## **TERMS OF USE**

This website and the services of Nodal Clear LLC ("**Nodal**"), a wholly owned subsidiary of Nodal Exchange, LLC, available via this website (the "**Site**") are provided subject to the terms set forth herein. If you visit the Site, you agree to be bound by these Terms of Use.

Nodal reserves the right to make changes at any time to the Site or these Terms of Use. Any modifications to the Terms of Use will be effective upon posting. Your continued use of the Site following posting of any revised Terms of Use will constitute acceptance of the modified Terms of Use.

## **Trademarks and Copyrights**

NODAL, the Nodal logo, NODAL CLEAR, the Nodal Clear logo, Nodal Exchange, EnergyClear, NEXT GENERATION OF POWER TRADING and other marks displayed on our Site are the proprietary service marks or trademarks of Nodal or third parties. You may not use Nodal's trademarks, service marks, names or logos in any manner without the prior written approval of Nodal. All other trademarks and service marks not owned by Nodal that appear on this Site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Nodal. You may not use, copy, modify or display any of the trademarks, service marks, names or logos appearing on the Site without the express written permission of the service mark or trademark owner.

All content on this Site, including, but not limited to, the clearing platform ("**Nodal Clear Platform**") and links to Nodal Exchange or other exchange online trading platforms (the "**Exchange Platforms**") (collectively, "**Nodal Platforms**"), and other works of authorship, design, text, graphics, photos, logos, button icons, images and data compilations; any improvements or modifications to such content; any derivative works based thereon; and the collection, arrangement and assembly of all content on this Site are the property of Nodal or its licensors and are protected by United States and international copyright and other intellectual property laws.

Nothing in these Terms of Use shall be deemed to grant to you or any other user any license or right in or to any copyright, trademark, trade secret or other proprietary right of Nodal or any other person.

## Use of the Site

The Site may include information regarding Nodal, its services, its clearing organizations, the Nodal Clear Platform, and/or the Exchange Platforms, as well as links to third party websites. You may download, view, copy and print information, materials and any other aspect of this Site, not including Nodal End-of-Day data (i) solely for your personal, informational purposes; and (ii) provided that neither the materials, nor any proprietary notices or disclaimers therein, are modified or altered.

You agree not to upload on or transmit to or via the Site any information which: (i) infringes or otherwise violates any copyright, patent, trademark, trade secret or other proprietary right; (ii) is defamatory, libelous, expresses hate, or is unlawfully threatening; (iii) is pornographic, obscene or exploitative of a minor; (iv) contains or embodies a virus, worm, Trojan Horse or other contaminating or destructive feature; or (v) otherwise violates any applicable treaty, law or regulation.

You agree you will not interfere, in any way, with others' use of or access to the Site and will not attempt to gain unauthorized access to the account or computer system of any other Site user. You further agree not to take any other action in connection with your use of the Site which violates any treaty, law or regulation and to fully comply with all applicable treaties, laws and regulations in your use of the Site. You agree to access the Site through a web browser, and specifically agree not to use any unauthorized third party applications to access the Site. You agree not to take any other action that imposes an unreasonable or disproportionately large load on the Site. In addition, you agree not to link to any page of the Site, including the home page (located at *www.nodalclear.com*), without Nodal's prior written approval.

## Unauthorized Use of the Site and Proprietary Rights

Nodal reserves the right to investigate and take legal action against any illegal and/or unauthorized use of the Site. Nodal's decision not to pursue legal action for any violation of the Terms of Use shall not be construed as a waiver of the Terms of Use or Nodal's legal rights.

By using the Site, you agree you will not sell, license, rent, modify, print, collect, copy, reproduce, upload, transmit, disclose, distribute, disseminate, publicly display, publish, edit, adapt, electronically extract or scrub, compile (including, without limitation, through framing or systematic retrieval to create collections, compilations, databases or directories) or create derivative works from any content or materials (including, without limitation, through framing or systematic retrieval to create collections, databases or directories) or otherwise transfer any of the content to any third person (including, without limitation, others in your company or organization). You agree not to decompile, reverse-engineer or disassemble any materials, information or other content available through the Site and not to insert any code or product to manipulate the content in any way that affects the user's experience. You agree not to insert any code or product to manipulate the Site content in any way. Any use of web browsers (other than generally available third-party browsers), engines, software, spiders, robots, avatars, agents, tools or other devices or mechanisms to navigate, search or determine the Site is strictly prohibited.

You agree not to, and have no rights to, use data collected from the Site, including but not limited to Nodal End-of-Day data to create, calculate, issue, settle, maintain, support or develop any financial instruments (including but, without limitation exchange traded products, certificates, warrants, contracts for difference, swaps, binary options, structured products), indexes, products, services (including but without limitation, portfolio management services, pre- and post-trade risk management services, or valuation services) or any other derivative works without a duly executed contract with Nodal.

You agree not to challenge (or assist any third party to challenge) the validity or enforceability of any intellectual property owned by Nodal or its applicable affiliates relating to the Site, its content or otherwise referenced therein, including but not limited to the patents and trademarks listed at the end of this Agreement.

# Access Method

You acknowledge you are fully responsible for all activities that occur through the use of any password, user ID or other access methods (each, an "Access Method") that may be granted to you by Nodal as a registered participant of the Nodal Clear Platform, whether or not such use is authorized by you. You agree not to access or attempt to access any password-protected portions of the Site without an authorized Access Method or through any means other than by utilizing your authorized Access Method with the appropriate web page or web tools.

# Privacy

The terms of the Nodal Privacy Statement are hereby incorporated as part of these Terms of Use. <u>Nodal</u> <u>Clear Privacy Statement</u>.

## **Feedback**

Except where otherwise expressly provided by Nodal, all comments, feedback or information submitted to Nodal through or in association with the Site (collectively, "Feedback") shall be considered non-confidential and Nodal's property. By submitting such Feedback to Nodal, you agree that you assign to Nodal, without charge, all worldwide rights, title and interest, including copyrights and other intellectual property rights, in and to such Feedback, and that Nodal shall be free to use such Feedback in any manner or media whatsoever, on an unrestricted basis and without any attribution, compensation or royalties to you.

## Nodal Does Not Endorse Comments of Users

Nodal does not necessarily endorse, support, sanction, encourage, verify, or agree with the comments, opinions, or statements of third parties displayed on or transmitted via the Site. Any information or material placed on the Site are the views and responsibility of those who post the statements, and do not necessarily represent the views of Nodal.

## **No Financial Advice Provided**

No aspect of the Site is intended to provide, or should be construed as providing, any investment, tax or other financial related advice of any kind. You should not consider any content on the Site to be a substitute for financial, investment, legal or tax advice, or as an opinion of the appropriateness or suitability of any investment.

#### Third Party Advertisements and Links to Third Party Site

You acknowledge that, at any time, Nodal may provide links to the websites of third parties. Additionally, the Site may display advertisements from third parties, such as banner advertisements and pop-up texts, and links to the sites of such advertisers. Nodal is not responsible for the content of such advertisements or any links, or any products, services or other materials relating to such advertisements, any linked site, or any link contained in a linked site. The display of any advertisement or link does not imply endorsement by Nodal of the advertisement or linked site or any content therein. IN NO EVENT WILL NODAL BE LIABLE, DIRECTLY OR INDIRECTLY, TO ANYONE FOR ANY DAMAGE OR LOSS ARISING FROM OR RELATING TO ANY USE, CONTINUED USE OR RELIANCE ON ANY ADVERTISEMENT DISPLAYED ON THE SITE, OR ANY PRODUCTS, SERVICES OR OTHER MATERIALS RELATING TO ANY SUCH ADVERTISEMENT, ANY LINKED THIRD PARTY SITE, OR ANY LINK CONTAINED IN A LINKED SITE.

#### **Disclaimer of Warranties and Limitation of Liability**

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE AND/OR THE NODAL PLATFORMS, OR ANY OTHER INFORMATION, CONTENT, SERVICES OR MATERIALS CONTAINED IN, ACCESSED VIA, OR DESCRIBED ON THE SITE, IS AT YOUR OWN RISK, AND THAT ALL SUCH INFORMATION, CONTENT, SERVICES AND MATERIALS ARE

PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, NODAL MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE AVAILABILITY, OPERATION AND USE OF THE SITE AND/OR THE NODAL PLATFORMS, OR ANY OTHER INFORMATION, CONTENT, MATERIALS OR SERVICES ON OR ACCESSED VIA THE SITE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NEITHER THE SITE, THE NODAL PLATFORMS, NOR ANY INFORMATION, CONTENT, MATERIALS, OR SERVICES AVAILABLE VIA THE SITE OR THE NODAL PLATFORMS, CONSTITUTES OR IS INTENDED TO CONSTITUTE, OR SHOULD BE CONSTRUED AS, A SOLICITATION OR ANY OFFER TO BUY AN INTEREST IN ANY SECURITY, INVESTMENT ADVICE OR A RECOMMENDATION OR PROMOTION OF ANY SECURITY, FINANCIAL PRODUCT. INVESTMENT MANAGER. OR TRADING OR INVESTMENT STRATEGY. IN ADDITION. NODAL DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE VIA THE SITE OR THE NODAL PLATFORMS ARE ACCURATE, COMPLETE OR CURRENT, AND IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THEREIN OR FOR ANY ADVERSE CONSEQUENCES RESULTING FROM YOUR RELIANCE ON ANY ASPECT OF THE SITE. FURTHER, NODAL MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SITE AND/OR THE NODAL PLATFORMS WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS.

IN NO EVENT SHALL NODAL OR ITS AFFILIATES, OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF NODAL OR ITS AFFILIATES (THE "**NODAL PARTIES**") BE LIABLE TO YOU OR ANY THIRD PARTY FOR DAMAGES OF ANY KIND ARISING OUT OF THE USE OF, ACCESS TO, RELIANCE ON, INABILITY TO USE OR IMPROPER USE OF THE SITE OR THE NODAL PLATFORMS, OR ANY INFORMATION, CONTENT, MATERIALS OR SERVICES AVAILABLE THEREON (INCLUDING, BUT NOT LIMITED TO, ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, GOODWILL OR REVENUE, BUSINESS INTERRUPTION, OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

CERTAIN STATE LAWS DO NOT PERMIT LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, AND THUS SOME OR ALL OF THE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS ABOVE MAY NOT APPLY TO YOU.

## **Indemnification**

You agree to indemnify and hold the Nodal Parties harmless from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees, disbursements and court costs) arising from or in connection with (i) use of the Site or the Nodal Platforms, or any content, information, materials or services contained, displayed or available therein, by you or any other person accessing the Site under any Access Method assigned to you as a registered participant; (ii) your violation of these Terms of Use; (iii) any Feedback provided to Nodal; or (iv) your violation of any rights of any third party.

#### Modification or Discontinuance of the Site by Nodal

At any time, without notice to you, and for any or no reason, Nodal may modify or discontinue the Site

and/or the Nodal Platforms. Nodal shall in no way be held liable for any consequence which results from Nodal's decision to modify or discontinue providing the Site and/or the Nodal Platforms.

## **Denial of Access**

Nodal may prohibit you from using or accessing the Site or the Nodal Platforms for any or no reason, at any time, in its sole discretion, without notice to you.

### **Governing Law**

The laws of the State of New York will govern these Terms of Use, without giving effect to any principles of conflicts of laws. You agree that any action arising out of the Terms of Use or your use of the Site or the Nodal Platforms shall be brought in state or federal court in New York, New York, and you consent to the jurisdiction of such courts.

### **Miscellaneous**

You may not assign or otherwise transfer these Terms of Use or any rights or obligations hereunder. Nodal's failure to act on any breach of any provision hereof shall not be construed as a waiver of the enforcement of any provision unless Nodal agrees to such waiver in writing.

If any portion of these Terms of Use is deemed unlawful, void or unenforceable, that portion will be deemed severable and will not affect the validity or enforceability of the remaining provisions. These Terms of Use set forth the entire understanding between you and Nodal with respect to the subject matter hereof and supersede any prior or contemporaneous communications, representations, or agreements, whether oral or written, between you and Nodal with respect to such subject matter.

## **Contact**

If you have any questions relating to these Terms of Use, the Site, the Nodal Platforms or Nodal, please contact: *info@nodalclear.com.* 

#### Notice and Procedure for Making Claims of Intellectual Property Infringement

Nodal respects the intellectual property rights of others. If you believe that any content on this Site may infringe your copyrights or other intellectual property rights, please provide Nodal the written information specified below. Please note that this procedure is exclusively for notifying Nodal that your intellectual property rights have been infringed.

- An electronic or physical signature of the person authorized to act on behalf of the owner of the intellectual property interest;
- A description of the intellectual property right that you claim has been infringed;
- A description of where the material that you claim is infringing is located on the Site;
- Your address, telephone number, and email address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the intellectual property owner, its agent, or the law;

• A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the intellectual property owner or authorized to act on the intellectual property owner's behalf.

Nodal's agent for notice of claims of copyright infringement or other intellectual property infringement on the Site can be reached as follows:

Intellectual Property Agent Legal Department Nodal Clear, LLC 1921 Gallows Road, 3<sup>rd</sup> Floor Vienna, Virginia 22182 Phone: 703-962-9800 Fax: 703-962-9850 email: *legal@nodalclear.com*