



## LIVEVOL PRO and LIVEVOL CORE MASTER SOFTWARE SUBSCRIPTION AGREEMENT

This LiveVol Master Software Subscription Agreement, including attached “**Exhibit A**” (Subscriber Information Form), “**Exhibit B**” (Fee Schedule) and “**Exhibit C**” (Order Form), the “**Subscription Policies**” and other documents incorporated by reference in any of the foregoing, posted on the CBOE LiveVol website at <http://www.LiveVol.com/contracts.aspx>, as are not inconsistent with this LiveVol Master Software Subscription Agreement (collectively, the “**Agreement**”), is entered into between CBOE LiveVol, LLC, with its principal place of business at 433 West Van Buren Street, Chicago, IL 60607 (“**LiveVol**”) and the undersigned “**Subscriber**.” Each of LiveVol and Subscriber may be referred to herein as a “**Party**” or collectively as the “**Parties**.”

If Subscriber is receiving a free trial for a LiveVol software product, this Agreement also governs Subscriber’s free trial. This Agreement will become effective without further notice or acknowledgement when Subscriber sends its request for the free trial including Subscriber’s acknowledgement of acceptance of the Agreement.

### 1. Services and License.

(a) Access and License. In consideration of Subscriber’s payment of applicable Fees, LiveVol hereby grants to Subscriber a limited, personal, non-exclusive, non-sublicensable, and non-transferable “**License**” in accordance with the terms of this Agreement, to access, operate, and use:

(i) the installable or web-based versions of the LiveVol software product(s) specified on Exhibit C, including any related support utilities, run-time support programs and libraries, and security programs, together with the software user documentation, if any, and any updates and upgrades to such software products and user documentation as may be made available in the ordinary course of LiveVol’s business (collectively the “**LiveVol Software**”);

(ii) the LiveVol proprietary data (“**LiveVol Data**”) and the third-party data, text, charts, calculations and statistics (“**Supplier Data**”), which together may hereinafter be referred to as “**Data**”;

(iii) the LiveVol Software and the Data (“**LiveVol Platform**”) to create new original works, and to use, copy, modify, display, publish and distribute such new original works as hereinafter provided; and

(iv) specific elements or extracts of Data and/or new original works based on Data, relating to particular transactions or situations, in materials written materials and to transmit such materials to Subscriber’s customers and prospective customers.

The foregoing License may be exercised only by Subscriber’s employees and natural person independent contractors conducting activities on behalf of Subscriber; provided however, employees of a company providing services to Subscriber may be authorized to exercise Subscriber’s License rights if such service provider company has entered into a limited use and confidentiality agreement with

LiveVol. For the avoidance of doubt, employees of Subscriber’s affiliates are not covered under the License.

(b) Supplier Data. Supplier Data made available under this Agreement may include: (i) last sale, quotation and other information relating to securities traded on a number of national securities exchanges that is provided by Securities Information Processors including New York Stock Exchange, Inc. (“**NYSE**”), the NASDAQ OMX Group, Inc. (“**NASDAQ**”), and, the Options Price Reporting Authority (“**OPRA**”), (ii) fundamental data, news, and other financial and business information that are provided by third- party financial information aggregators; and (iii) such other data and/or information provided directly or indirectly by any other third- party source, now or in the future (all of the foregoing third-party providers may collectively be referred to herein as the “**Data Supplier(s)**.” Subscriber acknowledges and agrees that the Data Suppliers may change without prior notice to Subscriber.

(c) Changes to Data. Subscriber acknowledges that LiveVol and the Data Suppliers may: (i) make changes in the speed of transmission of Data, the specifications governing the format of Data and any other characteristics of the Data as the Data Suppliers and/or LiveVol may from time to time determine, and (ii) discontinue furnishing all or any portion of the Data to Subscriber hereunder. LiveVol will alert Subscriber of any such changes in the Data as soon as commercially practicable. In no event shall any such changes be regarded as a breach of the terms of this Agreement by LiveVol.

(d) New Original Works. Subscriber may process Data using the LiveVol Software or otherwise, with or without other input data, for the purpose of creating or calculating new original works, provided that: (1) any works so created that display, represent or recreate any Data, or from which Data can be readily recalculated, will constitute Data for purposes of this Agreement; (2) any works so created that do not display, represent or recreate any Data, and from which Data cannot be readily recalculated, will constitute “**Derived Data**” for purposes of this Agreement; and (3) notwithstanding the foregoing, Subscriber shall not use, or permit any third party to use, any Data (i) as input data in the creation or calculation of any index or similar work or (ii) to create any financial instrument or investment product that is based on, or seeks to match the performance of, values included in the Data, in each case, unless and until Subscriber has entered into a separate license agreement with LiveVol or the applicable Data Supplier authorizing such use of the Data.

(e) User and License Limitations. Subscriber agrees that the License granted to Subscriber pursuant to this Section 1 is subject to the following additional restrictions: (i) the installable LiveVol Software shall only be installed on computer(s) that can only be accessed by the applicable users specified in Exhibit C, and the web-based LiveVol Software shall only be accessed by the applicable users specified in Exhibit C (each such user, hereinafter a “**User**”); (ii) each User shall only access the LiveVol Platform using a logon identifier and a password (together, a “**User Account**”) delivered by LiveVol to Subscriber’s account administrator identified in Exhibit A; (iii) each User Account shall be used only by one specified User and not by any other person or entity; (iv) Subscriber shall not, directly or indirectly, reverse engineer, disassemble or decompile any component of the LiveVol Software, or create a source code version of the LiveVol Software or any component thereof; (v) Subscriber shall not disseminate, transmit or otherwise distribute Data from the LiveVol Platform to any entity or person who is not an employee of Subscriber unless expressly authorized by this Agreement and/or a Data Supplier agreement (as applicable); (vi) Subscriber shall not transfer, distribute, sell, resell, lease, sublease, license, sub-license or

assign the right to use the LiveVol Platform; (vii) Subscriber shall not use or permit anyone else to use the LiveVol Platform or any component thereof in any illegal business or for any illegal purpose; and (viii) Subscriber shall make no use of the LiveVol Platform except in compliance with the terms of this Agreement.

(f) User Accounts and Security. The LiveVol Platform will be accessed solely by Users (as specifically identified on Exhibit C) via a network connection to a computer server controlled by LiveVol. For security reasons, LiveVol reserves the right, upon reasonable notice to Subscriber, to periodically change (or require a change of) User Account identifiers and/or passwords. Subscriber acknowledges and agrees that:

(i) no User Account will be used to provide access to the LiveVol Platform by more than one (1) named individual User;

(ii) sharing of User Account information and/or permitting access to the LiveVol Platform by users other than a User specified on Exhibit C shall be deemed a material breach of this Agreement enabling LiveVol, at its sole option, to terminate this Agreement and Subscriber's access to the LiveVol Platform as hereinafter provided;

(iii) In addition to any other remedies available to LiveVol, Subscriber shall be liable for additional Fees (as hereinafter defined) if any User Account is shared among multiple individuals;

(iv) each User Account will allow access to the LiveVol Platform only for so long as Fees are paid timely and in the manner hereinafter provided, and Subscriber is not otherwise in breach of this Agreement;

(v) no User Account may be used to facilitate access to Data by any third party; and

(vi) Subscriber shall be liable for each User's failure to adhere to and follow the terms and conditions of this Agreement.

(g) LiveVol may enable Subscriber to access and use a limited or fully functional version of the LiveVol Platform on a trial basis free of charge pursuant to this Agreement, for such period as LiveVol determines. Additional terms and conditions may be incorporated into this Agreement via the trial registration page, or an e-mail or other document authorizing or implementing the trial, and any such additional terms and conditions are incorporated into this Agreement by this reference. NOTWITHSTANDING ANY REPRESENTATIONS, WARRANTIES OR PROMISES MADE BY LIVEVOL IN SECTIONS 8 AND 9 OF THIS AGREEMENT, DURING A FREE TRIAL PERIOD, DATA WILL BE DELAYED BY AT LEAST FIFTEEN MINUTES AND THE LIVEVOL PLATFORM IS PROVIDED TO SUBSCRIBER "AS-IS" WITHOUT ANY WARRANTY OR GUARANTEES WHATSOEVER, AND SUBSCRIBER ACKNOWLEDGES THAT ITS USE OF THE LIVEVOL PLATFORM IS AT SUBSCRIBER'S OWN RISK.

## **2. Intellectual Property.**

(a) Ownership of LiveVol Software and Data. Subscriber acknowledges that the LiveVol Software and LiveVol Data, and all copyrights, patents, trade secrets and other rights, title and interest therein, howsoever designated, are the sole property of LiveVol. The Supplier Data, and all copyrights, patents, trade secrets and other

rights, title and interest therein, howsoever designated, are the sole property of the Data Suppliers. Subscriber shall acquire no right, title or interest in the LiveVol Platform by virtue of this Agreement other than the non-exclusive right of access and use it as granted herein. Without limiting the foregoing and subject to Subscriber's rights in Derived Data, if any, Subscriber specifically acknowledges LiveVol's exclusive rights to ownership in all copies, derivative works, translations, and adaptations of the LiveVol Software and LiveVol Data.

(b) Ownership of Confidential Information. Subscriber further acknowledges and agrees that: (i) LiveVol owns all right, title and interest in and to LiveVol's Confidential Information, as hereinafter defined; and (ii) no Data Supplier shall be deemed to have waived any of its proprietary interest in any Supplier Data as a result of the furnishing the same to Subscriber.

(c) Ownership of Derived Data. Subject to Sections 2(a) and 2(b) above, LiveVol acknowledges that Subscriber shall have all right, title or interest in any Derived Data based on LiveVol Data, and all proprietary rights therein. Subject to the terms of conditions relating to creation, use and ownership of Derived Data based as each Supplier may specify with respect to its respective Supplier Data, Subscriber shall have all right, title or interest in any Derived Data based on Supplier Data.

(d) Marks. Subscriber acknowledges and agrees that LiveVol and the Data Suppliers are the sole owners of, and have all right, title, and interest in and to, their respective trademarks, trade names, logos, and service marks ("Marks") used in connection with the LiveVol Platform, and that nothing contained in this Agreement grants Subscriber the right to use any Marks. Subscriber will not use any Marks of LiveVol, its affiliates, or the Data Suppliers without first securing the prior written permission from the owner of such Marks, except that Subscriber may use LiveVol's name solely for the purpose of source attribution. Subscriber will not, under any circumstance, remove any Marks from the LiveVol Platform. In the event that Subscriber obtains written consent from LiveVol or a Data Supplier authorizing Subscriber to use such Marks, such use shall comply with the the Mark owner's quality control procedures, specifications and other requirements as communicated to Subscriber from time to time. Without limiting the foregoing, all goodwill from the use of the Marks shall inure to the benefit of the respective owner.

(e) Feedback. Subscriber may from time to time provide suggestions and/or comments regarding modifications to the functionality of the LiveVol Platform ("Subscriber Feedback"). Subscriber hereby grants LiveVol a perpetual royalty-free, fully paid up, worldwide, transferable, sublicenseable, and irrevocable, right and license to use, develop, copy, modify, create derivative works, distribute, transmit, display, sell or otherwise make available to others the Subscriber Feedback or other materials that embody all or any portion of the Subscriber Feedback. Subscriber acknowledges and agrees that LiveVol may from time to time in its sole discretion make modifications to the LiveVol Platform based to some extent on Subscriber Feedback, that any and all such modifications to the LiveVol Platform and the resulting modified LiveVol Platform shall be the sole property of LiveVol to commercialize for its sole benefit, and that Subscriber shall have no rights whatsoever in any such modifications or the resulting modified LiveVol Platform, or to any payment of money or other commercial benefit derived therefrom.

## **3. Protection of Data and Inspection Rights.**

Subscriber shall, at all times during the term of this Agreement,

maintain accurate records with respect to access to and use of the LiveVol Platform. Solely for the purpose of verifying that access to and the use of the LiveVol Platform complies with this Agreement, Subscriber shall at all reasonable times permit LiveVol and the Data Suppliers, upon five (5) business days' notice to Subscriber, during ordinary business hours, to have access to Subscriber's systems and records with respect to access to and use of the LiveVol Platform by User Accounts associated with Subscriber; provided, however, that each such inspection shall: (a) extend only so far as may be necessary to verify compliance with the terms of this Agreement and the Data Supplier agreements, and (b) be completed in accordance with Subscriber's reasonable policies and procedures regarding security and confidentiality. In the event that any such inspection reveals a discrepancy in the number of Users or other breach of this Agreement, Subscriber shall promptly correct the deficiency and, if applicable, remit to LiveVol and/or the Data Suppliers, such additional Fees as are applicable.

#### **4. Term.**

The "Term" of this Agreement shall commence on the earlier of the date on which Subscriber receives a fully executed copy of this Agreement or the date on which Subscriber's access to the LiveVol Platform is enabled by LiveVol ("**Effective Date**"), and shall continue until terminated as hereinafter provided.

#### **5. Fees and Taxes.**

(a) **Fees.** In consideration of the License to use the LiveVol Platform Subscriber agrees to pay: (i) "**LiveVol Subscription Fees**" to LiveVol for access to and use of the LiveVol Software specified in the then current Fee Schedule (Exhibit B shows the Fee Schedule current as of the Effective Date); and (ii) "**Data Supplier Fees**" to LiveVol or each Data Supplier for access to and use of Supplier Data (LiveVol Subscription Fees and Data Supplier Fees together may be referred to together as "**Fees**"). Subscriber is solely responsible for payment of Data Supplier Fees invoiced by a Data Supplier and LiveVol will not provide reminders or notices regarding amounts due Data Suppliers. In the event Subscriber fails to pay any Data Supplier Fees when due, Subscriber agrees to pay any penalties assessed against LiveVol or Subscriber.

(b) **Taxes.** In addition to Fees payable under this Agreement, Subscriber is responsible for and shall pay any and all sales, use and other applicable taxes or duties based on access to and use of the LiveVol Platform, however designated, except for those taxes based on the income of LiveVol (collectively "**Taxes**"), and shall promptly reimburse any such Taxes paid by LiveVol upon request. Subscriber shall pay the full amount of Fees without any reduction for Taxes.

(c) **Terms of Payment.** LiveVol will prepare and transmit invoices to Subscriber after the end of each month for LiveVol Subscription Fees, Taxes and Data Supplier Fees that are not invoiced directly by a Data Supplier, and Subscriber shall pay the stated amounts within thirty (30) days of the invoice date unless Subscriber disputes the charges in writing before payment is overdue. LiveVol may process monthly payments pursuant to credit card authorization after the end of the subject month without regard to whether LiveVol's invoice has previously been transmitted. Undisputed Fees not paid within thirty (30) days after the invoice date are subject to interest at the prime rate, compounded monthly. If any Fees are not disputed or paid within forty-five (45) days after the invoice date, LiveVol may, without limiting its other rights and remedies, suspend Subscriber access to the LiveVol Platform until such amounts are paid in full.

(d) **Fee Calculation.** Subject to such fee calculation mechanics as a Data Supplier may require with respect to its Supplier Data, Fees invoiced by LiveVol (other than those for the LiveVol Report Builder Software product) will be determined based on the information provided by Subscriber on Exhibit B to this Agreement, by multiplying the number of User Accounts times the applicable monthly User Fee for the LiveVol Software and/or Supplier Data. The LiveVol Report Builder Software monthly User Fee listed in Exhibit B covers access to and use by all Users that also have a License to use LiveVol Pro and/or LiveVol Core.

(e) **Proration and Adjustment.** Subject to requirements of applicable Data Suppliers, LiveVol will calculate Fees in accordance with the then current Fee Schedule and Subscription Policies for each User that had access to the LiveVol Platform during the subject monthly billing period, regardless of whether access was actually made. Fees apply to each separate User of the LiveVol Platform, and if (contrary to the terms of this Agreement) multiple Users access the LiveVol Platform via a single User Account, Subscriber is responsible for alerting LiveVol and paying the Fees that would be due based on the actual number of Users that accessed the LiveVol Platform during the subject monthly billing period.

(f) **Fee Modifications.** LiveVol Subscription Fees are subject to modification by LiveVol upon at least thirty (30) days prior written notice to Subscriber. LiveVol Subscription Fees will not be increased more than once in any twelve (12) month period. Each Supplier's Data Supplier Fees are subject to modification by it at any time without prior notice to Subscriber.

#### **6. Support.**

(a) **Uptime Performance.** LiveVol will use commercially reasonable efforts to: (i) minimize any interruptions in Subscriber's access to, and use of, the LiveVol Platform; and (ii) minimize and/or correct any performance issues, malfunctions, delays in refreshing the Data, interruption, errors or termination of the LiveVol Platform. It is intended that Subscriber be able to access and effectively use the LiveVol Platform twenty-four (24) hours a day, three hundred sixty five days per year, excluding times scheduled for preventative maintenance. Scheduled preventative maintenance during each calendar year is not anticipated to exceed ten (10) hours and LiveVol will use commercially reasonable efforts to ensure that such maintenance time is scheduled during non-peak usage hours. LiveVol shall alert Subscriber at least forty-eight (48) hours prior to any scheduled preventative maintenance unless an extraordinary event requires emergency response measures to be taken. Notwithstanding the foregoing, Subscriber acknowledges and agrees that LiveVol does not guarantee uptime performance of the LiveVol Platform, or any component thereof.

(b) **Technical Assistance.** LiveVol will use commercially reasonable efforts to provide Subscriber with remote (e.g. by e-mail, telephone, online, etc.) technical assistance with matters involving access to and use of the LiveVol Platform that are under LiveVol's reasonable control. Technical assistance may be requested via e-mail at support@LiveVol.com by the Subscriber representative identified in Exhibit A. LiveVol does not represent that the technical assistance it provides will be sufficient to meet Subscriber's needs.

(c) **LiveVol Software Maintenance.** LiveVol will provide updates to the LiveVol Software, from time to time in LiveVol's sole discretion.



## **7. Limitation of Liability.**

(a) Force Majeure. With the exception of Subscriber's payment obligations, neither Party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in performing any obligation hereunder due to causes beyond its reasonable control (each a "**Force Majeure**"), including, but not limited to, acts of God, war, terrorism, riots, embargoes, strikes or other industrial disputes, acts of civil or military authorities, fires, floods, earthquakes, accidents, or failures or malfunctions of telecommunications facilities or electric power, provided that the Party experiencing the Force Majeure gives prompt written notice thereof to the other Party and uses reasonable efforts to eliminate or alleviate the effect of the Force Majeure.

(b) Limitation of Liability. IN NO EVENT SHALL LIVEVOL OR ANY DATA SUPPLIER, OR ITS OR THEIR RESPECTIVE AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, TRADING LOSSES, OR DAMAGES RESULTING FROM INCONVENIENCE, UNAVAILABILITY, OR LOSS OF USE OF THE LIVEVOL PLATFORM.

(c) Aggregate Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ALL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED (AT THE TIME OF THE SUBJECT CLAIM) THE TOTAL VALUE OF THE LIVEVOL SUBSCRIBER FEES PAID TO LIVEVOL FOR THE MOST RECENT TWELVE (12) MONTH PERIOD, REGARDLESS OF THE CAUSE OR FORM OF ACTION, EXCEPT TO THE EXTENT OF: (i) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (ii) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, (iii) SUBSCRIBER'S VIOLATION OF SECTIONS 1, 2 OR 5 OF THIS AGREEMENT, OR (iv) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 12.

## **8. Representations and Warranties.**

(a) Mutual Warranties. Each Party hereto represents and warrants that (i) it has the full right and power to enter into and fully perform this Agreement in accordance with its terms; and (ii) the execution, delivery, and performance of this Agreement will not violate any rights granted by such Party to any third party or violate the provisions of any agreement to which it is a party or violate any applicable law or regulation, including those regarding export control.

(b) Subscriber Warranties. Subscriber represents and warrants that: (i) the information it has provided to LiveVol (including Subscriber's representation on Exhibit C that a User is either a professional or non-professional) is accurate and complete; (ii) it will promptly furnish LiveVol with new information if the information previously provided becomes materially inaccurate or incomplete, and (iii) it is not knowingly conducting any illegal business activities.

(c) LiveVol Warranties. LiveVol represents and warrants that it is authorized to grant Subscriber the right: (i) to use the LiveVol Software, and (ii) the Suppliers Data.

(d) EXCLUSION OF WARRANTIES. THE LIVEVOL PLATFORM IS PROVIDED TO SUBSCRIBER "AS IS." LIVEVOL MAKES NO EXPRESS OR IMPLIED WARRANTY CONCERNING THE LIVEVOL PLATFORM, AND LIVEVOL, ON BEHALF OF ITSELF AND EACH DATA SUPPLIER, HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE LIVEVOL PLATFORM. LIVEVOL MAKES NO GUARANTY THAT THE LIVEVOL PLATFORM WILL MEET SUBSCRIBER'S REQUIREMENTS, BE ERROR FREE, OR OPERATE WITHOUT INTERRUPTION.

NEITHER LIVEVOL NOR ANY DATA SUPPLIER GUARANTEES OR MAKES ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT ANY DATA, DERIVED DATA OR OTHER INFORMATION ACCESSIBLE VIA THE LIVEVOL PLATFORM (A) WILL BE ACCURATE, COMPLETE, TIMELY OR SEQUENCED IN A PARTICULAR MANNER, OR (B) WILL BE RELIABLE FOR TRADING PURPOSES. SUBSCRIBER AGREES TO INDEPENDENTLY DETERMINE THAT THE DATA, DERIVED DATA AND OTHER INFORMATION RECEIVED THROUGH THE LIVEVOL PLATFORM IS SUFFICIENT FOR SUBSCRIBER'S PURPOSES.

SUBSCRIBER ASSUMES SOLE RESPONSIBILITY AND RISK OF USING THE DATA, DERIVED DATA AND OTHER INFORMATION ACCESSIBLE VIA THE LIVEVOL PLATFORM. THE LIVEVOL PLATFORM IS PROVIDED SOLELY FOR USE AS A TOOL AND IS NOT MEANT AS A GUIDE TO ACTION. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT ANY DATA, DERIVED DATA OR OTHER INFORMATION ACCESSIBLE THROUGH THE LIVEVOL PLATFORM ARE NOT INTENDED TO BE, AND SHOULD NOT BE CONSTRUED OR USED AS, INVESTMENT ADVICE. SUBSCRIBER HEREBY CONFIRMS ITS UNDERSTANDING OF THE FOREGOING DISCLOSURES AND AGREES THAT THESE LIMITATIONS ARE REASONABLE ALLOCATIONS OF RISK.

## **9. Indemnification.**

(a) Indemnification by Subscriber. Subscriber shall indemnify, defend and hold harmless, LiveVol, the Data Suppliers and its and their respective affiliates, and its and their respective officers, directors, employees, agents, representatives, contractors and suppliers (collectively the "**LiveVol Indemnities**") from and against any suit or other proceeding, at law or in equity, claim, liability, loss, cost, damage, or expense (including reasonable attorneys' fees) threatened against or incurred by the LiveVol Indemnities, that arises out of or relates to (i) Subscriber's failure to comply with this Agreement or Subscriber's breach of any representation or warranty contained in this Agreement, or (ii) Data, Derived Data or other information or functionality comprising the LiveVol Platform accessed by User Accounts associated with Subscriber.

(b) Indemnification by LiveVol. LiveVol shall indemnify, defend and hold harmless, Subscriber and its officers, directors, employees, agents, representatives and contractors (collectively the "**Subscriber Indemnities**") from and against any suit or other proceeding, at law or in equity, claim, liability, loss, cost, damage, or expense (including reasonable attorneys' fees) threatened against or incurred by the Subscriber Indemnities, that arises out of or relates to any claim that the LiveVol Software, as used by Subscriber in accordance with this Agreement, infringes any United States patent, copyright, trade secret or other intellectual property right. LiveVol shall have no liability or

obligation under this Section 9(b) if such claim is caused in whole or in part by way of the combination, operation or use of the LiveVol Software with any other applications, products or services, if the LiveVol Software would not, by itself, be infringing.

(c) Notice and Participation. If a LiveVol Indemnitee or Subscriber Indemnitee (each an “**Indemnified Person**”) believes that it is entitled to be indemnified pursuant to this Section 9, it shall promptly notify the responsible indemnifying Party in writing; provided however, failure or delay in giving notice shall only excuse the indemnifying Party to the extent it materially prejudices its ability to defend or otherwise resolve any such claim, non-compliance or breach. The indemnifying Party shall be entitled to make all decisions with respect to the defense of any claim, including any decisions to compromise or settle, provided, that, except with the written consent of the Indemnified Person, the indemnifying Party shall not consent to entry of any judgment or enter into any settlement which either (i) does not include, as an unconditional term, the grant by the claimant to the Indemnified Person of a release of all liabilities in respect of the claim, or (ii) otherwise adversely affects the rights of the Indemnified Person. Upon request, each Indemnified Person shall provide reasonable cooperation and assistance, including providing the indemnifying Party with any and all available information under its control necessary for the indemnifying Party to conduct a defense, or resolve any non-compliance with or breach of this Agreement.

#### **10. Data Providers as Third-Party Beneficiaries.**

Each of the Data Suppliers is an intended third-party beneficiary of this Agreement, and may enforce all rights and obligations in its favor contained in this Agreement, provided that the right to such enforcement is assigned to it by LiveVol. LiveVol may make any such assignment in its sole and absolute discretion, and no such assignment, if and when made, shall create any liability for LiveVol to Subscriber or to any other person or entity.

#### **11. Termination.**

(a) Termination of Agreement. Either Party may terminate this Agreement without cause on thirty (30) days’ notice. Either Party may terminate this Agreement upon three (3) days’ notice if a material breach by the other Party is not cured within seven (7) days after notice of such breach. Upon termination of this Agreement for any reason, all Fees payable through the end of the last month of the Term (i.e. the end of the calendar month including the effective date of termination) shall become immediately due and payable.

(b) Termination of Trial. If this Agreement has been entered into to facilitate Subscriber’s free trial of LiveVol Platform, it shall automatically terminate at the end of the day on which Subscriber’s trial access to the LiveVol Platform is disabled by LiveVol.

(c) Termination of Data Supplier Agreements: Subscriber is responsible for termination of any agreements directly between Subscriber and any Data Supplier as appropriate, in accordance with the applicable requirements.

(d) Rights Upon Termination. Upon the effective date of termination, Subscriber’s License shall cease, and except as required by compliance or legal requirements, Subscriber will immediately delete or return to LiveVol all installable LiveVol Software and Data (unless a separate agreement between Subscriber and a Data Supplier provides that Subscriber may do otherwise with respect to that Data Supplier’s Supplier Data).

#### **12. Confidentiality**

Subject to the exclusions as hereinafter provide in this Section 12, the term “**Confidential Information**” shall mean this Agreement and all data, trade secrets, business information, and other information of any kind and in any form whatsoever of one Party (“**Discloser**”), received or accessed by the other Party (“**Recipient**”) in connection with entering into or operating under this Agreement, which is either marked as “confidential” at the time of its disclosure, identified within thirty (30) days of its disclosure as containing confidential information of the Discloser, or should be reasonably understood by the receiving Party to contain confidential or proprietary information of the Discloser as of the date of its disclosure. Recipient acknowledges and agrees that it will neither use nor disclose Discloser’s Confidential Information to any third party, except as contemplated by this Agreement.

Recipient acknowledges that a breach of the provisions of this Section 12 may cause Discloser irreparable injury for which Discloser may not have an adequate remedy available at law. Accordingly, Discloser shall be entitled to seek injunctive or other equitable relief to prevent or stop any such breach, threatened or actual, without posting a bond or security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

Notwithstanding the foregoing, Confidential Information under the terms of this Agreement shall not be deemed to include, and the Recipient shall have no obligation to keep confidential, information which: (i) was rightfully known to the Recipient prior to its receipt from the Discloser; (ii) is or becomes public knowledge through no fault of the Recipient; (iii) is disclosed to the Recipient by a third party with the right to disclose the information without restriction; (iv) is independently developed by the Recipient without the use of any Confidential Information of the Discloser; (v) is disclosed with the approval of the Discloser; or (vi) is required or requested by any government or regulatory authority having jurisdiction over the Recipient or its affiliates. The obligations of the parties under this Section 12 shall commence on the Effective Date and shall continue for two years from the effective date of termination of this Agreement, provided that with respect to Confidential Information that qualifies as proprietary technological information, or otherwise as a “trade secret” under applicable law, the Discloser’s rights and the Recipient’s obligations under this Agreement shall survive indefinitely, or in the case of trade secrets, for so long as applicable law affords trade secret protection. For the avoidance of doubt, the Parties agree that the LiveVol Platform shall be regarded as “trade secret” information of LiveVol.

#### **13. General.**

(a) Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to conflict of law principals. Each Party hereby irrevocably consents to, and waives any right to contest, the jurisdiction or venue of the Federal or state courts located in Chicago, Illinois, as the exclusive forum in connection with any action or proceeding instituted to resolve a matter arising out of or relating to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

(b) Export Compliance. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the LiveVol Platform. Specifically, Subscriber acknowledges that the LiveVol Product may be subject to export restrictions imposed by the U.S. Government at any time and from time to time. Subscriber agrees not to export or reexport, directly or

indirectly, any of the LiveVol Platform to any country for which the US Government or any agency thereof prohibits or restricts the undertaking of business or requires an export license or other government approval, without first notifying LiveVol in writing and obtaining such license or approval.

(c) Attorneys' Fees and Costs. Each Party shall bear its own costs and expenses in the completion or enforcement of this Agreement.

(d) Notices. Notices to LiveVol shall be effective upon receipt (as evidenced by delivery receipt), if sent by nationally recognized courier to the attention of its General Counsel, at 433 West Van Buren Street, Chicago, Illinois, 60607, with a copy to legalnotices@cboe.com. Notices to Subscriber shall be effective upon receipt (as evidenced by delivery receipt), if sent by nationally recognized courier or by e-mail to the physical address or e-mail address specified by Subscriber under Subscriber Legal Notice Information on Exhibit A. All notices shall be in writing.

(e) Assignment. This Agreement is personal to Subscriber and shall not be assigned in whole or in part without the prior written consent of LiveVol. Notwithstanding the foregoing, Subscriber may assign this Agreement upon notice only (without LiveVol's consent) to any entity that controls, is controlled by, or under common control with Subscriber, or that acquires all or substantially all of the assets and business of Subscriber, provided that such person or entity assumes includes in its notice and acknowledgement that it is subject to all of the terms and conditions of this Agreement. Any other attempt by Subscriber to assign or transfer any of the rights, duties or obligations of this Agreement in violation of the foregoing shall be void.

(f) Amendments and Waivers. LiveVol may amend the terms of: (i) this LiveVol Master Software Subscription Agreement, effective upon not less than ninety (90) days' notice to Subscriber; (ii) Fees in any applicable Fee Schedule, effective upon not less than thirty (30) days' notice to Subscriber, and (iii) the Subscriber Policies or any other document attached to or referenced in the LiveVol Master Software Subscription Agreement, effective not less than thirty (30) days after posting on the Cboe LiveVol website provided separate written notice has also been given to Subscriber. Notwithstanding anything to the contrary, Subscriber may terminate this Agreement

before any amendment to this Agreement becomes effective by giving notice of such termination to LiveVol within fourteen (14) days of LiveVol's notice of amendment. The failure or delay of either Party at any time or times to require full performance of any provision hereof will in no manner affect the right of such Party in the future.

(g) Other Services Excluded. This Agreement covers only the right to gain access to and use the LiveVol Platform (as described in Exhibit C) and related support. To the extent Subscriber requires other services or products, including LiveVol's execution products or separate data subscription products, these services shall be pursuant to separate contract(s) between LiveVol and Subscriber.

(h) Counterparts. This Agreement may be signed in counterparts, each of which will be an original, but all of which, together, will constitute one and the same instrument.

(i) Severability. If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful or unenforceable as drafted, the Parties intend that this Agreement continue to be valid and enforceable and that such provision be amended and construed in a manner designed to effectuate the purposes of the provision. If such provision cannot be so amended and construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

Miscellaneous. This Agreement (including the Subscription Policies, Exhibits and other exhibits and addenda incorporated herein by reference) constitutes the complete understanding of the Parties, and supersedes all prior agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the Parties, with regard to the subject matter hereof. This LiveVol Master Software Subscription Agreement shall govern any conflict between it and the Subscription Policies, the Exhibits, and any other exhibit, addenda or other document referenced herein. As used in this Agreement, the terms "include(s)" and "including" mean "including without limitation." Sections 2, 3, 5, 7, 9, 10, 11(d), 12 and 13 of this Agreement will survive the termination of the Agreement.