

## **MASTER DATA AGREEMENT INSTRUCTIONS**

In order to receive data feeds, the applicant must complete the following:

1. The Nodal Data Order Form (“**Order Form**”)
2. Nodal Master Data Agreement Execution

Applicants interested in receiving Nodal Data must execute **one (1) copy** of the Nodal Master Data Agreement accessible on the Nodal Exchange website. Execution entails having an authorized officer sign in the name of the applicant organization.

After completion of the above documents, applicants should submit signed copies of the Nodal Data Order Form and Nodal Master Data Agreement to [MarketData@nodalexchange.com](mailto:MarketData@nodalexchange.com).

Applicant may also mail the documents to the following address:

Nodal Exchange, LLC  
1921 Gallows Road, 3<sup>rd</sup> Fl.  
Tysons Corner, VA

The Nodal Master Data Agreement and Nodal Order Form do not create a binding agreement between applicant and Nodal until (1) Nodal has signed the documents and (2) Nodal returns the fully executed documents to applicant.

Please direct questions to [MarketData@nodalexchange.com](mailto:MarketData@nodalexchange.com) or +1 703 962 9800.

## MASTER DATA AGREEMENT

This Master Data Agreement, together with all Order Forms and all applicable Schedules (defined below) (together, the “**Agreement**”), sets out the general terms and conditions for the use of Nodal Data (defined below) as provided by Nodal Exchange, LLC, a designated contract market (“**DCM**”) regulated by the CFTC (“**Nodal**”) to Company (defined below).

This document provides a unified set of terms for the licensees of all Nodal Data, and together with any Order Forms and the applicable Schedules, form a binding agreement and an independent legal relationship between Nodal and the Company.

This Agreement shall be effective as of the date executed by Nodal in the signature block (the “**Effective Date**”). Nodal and Company shall be referred to herein individually as a “**Party**” and collectively as the “**Parties**”. All Capitalized terms used herein that are not defined or ascribed a meaning herein shall have the meaning ascribed to such terms in the Nodal Exchange Rulebook, which is publicly available via the Nodal website ([www.nodalexchange.com](http://www.nodalexchange.com)).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### SECTION 1 - DEFINITIONS

1.1. Defined Terms. In addition to the terms that are defined in the body of this Agreement, the following terms shall have the meanings set forth below:

- a. “**Affiliate**” shall mean a Person who directly or indirectly, controls, is controlled by, or is under common control with another Person.
- b. “**Applicable Laws**” shall mean all applicable national, federal, state, and local laws, ordinances rules, and regulations of any governmental or self-regulatory authority (including any requirement or notice of any regulatory body), as may be amended from time to time, including the United States Commodity Exchange Act (“**CEA**”) and the regulations promulgated thereunder by the United States Commodity Futures Trading Commission (“**CFTC**”), and all Data Protection Laws.
- c. “**Company**” shall mean the entity entering into this Agreement and as identified in the signature block.
- d. “**Data Protection Laws**” shall mean the General Data Privacy Regulation (EU) 2016/679 and any other laws, rules, and regulations relating to the collection and use of Personally Identifiable Information or an individual’s right to privacy with respect to the processing of Personally Identifiable Information.
- e. “**Derived Data**” shall mean any output, derivation, or other result obtained using any software, application, model, formula, calculation method, algorithm, adaption, manipulation or engine that uses Nodal Data, in whole or in part, as a component or input.
- f. “**Financial Product**” shall mean all financial instruments including, but not limited to, indices, benchmarks, securities, commodities, derivatives, futures contracts, swaps, options, structured products, spot products, notes, funds, certificates, other investment wrappers, debt instruments, and any derivatives thereof whether such product is listed on an exchange, traded over the counter, or traded on a private-placement basis.
- g. “**Initial Term**” shall mean the Effective Date until December 31<sup>st</sup> of the same calendar year.
- h. “**Intellectual Property Rights**” shall mean all worldwide intellectual property and proprietary rights, including without limitation: (a) all copyright rights in works of authorship under the copyright laws of the United States and other countries for the full term thereof, whether registered or unregistered, as well as all associated moral rights; (b) all worldwide statutory and common law rights in trademarks, trade dress, service marks, logos, trade names, business names, other names, and all registrations and applications to register the same, for the full term thereof, as well as all goodwill associated therewith; (c) all patent rights in the United States and other countries or jurisdictions along with issued patents and pending patent applications (and all patents that issue therefrom), patent disclosures, and any and all divisionals, continuations, continuations-in-part, continuing prosecution applications, reissues and reexaminations thereof, for the full term thereof; and (d) all worldwide statutory and common law trade secret rights.
- i. “**License**” shall mean the specific license at issue for this Agreement described in greater detail in **Schedule C**.
- j. “**Marketing Materials**” shall mean all marketing and promotional materials relating to the Products.
- k. “**Nodal Affiliate**” shall mean any affiliate of Nodal Exchange, including, but not limited to Nodal Clear,

LLC and Nodal Exchange Holdings, LLC.

- l. “**Nodal Historical Data**” shall mean all Nodal Data provided that occurred prior to the Effective Date as well as all Nodal Data that is two (2) or more years old from the then current date.
- m. “**Nodal Data**” shall mean all of Nodal’s market data which is provided by Nodal to Company in connection with this Agreement and which is described in greater detail on each Order Form (including, but not limited to, bids, offers, prices, rates and other trading and informative data, and the information derived therefrom).
- n. “**Nodal Marks**” shall mean the trademarks, services marks, logos, and designs that Nodal uses in commerce, including but not limited to NODAL, NODAL EXCHANGE, NODAL CLEAR, including subsequent trademarks, services marks, logos, and designs acquired and the names of the commodity-related futures and options contracts and other financial instruments traded on its electronic trading system.
- o. “**Nodal System**” shall mean the network, trading platforms, and market data feeds owned and operated by Nodal, including all intellectual property associated therewith, including components, documentation, or specifications.
- p. “**Person**” shall mean 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, including the meaning set forth in Section 1a(38) of the CEA and in the CFTC Regulations.
- q. “**Personally Identifiable Information**” shall mean any information that relates to an identified or identifiable living individual.
- r. “**Renewal Term**” shall mean a one-year period following the expiry of the Initial Term, commencing on January 1<sup>st</sup> and ending on December 31<sup>st</sup>.
- s. “**Schedule**” shall mean any annex, schedule, or order form, however it may be titled, attached to this Agreement or otherwise agreed to or entered into in writing between Company and Nodal, which sets forth the business terms, as well as any additional terms and conditions governing a particular service, and is governed by this Agreement. The Schedules shall be identified as follows:

1. Schedule A: Order Form
2. Schedule B: Nodal Data Products and Price List

3. Schedule C: License (whichever is applicable)
4. Schedule D: Reporting Requirements and Audit Schedule
5. Schedule E: Disclaimers

- t. “**Web Display**” shall mean Nodal or the Company’s public website including, but not limited to, HTML web pages, mobile applications, and desktop displays.

1.2. Other Terms. As used herein, “including” shall mean “including but not limited to” and “or” shall mean “and/or”.

## SECTION 2 – GENERAL USE OF NODAL DATA

### 2.1. License.

- a. Subject to Company’s compliance with the terms of this Agreement, Nodal hereby grants the Company a non-exclusive, non-transferable, revocable, worldwide license during the Initial Term and each Renewal Term (as applicable) to:
  1. view the Nodal Data for its internal informational purposes;
  2. use the Nodal Data pursuant to any additional License as set forth in **Schedule C**;
  3. use Nodal Marks pursuant to any additional License as set forth in **Schedule C**.
  4. backup and store the Nodal Data in so far as it is necessary for:
    - i. compliance with **Schedule D**; and
    - ii. compliance with Applicable Laws.

The terms of this Section 2.1(a) set forth Company’s sole rights to use the Nodal Data and Nodal Marks.

- b. Restrictions. Except as expressly permitted under this Agreement or the applicable **Schedule(s)**, Company shall **NOT**:
  1. copy, modify, reverse engineer, reverse assemble, reverse compile, decompile, recompile, reconfigure, edit or create Derived Data based in whole or in part on Nodal Data;
  2. license, sublicense, transfer, sell, resell, publish, reproduce or otherwise distribute or redistribute Nodal Data or any portion or components thereof in any manner (including, but not limited to, any Web Display);
  3. use Nodal Data or any portion thereof in connection with creating, constructing or calculating any Financial Products;
  4. use Nodal Data in connection with issuing, selling, offering, managing, advising, marketing, promoting, or pricing any Financial Product;
  5. use Nodal Data for portfolio valuation, securities valuation, or risk evaluation services,

- or as an underlying strategy for any Financial Product;
- 6. use Nodal Data, in whole or in part, including the use of Derived Data, in any manner that directly competes with Nodal or Nodal Affiliates;
- 7. engage in any illegal, fraudulent, intentionally deceptive or misleading practices with respect to Nodal Data or make any representations, warranties or guarantees with respect to Nodal Data;
- 8. alter, change or in any manner whatsoever otherwise modify or revise any disclaimers, legends, copyright notices, regulatory, legal and compliance disclosures, other text or any other component or content of Nodal Data; or
- 9. assist, permit or facilitate any other entity to do any of the foregoing.

Company shall not, upon its actual or constructive knowledge of any Person engaging in any activity prohibited under this agreement (including the activities listed in this Section 2.1), knowingly withhold information, or fail to notify Nodal as soon as practical and without undue delay, of learning of or reasonably suspecting the Person engaging in the prohibited activity.

- c. Nodal Historical Data. Company may retain and store Nodal Historical Data that it has acquired over time via its Nodal Data License(s); however, Nodal, reserves the right, in its sole discretion, on a case-by-case basis, to require Company to enter into an Order Form and License to maintain such Nodal Historical Data. Further, Nodal reserves the right, at Nodal's request and sole discretion, to require Company to purge any and all Nodal Historical Data as of the date it becomes Nodal Historical Data.
- d. Storage of Nodal Data. Company must store Nodal Data on systems or devices (whether located on Company's premises, in a colocation center or managed by a third-party host) that are restricted solely to Company's own use (the "**Company System(s)**"). All servers on which Nodal Data is stored must be located in either the United States, Canada, the European Union, Norway, Switzerland, or the United Kingdom. Company shall use industry standard administrative, physical, and electronic security measures to protect the security of the Company System(s) and all Nodal Data stored thereon.
- e. Processing of Nodal Data. Company must process Nodal Data on Company System(s). All Company System servers on which Nodal Data is stored must be located in either the United States, Canada, the European Union, Norway, Switzerland, or the United Kingdom. Company shall use industry

standard administrative, physical, and electronic security measures to protect the security of the Company System(s) and all Nodal Data stored thereon.

2.2. Unauthorized Access. Company will use reasonable efforts to (a) scan the Company System(s) and its related systems for any code or device which is designated or intended to impair the operation of, any program or data, using detection software generally accepted in the industry; (b) secure its computing environments according to generally accepted industry standards to ensure that the Company System(s) cannot be accessed by any unauthorized person or malicious software; and (c) remedy any security breach of which it becomes aware. Company will not disclose or provide access to Nodal Data or any portion thereof to any Person other than its Affiliates listed in the Order Form or otherwise expressly authorized by Nodal in writing. Company shall notify Nodal of any unauthorized use, access, distribution or disclosure of any portion of the Nodal Data ("**Unauthorized Access**") as soon as practical and without undue delay, of learning of or reasonably suspecting that Unauthorized Access has occurred, whether such Unauthorized Access resulted from acts or failures to act of Company, or otherwise. Company shall cooperate as reasonably requested by Nodal in Nodal's investigation of such Unauthorized Access. In the event of any Unauthorized Access resulting from the acts or failures to act of Company, the Parties shall mutually agree upon a remediation plan to address the Unauthorized Access. Company shall implement any such remediation plan at its sole expense. Moreover, in addition to the foregoing and any other remedies that Nodal may have, in the event of any Unauthorized Access resulting from the acts or failures to act of Company, Nodal may, at its option, terminate this Agreement in whole or only with respect to the portions of Nodal Data that are the subject of the Unauthorized Access. Company shall reasonably cooperate with Nodal to remediate any Unauthorized Access without limiting any other provision of this Agreement.

2.3. Inadvertent Information. If the interface with the Nodal System or usage of Nodal Data by Company enables Company to receive information for which Company has not been authorized ("**Other Information**") or if Nodal otherwise inadvertently transmits Other Information to Company, Company shall notify Nodal and Company shall not knowingly furnish or knowingly permit to be furnished such Other Information to any third party or other place. If Company knowingly so furnishes the Other Information to any third party or to any other place, or knowingly permits the Other Information to be so furnished, or otherwise knowingly makes use of the Other Information, Company shall be liable to Nodal pursuant to this Agreement for the use of Other Information, including, but not limited to, for charges for the Other Information. Company is considered to have knowingly furnished or used the Other Information if Company intentionally undertakes to interface with the Nodal System or otherwise uses the Nodal Data other than as identified by Company in accordance with this Agreement or undertakes any efforts to market any product or service that is based on,

uses or intentionally distributes the Other Information or of which the Other Information is a part.

2.4. Affiliates. Company's Affiliates have no rights under this Agreement unless they are specifically listed on the applicable Order Form (each such listed Affiliates, a "**Authorized Affiliate**"). Company agrees that Nodal can use the Company's contact information (as set forth herein) as the contact information for each Authorized Affiliate. All of the rights and obligations of Company under this Agreement will apply to each Authorized Affiliate to the same extent as applicable to Company. COMPANY SHALL ASSUME ALL RESPONSIBILITY AND LIABILITY FOR ITS AUTHORIZED AFFILIATES AND ENSURE THAT THEY COMPLY WITH THE TERMS OF THIS AGREEMENT. COMPANY WILL HOLD HARMLESS AND INDEMNIFY NODAL AGAINST ANY ACTION OR INACTION BY ANY AFFILIATE AS IF SUCH ACTION OR INACTION WERE THAT OF COMPANY, AND, COMPANY AND ALL OF ITS AFFILIATE(S) SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL ACTIONS OR INACTIONS OF THE OTHER(S).

2.5. Information Requests. Company shall promptly provide to Nodal in writing, upon request, an overview of how the Nodal Data is used by Company or the Company's Affiliates.

2.6. Regulatory Aspects. Company agrees that it will obtain and maintain all approvals, authorizations and licenses necessary to undertake the activities contemplated to be taken by it under this Agreement and agrees to promptly notify Nodal (where permissible under Applicable Laws) if (a) it receives notice that it is not properly licensed or authorized, (b) its authorizations, approvals or licenses have been, or may reasonably be expected to be, withdrawn, or (c) there are any material conditions applied to such authorizations, approvals or licenses that would materially affect either Party's ability to perform its obligations hereunder in any material respect.

2.7. Governmental Requests. Company shall promptly send during the Term (as defined in Section 6.1), and thereafter to Nodal a copy of any governmental or self-regulatory inquiries, approvals, or investigations related to the use of the Nodal Data or Nodal Marks, or any of Company's products or services that use or relate to the Nodal Data.

### SECTION 3 - SYSTEM ACCESS

3.1. Generally. Subject to the terms and conditions of this Agreement, Nodal shall provide Company with the limited, non-exclusive, non-transferable, non-sublicensable, worldwide, electronic means to access Nodal Data via the Nodal System, through one or more user IDs, passwords, certificates or other access method to access and download the Nodal Data during the Term. Company will designate an employee as the primary contact to receive the password and other information as needed to access Nodal Data ("**Password Information**"). Every Company employee accessing Nodal Data shall have their own Password Information

("Authorized User"). In the event an Authorized User is no longer employed by Company, Company shall immediately notify Nodal to have the Password Information terminated. Nodal will provide Company with Password Information that will include specific reasonable download instructions and the type of file information included in Nodal Data that Company will be authorized to access. Company shall provide Password Information only to its Authorized Users for the sole purpose of accessing and using the applicable Services and may not furnish or otherwise permit or provide access to Password Information to any third party without prior written approval by Nodal. Company is and will remain fully responsible for (a) maintaining the confidentiality of Company's Password Information; (b) controlling and monitoring any use of such Password Information; and (c) notifying Nodal promptly and without undue delay of any unauthorized disclosure or use of Company's Password Information.

Should Company desire to obtain Password Information for additional Authorized Users, Nodal shall provide such Password Information consistent with the fees posted on Nodal's Web Display ("**FIX Credential Fee**").

3.2. Restrictions. Company shall not and shall not permit any other Person to: (a) create any hyperlinks to password-protected portions of the Nodal System, or frame or mirror any content contained in or accessible through the Nodal System; (b) use the Nodal System to further any unlawful purpose or to otherwise undertake any activities that reasonably can be expected to be detrimental to the interests, welfare or integrity of the Nodal System or Nodal; or (c) access the Nodal System without Nodal's express written authorization or exceed the scope of any such authorization.

3.3. Access to System. Company shall be solely responsible for all costs and expenses associated with its method of access to obtain Nodal Data, including FIX API connection fees ("**FIX API License Fees**"). Without limiting the generality of the foregoing, Company shall electronically access Nodal Data. All access to the Nodal System shall be through Nodal's security gateways/firewalls. Company shall access the Nodal System as of the Effective Date of this Agreement and shall cooperate with Nodal to maintain the necessary connections during this Agreement.

3.4. Suspension. Notwithstanding any provision of this Agreement to the contrary, Nodal may, in its sole discretion, at any time, and with or without prior notice to Company, modify the Nodal System, or make certain Nodal Data temporarily or permanently unavailable, or temporarily or permanently suspend operation of the Nodal System or of access thereto (or any Nodal Data) to all recipients. To the extent possible, Nodal will use reasonable commercial efforts to provide prior written notice of any changes to Company.

3.5. Monitoring. Company acknowledges and agrees that, in accordance with the provisions of the CEA and CFTC Regulations applicable to Nodal as a DCM, that Company will be subject to Nodal's monitoring of its access to, and utilization of, the Nodal System.

3.6. Information Security. Company shall use industry standard administrative, physical, and electronic security measures to protect the security of Company System(s) and all Nodal Data stored thereon.

#### SECTION 4 - USE OF NODAL MARKS

4.1. Generally. Conditioned on compliance with the terms and conditions of this Agreement, Company may use the Nodal Marks pursuant to the license granted in Section 2.1(a)(3). If the additional Licenses in **Schedule C** do not explicitly list a right to use the Nodal Marks, then Company has no right to use the Nodal Marks. Nodal reserves the right to require Company to immediately remove publicly displayed Nodal Marks at Nodal's sole discretion.

4.2. Usage Restrictions. Company shall use its commercially reasonable efforts to protect the goodwill and reputation of Nodal and of the Nodal Marks in connection with its use of the Nodal Data and the Nodal Marks under this Agreement. Company shall not use or authorize any other Person to use the Nodal Marks for any purposes whatsoever other than as permitted in this Agreement. Company may not use or seek to register any designation, trademark, service mark or trade name anywhere in the world that is confusingly similar to the Nodal Marks. Company's use of the Nodal Marks must always be in compliance with any trademark use requirements or instructions provided by Nodal. Any materials including Nodal Data or Nodal Marks shall prominently state that the Nodal Data and Nodal Marks are the property of and licensed by Nodal. Company may not state or imply an endorsement by Nodal (or its Affiliates) of Company or of any of its products or services. The use of Nodal Marks shall be of the same high standards of quality and excellence utilized by Company as of the Effective Date. All goodwill arising from Company's use of the Nodal Marks shall inure solely to Nodal.

4.3. No Marketing Obligations. Neither party shall be obligated to engage in any way or to any extent in any marketing or promotional activities in connection with the other party's services or in making any representation or statement to any third party in connection with the marketing or promotion of the other party's services.

4.4. Company Marks. Nodal shall not use Company's name, trademarks, logos, or likeness without Company's prior written permission.

#### SECTION 5 - CERTAIN RIGHTS RESERVED TO NODAL

5.1. Calculation Methods. Nodal reserves the right, at any time, and without prior notice, to make adjustments to the method and manner in which it determines, or calculates, or provides access to Nodal Data without taking into account the needs of Company. Subject to regulatory intervention, Nodal will use reasonable commercial efforts to provide at least thirty (30) days' prior written notice of any changes made in

the ordinary course of business to Company. Nothing in this Agreement shall give Company the right to exercise any judgment or require any changes with respect to Nodal's method of calculating, disseminating, or determining the Nodal Data.

5.2. Disclaimer. Company acknowledges and agrees that the provision of the Nodal Data under this Agreement shall not be considered (and Nodal and its Affiliates shall have no liability whatsoever for): (a) investment advice; (b) a recommendation to enter into any transaction or strategy; (c) advice that a transaction or strategy is suitable or appropriate; (d) the primary basis for any investment decision; (e) a representation, warranty, guarantee with respect to the legal, accounting, tax or other implications of any transaction or strategy; or (f) to cause Nodal or its Affiliates to be an advisor or fiduciary of Company or any other Person.

5.3. Changes to Nodal Data. Company acknowledges and agrees that from time-to-time Nodal may have to alter the Nodal Data or cease provision of the Nodal Data to Company (in whole or in part), immediately and without notice due to events within or beyond Nodal's control (i.e. third party issues). Nodal will attempt to provide at least thirty (30) days' prior written notice for product launches or de-listings when possible.

5.4. Non-Exclusivity. This is a nonexclusive agreement. Nodal shall not be restricted in any manner in the distribution or licensing of the Nodal Data to third parties. Nothing herein shall restrict Nodal's right to contract with any third party to provide products or services, or allow distribution or use of data, content and information, identical to or different from that anticipated under this Agreement.

5.5. Order of Data Delivery. Nodal reserves the right to determine the order in which data distribution services are delivered to Company in the course of this Agreement.

#### SECTION 6 – TERM AND TERMINATION

6.1. Term. This Agreement shall commence on the Effective Date and shall automatically renew after the Initial Term for successive Renewal Terms, unless either Party provides the other Party with notice of non-renewal at least ninety (90) days prior to the end of the Initial Term or then-current Renewal Term. As used herein, "**Term**" shall mean, collectively, the Initial Term and all Renewal Terms.

6.2. Termination for Convenience. Either party shall have the right to terminate this Agreement without cause (but upon notice to the other Party) if required by any governmental authority charged with the supervision of and enforcement of Applicable Laws ("**Government Regulator**"), within the timeframe set forth by the Government Regulator, including during the Initial Term or Renewal Term.

6.3. Breach or Harm. Either Party may terminate this Agreement in the event that the other Party is in default or breach of any material provision of this Agreement and such

default or breach continues unremedied for a period of thirty (30) days after written notice thereof. In the event of multiple and persistent non-material breaches of the Agreement by either Party, whether such breaches have been cured or not, the non-breaching Party shall have the right to terminate this Agreement by giving thirty (30) days' prior written notice thereof or pursue any other remedies and rights at law or in equity. Additionally, either Party may terminate this Agreement on thirty (30) days' prior written notice if the Party believes in good faith that material damage or harm is occurring to its reputation or goodwill by reason of its continued performance hereunder. If Company terminates this Agreement pursuant to this Section 6.3, any Fees paid in advance will be retained by Nodal.

6.4. Insolvency. Either Party hereto shall have the right to immediately terminate this Agreement upon notice to the other in the event such other Party (or any permitted successor organization) ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, is insolvent or the subject of receivership, or in the event any substantial part of the other's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released or satisfied within ten (10) days thereafter.

6.5. Other Nodal Termination Rights. Nodal may terminate this Agreement upon thirty (30) days (or upon such lesser period of time if required pursuant to a court order or regulatory or self-regulatory order) prior written notice to Company if (a) Nodal is informed of the final adoption of any legislation or regulation or the issuance of any interpretation that in Nodal's reasonable judgment materially impairs Nodal's ability to license and provide the Nodal Data or Nodal Marks under this Agreement; (b) any material litigation or proceeding is threatened or commenced and Nodal reasonably believes that such litigation or proceeding would have a material and adverse effect upon Nodal Data, the Nodal Marks or Nodal's ability to perform under this Agreement; or (c) Nodal otherwise no longer has the right to use or license the Nodal Data or Nodal Marks, provided that Nodal's ability to provide the thirty (30) days' notice with respect to an event in this sub-section is subject to Nodal receiving sufficient advance notice.

6.6. Obligations Upon Termination or Expiration. Upon termination or expiration of this Agreement: (a) Company shall immediately cease use of all Nodal Data; (b) Company shall cease all use of the Nodal Marks; (c) Company shall cease all commercial use and distribution of all Nodal Data in its possession or under its control; and (d) Company shall either return or, at Nodal's option, and to the extent practicable, destroy all Confidential Information (as defined in Section 7), inclusive of all Nodal Data, except as required to comply with any Applicable Laws, regulatory or accounting record keeping requirement, **Schedule D**, if applicable, or pursuant to any automated archiving or back-up procedures, if applicable. All copies of Nodal Data remaining on Company's computer hardware, servers, and other information technology

systems shall remain confidential subject to the terms of Section 7.

6.7. Suspension of Services. Nodal may, in its sole discretion and with or without cause or prior notice to Company, temporarily or permanently suspend or restrict Company's use of or access to Nodal Data, in each case as and to the extent that Nodal determines it is necessary to protect its Intellectual Property Rights or reputation, or as necessary to comply with Applicable Laws. Nodal will use commercially reasonable efforts to give prior notice to Company of any such cessation to the extent that Nodal determines such notice would not threaten its Intellectual Property Rights or reputation, and would not conflict with any Applicable Laws.

## SECTION 7 - CONFIDENTIAL INFORMATION

7.1. Confidential Information. Any and all non-public information of one Party (a "**Disclosing Party**"), that is provided for or obtained by the other Party (the "**Receiving Party**") hereunder shall be deemed to be the Disclosing Party's "**Confidential Information**". Confidential Information includes, but is not limited to: (i) any confidential or proprietary information supplied by any party to any other with respect to its financial affairs or business operations and (ii) all communications between the parties relating to the Agreement or the Service. Notwithstanding the foregoing, Confidential Information will not include any information that: (a) is in or becomes part of the public domain (other than by disclosure in violation of this Agreement); (b) was previously known to the receiving Party free of restriction; (c) is independently developed by the Receiving Party without reference to the Confidential Information; or (d) is lawfully obtained by the Receiving Party from a third party having the legal right to furnish such information. Nodal Data shall always be maintained as Nodal's Confidential Information despite the applicability of any exemptions.

7.2. Nondisclosure. The Receiving Party shall hold in strict confidence the Disclosing Party's Confidential Information and shall not disclose such Confidential Information to any third party or use Confidential Information for any purpose not expressly permitted under this Agreement. Notwithstanding the foregoing, Confidential Information may be disclosed (a) to a Receiving Party's employees, agents, and contractors ("**Representatives**") who have a legitimate need to know such information in connection with the Receiving Party's rights and obligations under this Agreement and who are bound to confidentiality obligations at least as strict as set forth herein; (b) as may be explicitly permitted pursuant to **Schedule C**; (c) to the extent required by Applicable Laws or regulation or the rules of a self-regulatory organization of competent jurisdiction; or (d) pursuant to a subpoena or order of a court or legislative, regulatory or self-regulatory body of competent jurisdiction, provided that, to the fullest extent permitted by law, Receiving Party shall immediately notify the Disclosing Party of such request for disclosure under

subsections (c) and (d) and cooperate with Disclosing Party to obtain a protective order or appropriate confidential treatment of any Confidential Information to be so disclosed. The Receiving Party shall remain liable to the Disclosing Party for the breaches of this Section 7 by its Representatives.

## **SECTION 8 - FEES AND TAXES**

8.1. Generally. The fees to be paid by Company to Nodal for the rights granted in this Agreement are set forth in **Schedule B** (the “Fees”).

8.2. Invoices. Invoices for the Fees shall be sent electronically by Nodal to Company at the Company email address set forth in the Order Form. All Invoices shall be paid within thirty (30) days of receipt.

8.3. Taxes. In addition to all Fees, Company shall also be liable for and pay to Nodal any taxes, duties, tariffs, or other fees assessed by or due to a governmental body or a self-regulatory body, related to or arising from this Agreement (except for taxes based on Nodal’s net income) (“Taxes”). Payment of Taxes are on the same terms as the Fees. In addition, if Company is required by Applicable Laws to deduct or withhold any Tax from any Fees due Nodal, then such Fees shall be increased so that the net amount actually received by Nodal after the deduction or withholding of such Tax will equal one hundred percent (100%) of the Fees that are owed.

8.4. Late Payments. Nodal reserves the right to assess interest calculated from the date a Fee was due and assessed on the balance (including interest and other charges) then due until paid in full, at the lower of a rate of one and one-half percent (1.5%) per month or the highest rate permitted by Applicable Laws. Company shall pay all reasonable costs and expenses (including reasonable attorneys’ fees) of collection incurred by Nodal in collecting all unpaid amounts hereunder.

8.5. Changes to Fees. The Fees may be changed by Nodal upon one hundred and twenty days’ (120) written notice prior to the end of the Initial Term or then-current Renewal to become effective upon the first day of the next Renewal Term.

## **SECTION 9 - REPRESENTATIONS AND WARRANTIES**

9.1. Mutual Warranties. Both Parties hereto warrant and represent to each other, as an essential part of this Agreement that (a) each is duly organized and validly existing and in good standing under the laws of the state of its incorporation or formation; (b) each is fully able to perform hereunder and that doing so will not conflict with or result in a breach of any other obligation of the Party; and (c) this Agreement has been duly authorized for execution.

9.2. Company Warranties. Company hereby further represents and warrants to Nodal as follows:

- a. To the knowledge of Company, its products, services, and technologies used in connection with Company’s permitted use of the Nodal Data do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights of any third party;
- b. Company shall have no rights in or to the Nodal Data other than the right to use it in accordance with the express terms of this Agreement;
- c. Company’s performance under this Agreement shall comply with all Applicable Laws; and
- d. Company’s use of the Nodal Data will not be for any unlawful, illegal, or fraudulent purpose.

9.3. Disclaimer. EXCEPT AS OTHERWISE SET FORTH HEREIN, NODAL MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE NODAL DATA, THE NODAL MARKS, AND THE NODAL SYSTEM, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. THE NODAL DATA, NODAL MARKS, AND NODAL SYSTEM ARE PROVIDED “AS IS” AND COMPANY EXPRESSLY AGREES THAT USE OF THE FOREGOING IS AT COMPANY’S SOLE RISK. NODAL DOES NOT WARRANT THAT THE TRANSMISSION OF THE NODAL DATA TO COMPANY WILL BE UNINTERRUPTED, UNDELAYED OR ERROR FREE, OR THAT THE NODAL DATA WILL BE FREE FROM VIRUSES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NODAL EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY INACCURACIES, DELAYS OR INCONSISTENCIES IN THE NODAL DATA, OR FOR ANY RELIANCE THEREON BY COMPANY OR ANY OTHER PARTY. NODAL DOES NOT AND SHALL NOT HAVE A DUTY OR OBLIGATION TO VERIFY, MONITOR, CONTROL OR REVIEW ANY INFORMATION OR DATA DISPLAYED VIA THE NODAL SYSTEM.

9.4. Acknowledgement. Company acknowledges and agrees that: (a) it is solely responsible for evaluating the accuracy, timeliness, and completeness of any and all Nodal Data or information delivered to it via the Nodal System; and (b) it has determined, based on its own evaluation, that the Nodal Data is suitable for and satisfactory to Company, and Company has not relied on any statement, representation or warranty made by Nodal or Nodal’s Affiliates in making such determination. Company further acknowledges and agrees that neither the Nodal Data nor any of the information obtained by or through the Nodal System is intended to supply investment, financial, tax or legal advice. Company acknowledges and agrees that it will consult its own investment, financial, tax, and legal advisors to the extent it requires any such advice.

## **SECTION 10 – PROPRIETARY RIGHTS**

10.1. Ownership by Nodal. Company acknowledges that the Nodal Data is the exclusive property of Nodal, and the Nodal Data is obtained, determined, compiled, prepared, revised, selected, arranged, verified, presented, supplied and authored by Nodal through the application of methods and standards of judgment used and developed through the expenditure of considerable work, time, effort, creativity, and money by Nodal. Nodal owns and retains ownership of all right, title and interest in and to (a) the Nodal Data, all information, data and content, displayed or distributed through the Nodal System in any manner; (b) the Nodal System, and all underlying technology and all materials provided by Nodal (or its third party service providers) in connection therewith; (c) all updates, modifications, enhancements and new versions to or of the foregoing, and all derivative works based thereon; (d) the Nodal Marks (including all goodwill related thereto); and (e) all Intellectual Property Rights associated with the foregoing (collectively, the “**Nodal Proprietary Property**”). Other than the limited usage rights granted to pursuant to this Agreement, Company acquires no right, title or interest in the Nodal Proprietary Property. Company hereby assigns to Nodal all right, title or interest it may acquire in the Nodal Proprietary Property.

10.2. Ownership by Company. Nodal acknowledges that, as between the parties, the Company shall retain ownership of its products and services, excluding any Nodal Proprietary Property, Company name, and Company trademarks (“**Company Intellectual Property**”).

10.3. Other Restrictions. In no event shall Company (a) challenge Nodal’s ownership of the Nodal Proprietary Property; (b) assert that the Nodal Proprietary Property is invalid or otherwise unenforceable, including but not limited to seeking to cancel or oppose registration of any Nodal Mark; (c) take any other action that is inconsistent with or that might prejudice Nodal’s ownership of the Nodal Proprietary Property; or (d) assist a third party in any of the foregoing. In no event shall Nodal (a) challenge Company’s ownership of the Company Intellectual Property; (b) assert that the Company Intellectual Property is invalid or otherwise unenforceable; (c) take any other action that is inconsistent with or that might prejudice Company’s ownership of the Company Intellectual Property; or (d) assist a third party in any of the foregoing.

10.4. Feedback. In its sole discretion, Company may provide Nodal with general information, ideas or recommendations concerning the Nodal Data that is not otherwise Nodal Proprietary Property (collectively, “**Feedback**”). All Feedback shall remain owned by Company, provided that Nodal shall be free to use such Feedback without obligation or restriction of any kind on account of any Intellectual Property Rights owned by Company or otherwise.

## **SECTION 11 – INDEMNIFICATION**

11.1. Company Indemnification Obligation. Company 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 third party 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 (a) use of the Nodal System, any Nodal Data, Derived Data, or Nodal Marks, or any other information or materials provided by Nodal or accessible by Company or any other person using Company’s access to the Nodal Data or Nodal System; whether or not authorized, except to the extent such Losses are proximately caused by the gross negligence or willful misconduct of Nodal; (b) actual or alleged breach by Company of this Agreement, including any of Company’s obligations, representations, warranties or covenants under this Agreement (or allegations that if true, would constitute a breach of this Agreement) (c) Company’s gross negligence or willful misconduct or fraud; or (d) allegations that the Company System(s) violate, infringe or misappropriate the Intellectual Property Rights of any third party or any Applicable Laws.

11.2. Infringement. In the event Nodal reasonably believes that the Nodal Data infringes, violates or misappropriates the Intellectual Property Rights of any third party, Nodal may, at its sole option and expense: (a) obtain for Company a license to continue exercising its rights under this Agreement; (b) repair, replace, modify, or take other action to render the Nodal Data non-infringing; or (c) terminate this Agreement upon written notice to Company.

11.3. Other Rights. Notwithstanding the foregoing, (a) Nodal shall have the right to engage separate counsel, at its own expense, to participate in the defense of or any negotiations relative to the Claim; and (b) Company 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 11 will not be deemed exclusive of any other rights to which Nodal may be entitled under any agreement or otherwise, and will inure to the benefit of the successors, assigns, heirs, executors and administrators of Nodal.

## **SECTION 12 - LIMITATION OF LIABILITY AND DISCLAIMER**

12.1. Limitation of Liability. IN NO EVENT SHALL NODAL OR NODAL’S AFFILIATES BE LIABLE FOR ANY 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 DATA, NODAL MARKS, NODAL SYSTEM, OR ANY OTHER INFORMATION OR MATERIALS PROVIDED BY NODAL INCLUDING THE ACCURACY, COMPLETENESS, RELIABILITY, TIMELINESS, QUALITY, SECURITY, PERFORMANCE, OR PRICING OF NODAL DATA OR ANY FAILURES, DEGRADATIONS OR DELAYS ASSOCIATED THEREWITH, REGARDLESS OF WHETHER SUCH DAMAGES ARISE IN TORT, CONTRACT, OR OTHERWISE, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF NODAL UNDER THE AGREEMENT FOR ANY CLAIM, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF THE FEES PAID OR PAYABLE BY COMPANY FOR THE CALENDAR YEAR IN WHICH THE EVENT GIVING RISE TO THE LIABILITY OCCURRED.

12.2. Other Terms. 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 12 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.

## SECTION 13 - AUDIT

13.1. Audit By Nodal. Except as otherwise specified in an applicable Schedule, during the Term and for as long as Company is in possession of Nodal Data, Company shall maintain complete and accurate records with respect to its use of the Nodal Data and Nodal Marks for the most recent two (2) year period. Upon written notice by Nodal of at least thirty (30) days prior, Nodal shall be entitled to carry out an audit at the site of the Company and its vendors and subcontractors, if applicable, for purposes of the verification of compliance with this Agreement, including confirming (a) that the use of the Nodal Data, Nodal System, and Nodal Marks have been in accordance with this Agreement, (b) the accuracy of records and reports relating to Company's receipt, use and distribution of Nodal Data, and (c) that the Fees have been properly calculated and paid (an "Audit"). Company shall cooperate with the Audit and in particular be obliged to ensure that Nodal or the auditors instructed by Nodal, as the case may be, receive access to operational controls, systems, books, records, or technical infrastructure at its site or the site of its vendors or subcontractors. Nodal may additionally request

from the Company relevant documents as well as electronic data files for the purpose of further examination. Company shall permit Nodal to take copies or extracts, and supply copies on demand to Nodal to verify compliance with the Agreement in accordance with this Section 13 and the relevant **Schedule D**. While on Company's premises, Nodal or its appointed auditor shall comply with Company's written reasonable confidentiality and security policies and procedures to the extent made known by Company to Nodal or its appointed auditor.

In no event will Nodal or its appointed auditor audit Company more than once in any 12-month period, unless necessary due to a reasonable suspicion of non-compliance with any material provision of this Agreement in Nodal's sole discretion. Company shall comply promptly with any reasonable request from Nodal for information regarding Company's receipt, use and distribution of Nodal Data. Nodal shall send Company advance written notice of any third-party auditor appointed to conduct an audit on behalf of Nodal, upon receipt of which Company must submit objections, if any, within ten (10) business days.

Without prejudice to any other rights under this Agreement or provided by law, if the Company fails to comply with its obligations under this Section 13, Nodal shall, until the due performance of the obligations, be entitled to suspend the provision of the licensed Nodal Data or the License granted under Section 2.1.

13.2. If the Audit or Activity Report determines there is underreporting, underpayment or other financial non-compliance with this Agreement (or discloses additional underreported or underpaid amounts or other financial non-compliance), then such amounts shall be remitted to Nodal, together with applicable interest as detailed in Section 8 within sixty (60) days of the completion of the Audit. If Company fails to remit such additional amounts to Nodal by the end of this sixty (60) day cure period, Nodal may, in its discretion at any time, with prior notice to Company, terminate as provided in Section 6 of this Agreement. Company's liability shall be limited to unpaid fees, together with interest, for the two (2) years preceding the earlier of the date that Company, Company's auditors or Nodal first knew or determined that such underreporting, underpayment or other financial non-compliance has occurred. If the Audit discloses an overpayment, then Nodal will apply the overpayment for the sixty (60) days prior to the end of the period being reviewed as a credit against amounts due from Company. The Company shall bear the audit costs if the audit reveals that the Company did not comply with this Agreement.

13.3. Activity Reports. If set forth in **Schedule C**, Company shall be subject to the Activity Reports further detailed in **Schedule D**.

## SECTION 14 - EXCUSABLE DELAY

14.1. Force Majeure Event. In no event shall either Party be liable one to the other, for any breach of this Agreement, which results from an unforeseen event outside the control of the breaching Party, including, but not limited to, acts of God, acts of the public enemy, acts of terrorism, acts of any foreign government, acts of the United States of America, (or any state, territory or political division of the United States of America, or of the District of Columbia), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather conditions (collectively, “**Force Majeure Events**”), provided that, in every case, (a) the delay or failure to perform is beyond the control and without the fault or negligence of the Party claiming excusable delay; (b) the affected Party provides prompt notice to the other Party of the Force Majeure Event; and (c) the affected Party uses commercially reasonable means to mitigate the effects of the Force Majeure Event and cures the breach as soon as possible after the occurrence of the unforeseen event.

**SECTION 15 - EQUITABLE REMEDIES**

15.1. Certain Breaches by Company. Company acknowledges and agrees that the violation of its obligations under Sections 2.1, 2.2, 3, 4, 6.6, 7, 9, and 10 (including any unauthorized copying of, use of, access to or distribution of the Nodal Data, Nodal System or any information, data or software contained therein) 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 Company, 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.

**SECTION 16 - GENERAL PROVISIONS**

16.1. Notice.

- a. Except as otherwise expressly provided herein, all notices and other communications hereunder:
  - 1. shall be in writing;
  - 2. may be delivered by hand, by any nationally recognized private courier, and via electronic mail;
  - 3. shall be effective:
    - i. if delivered by hand or by courier on the date of delivery, and
    - ii. if sent electronic mail, 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 or an email log); and

4. 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):

<p>If to Nodal:</p> <p>Nodal Exchange, LLC          Attn: Office of General Counsel          1921 Gallows Road 3rd Floor          Tysons Corner, Virginia 22182          Telephone: 703-962-9800          Facsimile: 703-962-9850</p> <p>Attn:  <a href="mailto:Legal@NodalExchange.com">Legal@NodalExchange.com</a></p>	<p>If to Company:</p> <p>See Signature Block</p>
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- b. Any legal claims or other documents related to any legal proceedings under this Agreement must be served in accordance with the laws or rules applicable to such proceedings.

16.2. Assignment. This Agreement shall be binding upon the Parties and their respective legal successors and permitted assigns. Neither Party may assign (by operation of law or otherwise) this Agreement without the prior written consent of the other Party and any such attempted assignment shall be void; provided, however, that, upon written notice to Company, Nodal may, without the consent of Company assign this Agreement along with any or all of the respective rights or obligations (a) to its Affiliates; (b) to any purchaser of any portion of Nodal’s business or assets; (c) as required by Applicable Laws; or (d) as required by any financial services regulator having jurisdiction over Nodal or its Affiliates.

16.3. Amendments.

- a. In addition to any other rights in this Agreement, Nodal may amend this Agreement, including the Schedules or Order Form, at any time on ninety (90) days written notice by posting amendments on Nodal’s Web Display at [www.Nodalexchange.com](http://www.Nodalexchange.com) or by sending an email notice to the Company provided email address. Notwithstanding the foregoing, Nodal may amend this Agreement, including the Schedules, upon less than ninety (90) days’ notice (but with as much notice as practicable) where required for legal or regulatory reasons.

Any receipt, acceptance, or use of Nodal Data after such date is deemed acceptance of the new term or condition.

- b. In the event the Company, in its reasonable discretion, considers any such amendment to materially adversely affect its business, it may terminate this Agreement on the date the

amendment comes into effect, provided it gives Nodal at least thirty (30) days' notice in writing, such termination to be effective on the date the amendment in question is to come into effect.

16.4. Change in Control. Company shall notify Nodal at least thirty (30) days prior to any material change in the ownership, control or management of Company (a "**Change of Control**"), provided that if Company is not permitted to notify Nodal prior to a Change of Control, then it shall notify Nodal within five (5) days after such Change of Control becomes effective. In the event of a Change of Control Nodal shall have the right to immediately terminate this Agreement upon written notice to Company.

16.5. Choice of Law. The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of New York, without regard to conflicts of law rules. The Parties hereto agree that the state and federal courts located in New York, N.Y. shall be the proper forums for any legal controversy arising in connection with this Agreement, and the Parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of such courts for such purposes. So far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service or process as is permitted by New York law, shall be necessary in order to confer jurisdiction upon Company in any such court. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is hereby disclaimed. ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, ACTION, PROCEEDING OR COUNTERCLAIM OR OTHER LEGAL ACTION ARISING UNDER THIS AGREEMENT IS HEREBY IRREVOCABLY WAIVED BY ALL PARTIES TO THIS AGREEMENT.

16.6. Modification. Except as set forth herein, no modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the Parties hereto unless made in writing and duly signed by both Parties.

16.7. No Waiver. The failure or delay of either Party to enforce at any time any of the provisions of this Agreement, or to exercise any option or right which is herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a waiver of such provision, right, performance or option.

16.8. Invalidity. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable, comes closest to the economic effect and intent of the Parties underlying the invalid, illegal or unenforceable provision.

16.9. Entire Agreement. This Agreement, together with all the Schedules, Order Form and other attachments hereto, constitutes the entire agreement between the Parties regarding the subject hereof and supersedes all previous agreements, promises, proposals, representations, understanding and negotiations, whether written or oral, between the Parties respecting the subject matter hereof.

16.10. Survival. The provisions of Sections 6.6, 7, 8, 9, 10, 11, 13, and 16.4 and any other provisions which by their nature should survive in order to give them effect, shall survive termination of this Agreement.

16.11. No Partnership. This Agreement shall not be construed as creating a partnership between the Parties, agency relationship or joint venture of any kind or any other form of legal association that would impose liability upon one Party for the acts or failure to act of the other Party. Neither Party is authorized to bind the other to any obligation or commitment.

16.12. Authorization. This Agreement shall not be binding upon a Party unless executed by an authorized officer/partner/proprietor. The individual executing this Agreement represents that he/she is duly authorized by all necessary and appropriate corporate, regulatory, or other action to execute the Agreement on behalf of Nodal or Company, respectively.

16.13. Headings. The headings in this Agreement are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.

16.14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

16.15. Order of Precedence. Where there is a conflict between any of: (a) this Agreement; (b) the Price List; (c) any Schedules other than the Price List; and (d) an Order Form, the prevailing terms shall be those contained in the following documents in prevailing order:

1. the Master Data Agreement;
2. the Schedules other than the Price List;
3. the Order Form;
4. the Price List.

16.16. Export Compliance. Company agrees that it will perform its obligations hereunder in compliance with all Applicable Laws and regulations, including but not limited to anti-corruption, economic sanctions, securities and anti-money laundering laws and regulations including the U.S. Foreign Corrupt Practices Act, and all regulations of the Office of Foreign Assets Control of the U.S. Department of the Treasury, now or hereinafter in effect. Customer agrees that it will not divert, use, export or re-export items (including, but not limited to software, technology, or data) contrary to

United States law. Customer expressly acknowledges and agrees that it will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time but currently includes Crimea-Region of Ukraine, Cuba, Iran, North Korea, Russia, Sudan, Syria, and Venezuela. Customer also expressly acknowledges and agrees that it will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department’s list of Specially Designated Nationals or on the United States Commerce Department’s Denied Persons List, Entity List, or Unverified List. Nothing in the Agreement shall be construed to mean that either party is required to take any action contrary to, or prohibited by, or otherwise in violation of any applicable laws or regulations.

16.17. Data Privacy.

- a. Data Protection Law. Each party will at all times comply with Data Protection Laws in respect of its processing of Personally Identifiable Information.
- b. Personal Data. While Nodal does not intend to provide any Personally Identifiable Information during the course of this Agreement, and any such disclosure shall be deemed accidental, Nodal confirms that any Personally Identifiable Information that has been collected was in accordance with Data Protection Laws. In the event Company comes into possession of any Nodal Personally Identifiable Information, Company shall immediately notify Nodal and delete such information. When accessing the Nodal System or any other information held by Nodal, Company shall not input, upload, maintain or disclose any irrelevant or unnecessary Personally Identifiable Information.

Company consents to Nodal’s use of Personally Identifiable Information and represents and warrants to Nodal that it has either obtained valid consents from those individuals to whom the Personally Identifiable Information relates, or has satisfied an applicable legal basis, pursuant to all Applicable Laws, so as to ensure Nodal is able to process the Personally Identifiable Information as necessary under this Agreement and in accordance with Applicable Laws.

- c. Cooperation. Each Party shall use reasonable efforts to assist the other Party in relation to the investigation and remedy of any claim, allegation, action, suit, proceeding or litigation with respect to alleged unauthorized access, use, processing or disclosure of Personally Identifiable Information provided by the other Party.
- d. Protective Measures. Each Party will maintain, appropriate physical, technical and organizational measures to protect Personally Identifiable Information against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access.
- e. Local Law Requirements. If in respect of its processing of Personal Data, Nodal or Company is required by Data Protection Laws to include privacy terms with the other party, additional data privacy terms shall be notified from time to time. The parties acknowledge and agree that these additional data privacy terms shall apply in addition to this Section 16.17 (Data Privacy) and form an Annex to this Agreement or are set out on Company’s Web Display in relation to the GDPR (2016/679). In such circumstances, any reference to this Section 16.17 (Data Privacy) in this Agreement shall be construed to include such additional data privacy term.

IN WITNESS WHEREOF, the Parties hereto, each acting under due and proper authority, have executed this Agreement as of the Effective Date.

**Company**  
**[Address]**  
**[Phone]**  
**[email]**

**Nodal Exchange, LLC**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 (type or print)  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 (type or print)  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_