nodal

NODAL EXCHANGE BROKER AGREEMENT

This Broker Agreement (this "**Agreement**") to become effective on _____ (the "**Effective Date**"), is by and between Nodal Exchange, LLC, a Delaware limited liability company ("**Nodal**"), and _____, a(n) _____ ("**Broker**").

A.   Nodal owns and provides the System (as defined below) for the execution of trades involving cash-settled energy-related futures contracts and other financial instruments ("**Products**").

B.   Broker desires, and Nodal agrees to provide to Broker, a non-exclusive right to access the System, on the terms and subject to the 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 Broker (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.

"**Broker Authorization**" means an authorization, in the form attached hereto, executed by a Participant, authorizing Broker to submit Block Trades and/or an Exchange For Related Position's ("EFRP"s) to Nodal for submission to the Clearing House.

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

"**Documentation**" means any documentation or other materials relating to the System as Nodal may provide to Broker 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.

"**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.

"**Routine Request**" is a request, inquiry, or order of (i) the CFTC that is not pursuant to Part 11 of the CFTC Regulations or (ii) the Securities and Exchange Commission, a securities self-regulatory organization, or a futures self-regulatory organization that does not trigger a notice requirement under CFTC Regulation 1.12(m).

"**Services**" means the acceptance and processing by Nodal of Block Trades or EFRPs submitted by Broker on behalf of two or more Participants.

"**System**" means the electronic trading system owned and provided by Nodal, including the systems through which Block Trades or EFRPs are submitted to Nodal.

"**Trade Risk Limit**" means, with respect to a Participant, the dollar limit (if any) established by such Participant's Clearing Member representing the maximum position risk that the Participant is allowed to assume on Nodal.

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 Broker, for the term hereof, a non-exclusive, non-transferable, and revocable right to access the System and/or Documentation through such procedures as Nodal may designate from time to time during the term of this Agreement, solely for the purpose of utilizing the Services to submit Block Trades or EFRPs on behalf of any Participant who has provided an effective Broker Authorization to Nodal (where such Broker Authorization has not been revoked) authorizing Broker to submit such Block Trades or EFRP on its behalf. Access to the System means, collectively, access and/or use of interfaces by the Broker for Services (i.e., only for administrative purposes and not for trading purposes) by such means, including but not limited to (i) via any secure file transfer protocol ("**SFTP**"), financial information exchange ("**FIX**"), or any of the application programming interfaces ("**APIs**") or graphic usage interfaces (including any front-end offered directly by Nodal and/or its Affiliates) ("**GUIs**") for the System, (ii) any of the accompanying product specifications or Documentation, each as may be amended from time to time, and (iii) such other Documentation which may be prepared and provided to Broker by Nodal, and which provides instructions to enable Broker to achieve the access to the System. Broker shall be deemed to represent at the time that it submits a Block Trade or EFRP that Broker is authorized by the Participants who are party to the Block Trade or EFRP. As used in this Agreement, "System" and "Services" shall include any and all modifications thereof as Nodal may make available under this Agreement. Nodal reserves the right, in its sole discretion, to modify the System or Services at any time. Use of the System or Services by Broker following any modification thereof shall constitute acceptance by Broker of such modification.

2.2   Jurisdiction; Compliance with Rules. Broker consents, on behalf of itself and its Authorized Users, to the jurisdiction of Nodal as set out in the Rules. Broker shall comply with, and shall cause its Authorized Users to comply with, the Rules relating to the submission of Block Trades, EFRPs, or other services provided by Broker. The Rules shall be part of the terms and conditions of Broker's use of the System. Broker shall continue to be subject to Nodal's jurisdiction and to be bound by the Rules as to Block Trades or EFRPs and as to all matters involving Broker, in either case occurring while the undersigned was a Broker.

2.3   Trade Risk Limit Validation. Nodal will compare Block Trades or EFRPs submitted by Broker against the Trade Risk Limits applicable to the Participants that are party thereto to confirm that such Block Trade or EFRP will not cause any such Participant to exceed its Trade Risk Limit (or, for a Participant that has exceeded its Trade Risk Limit, to confirm that such transaction would be risk-reducing) and will reject any non-conforming transaction. In the event a Block Trade or EFRP is rejected under this **Section 2.3**, Nodal shall send an error notification electronically to Broker and to the Participants that were party to the Block Trade or EFRP promptly upon rejection of the Block Trade or EFRP.

2.4   Clearing. Upon confirmation that a Block Trade or EFRP submitted by Broker will not violate applicable Trade Risk Limits, Nodal shall submit such Block Trade or EFRP to the Clearing House for registration and novation. Broker acknowledges and agrees that the Clearing House shall have the right to reject a Block Trade or EFRP submitted by Nodal for clearing, in accordance with rules of the

Clearing House. Nodal shall promptly provide electronic notice to Broker and Participants that were party to the Block Trade or EFRP in the event of any such rejection by the Clearing House.

2.5   Access Methods. Broker shall appoint one or more Account Administrators in accordance with Rule 3.10 of the Rulebook, as if references therein to "Participant" were references to "Broker." Nodal shall provide to Broker, through such Broker's Account Administrator(s), Access Methods for use by its employees or agents designated by the Broker as Authorized Users in accordance with Rule 3.6 of the Rulebook, as if references therein to "Participant" were references to "Broker." Broker's Account Administrator(s) will manage use of Access Methods, including suspending or terminating access of Broker's Authorized Users. Broker shall promptly notify Nodal of any change of an Account Administrator or Authorized User. Broker shall not divulge, and shall not permit any other Person to divulge, Access Methods to any Person other than an Account Administrator or an Authorized User. Broker is and shall remain fully responsible for (i) maintaining the confidentiality of Broker's Access Methods, (ii) controlling and monitoring any use of any such Access Methods, and (iii) notifying Nodal immediately of any unauthorized use of Broker's Access Methods or any other known or suspected breach of security relative to the System or the Services.

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

2.7   Restrictions on Use. Without Nodal's prior written consent, except as otherwise expressly permitted under this Agreement, Broker 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 for any purpose other than the facilitation, negotiation or submission of Block Trades or EFRPs; (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 and/or the Services; (v) create any hyperlinks to password-protected portions of the Nodal Site, the Services or frame or mirror any content contained in or accessible through, the Nodal Site or the System; (vi) misstate or omit information that Broker 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 or otherwise performing any act designed or intended to manipulate prices; (viii) use the Services or the System to further any other 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 transmissions that impose a disproportionately large load on the System or the Services, either directly or by relaying, (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, Participants, or Nodal.

2.8   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 Broker, modify the System or temporarily or permanently suspend operation of the System and/or any Services or of access thereto by Broker or any of its Authorized Users.

2.9   Monitoring. Broker acknowledges and agrees that, in accordance with the provisions of the CEA and CFTC Regulations applicable to Nodal as a designated contract market, Broker 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.

2.10   Broker Warranties. Broker 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 Broker to enter into this Agreement; (ii) neither Broker 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) it is registered as either a futures commission merchant or an introducing broker with the CFTC and is a member of NFA and such registration and membership shall continue in effect at all times when utilizing the System or the Services; (v) 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; (vi) Broker has reviewed and understands the Rules and the rules of the Clearing House applicable to its access to the System and use of the Services; (vii) all information provided to Nodal in connection with entering into this Agreement 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. Broker 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.

3.   **Transactions.**

3.1   Information and Audit. Broker shall provide to Nodal all such information relating to Broker's use of the System as Nodal may reasonably request. Broker further acknowledges and agrees that it shall be subject to the inspection and audit provisions of Nodal Rule 3.13 as if references to "Participant" therein were references to "Broker."

3.2   Authorization. Broker acknowledges and agrees that Nodal shall not be required to accept a Block Trade or EFRP submitted by Broker unless each party thereto has authorized Broker to submit Block Trades or EFRPs on its behalf pursuant to an effective Broker Authorization. Broker further acknowledges and agrees that all Block Trades or EFRPs submitted by Broker through the System on behalf of Participants pursuant to effective Broker Authorizations may be relied upon by Nodal as duly authorized and binding, and Nodal shall have no duty to investigate the accuracy thereof or the authenticity of authority thereby authorized.

3.3   Data Provided by Broker. Broker accepts sole responsibility (i) for the accuracy and adequacy of data entered into the System by Broker or any other Person using Broker's Access Methods, and (ii) for implementation of procedures external to the System to enable Broker to comply with the Audit Trail requirements set out in the Nodal Rule 4.9, as if references to "Participant" therein were references to "Broker." In the event Broker becomes aware of an error in any transaction data provided by Nodal or in any entry submitted through the Services by Broker, Broker shall promptly so notify Nodal; *provided,* that Broker shall be responsible for any such erroneous data or entry unless Nodal notifies Broker otherwise.

4. **Fees.**

Broker will not be charged fees by Nodal for Block Trades or EFRPs. (For the avoidance of doubt, Nodal reserves the right to charge fees to Participants for Block Trades or EFRPs.) Broker may be eligible for broker incentive payments from Nodal based on the volume of Block Trade or EFRP submitted by Broker pursuant to criteria established by Nodal from time to time in its sole discretion.

5. **Term and Termination.**

5.1 Term; Termination. The term of this Agreement shall commence upon the Effective Date and may be terminated by either Party, for any or no reason, upon ten business days notice to the other Party. Notwithstanding the foregoing, (i) either Party may terminate this Agreement at any time, immediately upon notice to the other Party, if it has reason to believe that the other Party has breached any term of this Agreement; or (ii) Nodal may terminate this agreement immediately if Broker violates any of the Rules applicable to Broker; or (iii) a change in law or actual or threatened legal action materially impairs the ability of the Party to perform its obligations hereunder. Broker's right to access the System or Services shall cease immediately upon termination of this Agreement. This Agreement will remain in effect with respect to Block Trades or EFRPs that were submitted prior to the effective date of termination of this Agreement.

5.2 Consequences of Termination. Upon termination of this Agreement for any reason, Broker shall (i) cease immediately all uses of the Services, the System and any Access Methods provided to Broker hereunder, (ii) destroy or return to Nodal all tangible materials (and all copies thereof) provided by Nodal (or its third party service providers) hereunder, and(iii) certify in writing to Nodal that such materials have been destroyed and/or returned and no portion thereof remain in Broker'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 Broker, Broker 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 Broker not reasonably feasible to destroy, as described in clause (ii) above, Broker 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. 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. Those provisions of this Agreement which by their terms would reasonably 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 2.7, 3.2, 3.3 and 5** through **14.9.**

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 employees, agents or contractors 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, 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 employees, agents, contractors or professional advisors, including the Clearing House and the Participants' Clearing Members in the case of Nodal, who have a need to know such Confidential Information to facilitate performance of this Agreement and who are required by written contract to protect the disclosing Party's Confidential Information in a manner no less protective of such Confidential Information than the requirements of this **Section 6**. 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 to the Participants' Clearing Members; (ii) to the extent required by Applicable Law or regulation or the rules of a Self-Regulatory Organization of competent jurisdiction; (iii) upon request by the CFTC or the Federal Energy Regulatory Commission; and (iv) pursuant to a subpoena or order of a court or legislative, regulatory or self-regulatory body of competent jurisdiction, provided that the Party receiving such subpoena or order immediately notifies the other Party thereof and cooperates with such Party to obtain a protective order or other appropriate confidential treatment of any Confidential Information to be so disclosed. In addition, and without limiting the generality of the foregoing, (i) Broker shall be permitted to disclose the details of Block Trades or EFRPs that it submits to the System to the applicable Participants, and (ii) Nodal shall be permitted publicly to disclose the details of Block Trades or EFRPs, other than the identities of the Participants that were party to such Block Trades or EFRPs and their Clearing Members.

7.   **Proprietary Rights.**

As between Nodal and Broker, 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 or in any way related to Block Trades or EFRPs; (ii) the Services and the System (including the Nodal Site), 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**"). Broker 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 Broker herein.

8.   **Disclaimer.**

BROKER'S USE OF THE SERVICES, THE SYSTEM, THE NODAL PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY NODAL, IS AT BROKER'S OWN RISK, AND THE SERVICES, THE NODAL PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY NODAL HEREUNDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, BY STATUTE, COMMON LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NODAL DOES NOT GUARANTEE THAT (i) THE NODAL PROPERTY OR THE SERVICES WILL OPERATE IN AN ERROR-FREE, SECURE OR

UNINTERRUPTED MANNER, OR (ii) ANY INFORMATION OR MATERIALS PROVIDED BY NODAL OR ACCESSIBLE THROUGH THE NODAL PROPERTY WILL BE ACCURATE, COMPLETE, RELIABLE, OR TIMELY, OR (iii) THE NODAL PROPERTY OR ANY ASPECTS OF THE SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. NODAL SHALL HAVE NO LIABILITY FOR THE CREDITWORTHINESS OF ANY PARTICIPANT. BROKER IS SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF THE BROKER TECHNOLOGY. BROKER ACKNOWLEDGES THAT BROKER'S ACCESS TO THE SYSTEM AND THE SERVICES IS INTERNET-BASED AND THAT NODAL HAS NO CONTROL OVER THE INTERNET OR BROKER'S CONNECTIONS THERETO. BROKER FURTHER ACKNOWLEDGES THAT THE INTERNET, COMPUTER NETWORKS, AND COMMUNICATIONS LINKS AND DEVICES NECESSARY TO ENABLE BROKER TO ACCESS AND USE THE SYSTEM AND THE SERVICES ARE INHERENTLY INSECURE AND VULNERABLE TO ATTEMPTS AT UNAUTHORIZED ENTRY AND THAT NO FORM OF PROTECTION CAN ENSURE BROKER'S DATA, HARDWARE, OR SOFTWARE OR THE SYSTEM OR OTHER NODAL PROPERTY WILL BE FULLY SECURE. FURTHERMORE, NODAL SHALL HAVE NO OBLIGATION TO MONITOR OR VERIFY ANY INFORMATION DISPLAYED THROUGH THE SYSTEM.

9.   **Limitation of Liability.**

EXCLUDING ANY LIABILITY OF NODAL FOR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, BROKER AGREES THAT IN NO EVENT SHALL NODAL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OR CORRUPTION OF DATA, TRADING LOSSES OR BUSINESS INTERRUPTION AND THE LIKE, ARISING IN ANY MANNER WHATSOEVER OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY USE (WHETHER OR NOT AUTHORIZED) OR INABILITY TO USE THE NODAL PROPERTY OR ANY OTHER INFORMATION OR MATERIALS PROVIDED TO BROKER BY NODAL OR ACCESSIBLE THROUGH THE SERVICES, INCLUDING THE ACCURACY, COMPLETENESS, RELIABILITY, TIMELINESS, QUALITY, SECURITY, PERFORMANCE, OR PRICING OF THE SERVICES OR ANY FAILURES, DEGRADATIONS OR DELAYS ASSOCIATED THEREWITH, REGARDLESS OF WHETHER SUCH DAMAGES ARISE IN TORT, CONTRACT, OR OTHERWISE, AND EVEN IF NODAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IF A COURT OR OTHER TRIBUNAL OF COMPETENT JURISDICTION SHOULD FIND NODAL LIABLE FOR ANY LOSS, DAMAGE OR EXPENSES UNDER THIS AGREEMENT, THE AGGREGATE LIABILITY OF NODAL UNDER THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED $10,000.

ANY CLAIM FOR REDRESS OR DAMAGES HEREUNDER SHALL BE FILED IN A COURT OF COMPETENT JURISDICTION WITHIN TWO (2) YEARS OF THE DATE ON WHICH SUCH CLAIM ALLEGEDLY AROSE. FAILURE TO INSTITUTE LITIGATION WITHIN SUCH TIME PERIOD SHALL BE DEEMED TO BE A WAIVER OF SUCH CLAIM AND THE CLAIM SHALL BE OF NO FURTHER FORCE OR EFFECT. THE ALLOCATIONS OF LIABILITY IN THIS **SECTION 9** REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY'S RIGHTS AND OBLIGATIONS HEREUNDER REFLECT SUCH ALLOCATIONS. THE PARTIES AGREE THAT THEY WILL NOT ALLEGE THAT THIS REMEDY FAILS ITS ESSENTIAL PURPOSE.

10.   **Indemnification.**

Broker shall defend, indemnify and hold Nodal, its Affiliates, and the respective officers, directors, employees, agents, and representatives of Nodal and its Affiliates (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 (including any Participant) claim, demand, or cause of action (each, a "**Claim**") based upon or arising out of (i) any claim that a Block Trade or EFRP submitted by Broker was not properly authorized by all parties to the transaction; (ii) any alleged entry error with respect to a Block Trade or EFRP submitted by Broker to the System; and (iii) breach of any of Broker's obligations, representations, warranties or covenants under this Agreement. Broker 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 or delayed. The indemnification provided by this **Section 10** 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. Nodal shall defend, indemnify and hold Broker, its affiliates, and its and their respective officers, directors, employees, agents and representatives (collectively, "**Broker Parties**") harmless from and against all Losses incurred or suffered by such Broker Parties arising directly or indirectly out of, or in connection with, any Claim based upon or arising out of the circumstances described in clauses (i), (ii) or (iii) above, solely to the extent that such Losses are proximately caused by the gross negligence or willful misconduct of Nodal.

11.   **Equitable Remedies.**

Broker acknowledges and agrees that the violation of its obligations under **Sections 2 or 6** 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 Broker, 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.

12.   **Dispute Resolution.**

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

13.   **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 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: If to Broker:

Nodal Exchange, LLC   Such address listed on the signature page to this
1921 Gallows Road   Agreement.
3rd Floor
Tysons Corner, Virginia 22182
Attn: Legal Department
Facsimile: 703-962-9850

Email:
Legal@NodalExchange.com

14. **Miscellaneous.**

14.1 Entire Agreement; No Third-Party Beneficiaries. This Agreement, together with any and all exhibits hereto, 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. 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**.

14.2 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.

14.3 Assignment. Neither Party shall assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, without the prior written approval of the other Party, which approval shall not be unreasonably withheld.

14.4 Uniform Agreement; Amendments. As a matter of policy, Nodal requires all Persons who become Nodal Brokers 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 Broker (and all other Persons that are Nodal Brokers) (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 Broker (and other Persons that are Nodal Brokers) or its (or their) rights or obligations under this Agreement, provided further that Nodal shall not amend Sections 6.2 and 14.4 to the extent that such Sections relate to rights granted to the Clearing House, without the express consent of the Clearing House. Broker's use of the System or Services following the effective date of any amendment shall constitute Broker's ratification of, and agreement to, the amendment. In addition to the methods permitted by Section 13, Nodal may notify Broker of amendments to this Agreement by posting such amendments on the Nodal Site or by e-mail. Broker 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 and 14.4 hereof, by a duly authorized representative of the Clearing House).

14.5 Force Majeure. Broker acknowledges and agrees that Nodal's performance of this Agreement is subject to the force majeure provisions set out in the Rules.

14.6 No Waiver; Remedies Not Exclusive. 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. 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.

14.7   Separability of Provisions; Interpretation. 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. References to sections and exhibits are to sections of, and exhibits to, 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.

14.8   Governing Law. 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.

14.9   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.

[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: _____

BROKER: _____

By: _____

Name: _____

Title: _____

Address:

_____

_____

_____

_____

Facsimile: _____
E-mail: _____

[SIGNATURE PAGE TO NODAL EXCHANGE BROKER AGREEMENT]