributed to such Participant or its revenues or assets. Participant shall immediately notify Nodal and cease all uses of the Services and the System if any of the foregoing representations or warranties ceases to be true.

8.3 Nodal. Nodal represents and warrants that: (i) it has been designated as a contract market by the CFTC and maintains its designation as a contract market in accordance with the CEA and the CFTC Regulations promulgated thereunder; (ii) it has the power and authority, corporate and otherwise, to execute and perform this Agreement; and (iii) neither its execution of this Agreement nor its performance of this Agreement hereunder will violate any other law, rule, regulation, order or agreement or other obligation to which it is bound.

9. Disclaimer; Limitation of Liability.

Participant acknowledges that its use of the System and Services is subject to the limited warranty and limitations on liability set forth in the Rules.

10. Indemnification.

10.1 Nodal. Participant shall defend, indemnify and hold Nodal, its Affiliates, and the respective officers, directors, employees, agents, and representatives of Nodal and its Affiliates, *provided that* such Affiliates are not Nodal participants (collectively, “**Nodal Parties**”), harmless from and against all costs, claims, demands, losses, expenses and liabilities of any nature whatsoever (including reasonable attorney’s fees) (“**Losses**”) incurred or suffered by such Nodal Parties arising directly or indirectly out of, or in connection with, any third-party claim, demand, or cause of action (each, a “**Claim**”) based upon or arising out of (i) use of the Services or the System, or any other information or materials provided by Nodal or accessible through the System or Services, by Participant or any other Person using any of Participant’s Access Methods, whether or not authorized, except to the extent such Losses are proximately caused by the gross negligence or willful misconduct of Nodal; (ii) any act or omission of any Authorized Broker in connection with the use of the System or the Services; (iii) breach of any of Participant’s obligations, representations, warranties or covenants under this Agreement; or (iv) Participant’s gross negligence or willful misconduct. Notwithstanding the foregoing, (a) the Nodal Parties shall have the right to engage separate counsel, at their own expense, to participate in the defense of or any negotiations relative to the Claim, and (b) Participant may not settle or otherwise compromise any Claim without Nodal’s written approval of any such settlement or other compromise, which approval shall not be unreasonably withheld. The indemnification provided by this **Section 10.1** will not be

deemed exclusive of any other rights to which a Nodal Party may be entitled under any agreement or otherwise, and will inure to the benefit of the successors, assigns, heirs, executors and administrators of such Nodal Party.

10.2 Clearing House. Participant shall defend, indemnify and hold the Clearing House harmless from and against all Losses directly or indirectly incurred by the Clearing House arising out of an act or omission of Participant in relation to a Transaction or Participant's use of the Services or the System.

11. Equitable Remedies.

Participant acknowledges and agrees that the violation of its obligations under **Sections 2 or 8.1** would cause irreparable harm to Nodal, which harm may not be compensable solely by monetary damages, and that, therefore, in the event of an actual or threatened breach thereof by Participant, Nodal shall be entitled to injunctive and other equitable relief, without the necessity of proving monetary damages or posting a bond or other security. Any such equitable relief granted shall be without prejudice to any other rights and remedies as Nodal may have under this Agreement.

Both Parties acknowledge and agree that the violation of their respective obligations under **Section 6** would likewise cause irreparable harm to the other Party that may not be compensable solely by monetary damages. Therefore in the event of an actual or threatened breach thereof, the other Party shall be entitled to injunctive and other equitable relief without the necessity of proving monetary damages or posting a bond or other security. Any such equitable relief granted shall be without prejudice to any other rights and remedies as the Parties may have under this Agreement.

12. Dispute Resolution.

Any disputes arising under this Agreement shall be brought in accordance with the dispute resolution provisions of the Rules.

13. Force Majeure.

Participant acknowledges and agrees that Nodal's performance under this Agreement is subject to the force majeure provisions set out in the Rules.

14. Notices.

Except as otherwise expressly provided herein, all notices and other communications hereunder: (i) shall be in writing; (ii) may be delivered by hand, by any nationally recognized private courier or by facsimile; (iii) shall be effective (a) if delivered by hand or by courier on the date of delivery, and (b) if sent by facsimile, on the date it is received by a responsible employee or authorized agent of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine); and (iv) shall be addressed as follows (or to such other address or addresses as may hereafter be specified by notice given by one Party to the other):

If to Nodal:

Nodal Exchange, LLC
8065 Leesburg Pike
3rd Floor
Vienna, Virginia 22182

If to Participant:

Such address listed on the signature page to this Agreement.

Attn: Legal Department
Facsimile: 703-962-9850
Email: Legal@NodalExchange.com

15. Entire Agreement.

This Agreement constitutes the entire understanding between the Parties, and supersedes all prior representations, agreements, negotiations and discussions between the Parties, with respect to the subject matter hereof.

16. Uniform Agreement; Amendments.

As a matter of policy, Nodal requires all Persons who become Nodal participants to execute an agreement identical in form and substance hereto. Nodal nonetheless reserves the right to amend this Agreement, in whole or in part, at any time, *provided that* Nodal shall provide Participant (and all other Persons that are Nodal participants) (i) prior notice of any amendment; and (ii) at least fourteen (14) calendar days notice where Nodal reasonably believes such amendment is likely to materially and adversely affect Participant (and other Persons that are Nodal participants) or its (or their) rights or obligations under this Agreement, *provided further* that Nodal shall not amend **Sections 6.2, 10.2, 16 or 17**, to the extent that such Sections relate to rights granted to the Clearing House, without the express consent of the Clearing House. Participant's use of the System or Services following the effective date of any amendment shall constitute Participant's ratification of and agreement to the amendment. In addition to the methods permitted by **Section 13.14**, Nodal may notify Participant of amendments to this Agreement by posting such amendments on the Nodal Site or by e-mail. Participant may modify, supplement or otherwise amend this Agreement only pursuant to an instrument in writing signed on behalf of a duly authorized representative of each Party (and, if such modification, supplement or amendment would affect the rights of the Clearing House under **Sections 6.2, 10.2, 16 or 17** hereof, by a duly authorized representative of the Clearing House).

17. Binding Provisions; Third-Party Beneficiaries.

This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective administrators, legal representatives, successors, and permitted assigns. The Parties agree that no provision of this Agreement is intended, expressly or by implication, to purport to confer a benefit or right of action upon a third party (whether or not in existence, and whether or not named, as of the Effective Date) other than the rights of a Nodal Party under **Section 10.1**, *except* that the Parties agree that the Clearing House is granted rights pursuant to **Sections 6.2 and 10.2** hereof, and shall be entitled to rely upon and enforce such rights directly against Participant.

18. Relationship.

Nothing in this Agreement shall constitute or be deemed to establish a partnership, joint venture, association or employment relationship between the Parties hereto, and neither Party shall have the authority or power to bind the other Party, or to contract in the name of the other Party, in any manner or for any purpose.

19. Assignment.

Participant shall not assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, without the prior written approval of Nodal, which approval shall not be unreasonably withheld. For purposes of this **Section 19**, any assignment by Participant, whether by

operation of law, under an order of any court, or pursuant to any plan of merger, consolidation or liquidation, shall be deemed an assignment for which Nodal's prior written consent is required, and any assignment made without such consent shall be void and of no effect as between the Parties hereto.

20. Separability of Provisions.

Each provision of this Agreement shall be considered separable; and if, for any reason, any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such determination shall not affect the enforceability of the remainder of this Agreement or the validity, lawfulness, or enforceability of such provision in any other jurisdiction.

21. Waiver.

The failure of a Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No waiver by either Party hereunder shall be effective unless agreed to pursuant to a writing signed by an authorized representative of each Party.

22. Remedies Not Exclusive.

No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

23. Interpretation.

References to sections are to sections of this Agreement, unless otherwise indicated. Section headings are inserted for convenience of reference only and shall not affect the construction of this Agreement. The singular number shall include the plural, and vice versa. Any use of the word "including" will be interpreted to mean "including, but not limited to," unless otherwise indicated.

24. Governing Law.

Subject to the terms of **Section 12**, the validity and effectiveness of this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York, without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws. The Parties hereby consent to the venue and jurisdiction of the federal and state courts located in New York, New York, and waive any objection thereto. Each Party hereby waives its right to trial by jury in any such action.

25. Counterparts.

This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument.

26. FCM Clearing Members.

To the extent that this Agreement is executed by an FCM Clearing Member that does not trade for its own account, such FCM Clearing Member acknowledges and agrees that it will be deemed a Participant hereunder ~~solely for the purpose of~~ upon accessing Documentation or when accessing the System or Services in order to liquidate Transactions and any resulting positions previously submitted to the Clearing House for the account of such FCM Clearing Member on behalf of a Nodal participant that has failed to perform its obligations to Nodal or such FCM Clearing Member (excluding in either case, **Sections 4.1** and **4.2** hereof, which shall not apply to such FCM Clearing Member).

*[Remainder of page intentionally left blank.
Signature page follows.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

NODAL EXCHANGE, LLC

By: _____
Name: _____
Title: _____

PARTICIPANT: _____

By: _____
Name: _____
Title: _____

Address: _____

Facsimile: _____
E-mail: _____

[SIGNATURE PAGE TO NODAL EXCHANGE PARTICIPANT AGREEMENT]