CHICAGOKVM
TERMS OF SERVICE

This terms of service agreement (the "*Terms of Service*") governs the terms and conditions under which ChicagoKVM ("*ChicagoKVM*") will provide computer infrastructure and related products and services (the "*Products and Services*") to Customer (defined below) described in the order form submitted in connection with these Terms of Service (the "*Order Form*"). For purposes of these Terms of Service, "*Customer*" shall mean the entity, or if being purchased by an individual, the individual (A) executing this online transaction via click wrap agreement, or (B) executing the Master Service Agreement, if applicable.

These Terms of Service incorporate by reference ChicagoKVM's Master Service Agreement (the "*MSA*"), if applicable, ChicagoKVM's Service Level Agreement (the "*SLA*"), ChicagoKVM's Acceptable Usage Policy (the "*AUP*") and ChicagoKVM's Privacy Policy (the "*Privacy Policy*"), as in effect from time to time as set forth on ChicagoKVM's website, and the Order Form, each of which is made a part of these Terms of Service and collectively referred to in the Terms of Service as the "*Agreement*". Customer's use of ChicagoKVM's website, ChicagoKVM Network (as defined in the SLA) and the Products and Services is also subject to Customer's acceptance and compliance with these Terms of Service, the MSA, the AUP, the SLA and the Order Form. Capitalized terms used without being defined in these Terms of Service shall have the meaning ascribed to such capitalized term in the MSA, SLA or AUP, as applicable. **CHICAGOKVM RESERVES THE RIGHT TO AMEND, ALTER, MODIFY, REPLACE OR SUSPEND, FROM TIME TO TIME, IN ITS SOLE DISCRETION, ALL OR ANY PORTION OF THESE TERMS OF SERVICE, THE MSA, THE SLA, THE AUP AND ITS PRIVACY POLICY. CUSTOMER REPRESENTS AND WARRANTS THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THE MSA, SLA, AUP, PRIVACY POLICY AND THESE TERMS OF SERVICE.**

By signing an Order Form or submitting it online or using ChicagoKVM's website, ChicagoKVM Network (as defined in the SLA), Products or Services, or signing the MSA or checking the box "I AGREE", Customer agrees to the terms and conditions of this Agreement.

1. **Services.**

Subject to the terms of this Agreement, ChicagoKVM grants to Customer a non-exclusive, non-transferable, non-sublicenseable, revocable right to use and access the Products and Services for Customer's internal purposes beginning on the date that Customer first installs, orders and/or begins using the Products and Services ("*Effective Date*"). ChicagoKVM may perform additional technical, supplemental, or professional services (other than the Products and Services) for Customer at either ChicagoKVM's published pricing rates or at rates mutually agreed to in writing between Customer and ChicagoKVM. Also, ChicagoKVM retains the right to reject a request for Products and Services. ChicagoKVM may change, discontinue, add, modify, re-price or remove features or functionality from the Products and Services upon its discretion by providing Customer with notice via ChicagoKVM's website. If Customer continues to use the Products and Services following any such modification, Customer acknowledges and agrees to be deemed to have accepted such modification.

2. **Term and Renewal**.

Unless Customer agrees to a one-year term or unless otherwise stated in an Order Form or any service description, the initial term ("*Initial Term*") of this Agreement shall be month-to-month, commencing on the Effective Date and shall automatically renew (A) in the case of a month-to-month term, the first day

of each month for successive one-month periods unless cancelled or terminated earlier pursuant to the express terms of this Agreement or (B) in the case of a one-year term, each yearly anniversary of the Effective Date for successive one-year periods unless cancelled or terminated earlier pursuant to the express terms of this Agreement (in each case, a "*Renewal Period*"). Customer agrees to be bound by the service term selected on the Order Form or via applicable promotional codes. ChicagoKVM may cancel or elect not to renew the Products and Services for any reason or no reason at all pursuant to the terms of the Section 3 below.

3. **Customer Cancellation or Non-Renewal**.

In order to cancel or elect not to renew any Product or Service, Customer must, for a month-to-month term, either (i) submit an online service cancellation request (a "*Cancellation Notice*") by completing the cancellation form provided at the billing portal (https://chicagokvm.com/billing) at least five (5) days prior to expiration of the Initial Term or the then-current Renewal Term or (ii) submit to ChicagoKVM's billing department a written notice specifying Customer's election to cancel or not renew the Products and Services at least five (5) days prior to expiration of the Initial Term or the then-current Renewal Term. In the case of a one-year term or longer, Customer must provide Cancellation Notice at least sixty (60) days prior to expiration of the Initial Term or the then-current Renewal Term pursuant to the terms of this Section 3. CUSTOMER AKNOWLEDGES AND AGREES THAT NO PRODUCT OR SERVICE WILL BE CANCELLED, AND ALL PRODUCTS AND SERVICES SHALL CONTINUE TO RENEW AND CUSTOMER WILL CONTINUE TO BE BILLED FOR ALL PRODUCTS AND SERVICES UNLESS CUSTOMER CANCELS THE PRODUCTS AND SERVICES AS PROVIDED IN THIS SECTION.

4. **Termination**.

A. <u>ChicagoKVM Termination</u>. ChicagoKVM may immediately terminate this Agreement at any time, and without liability, upon the occurrence of any of the following events ("*ChicagoKVM Termination*"): (i) Customer's failure to pay any overdue amount within ten days after written notice by ChicagoKVM is given to Customer or (ii) Customer's material breach or violation of any provision of this Agreement (other than such violations set forth in clauses (iii), (iv) and (v) below) that is not cured within ten (10) days of Customer's receipt of written notice from ChicagoKVM referencing such breach or violation; (iii) Customer ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) calendar days, or making an assignment for the benefit of its creditors; (iv) Customer's violation of the AUP or the Privacy Policy; or (v) ChicagoKVM determines in its sole discretion that Customer continues to host content that may subject ChicagoKVM to legal liability (in which case, ChicagoKVM may terminate or modify the Products and Services to avoid such liability).

B. <u>Customer Termination</u>. Customer may terminate this Agreement with respect to all, and not less than all, of the Products and Services without liability (except for Charges due through the effective date of such termination) upon the occurrence of a material breach by ChicagoKVM of its obligations to provide the Products and Services according to the terms of this Agreement that is not cured within ten (10) business days after written notice from Customer describing such breach in detail is received by ChicagoKVM ("*Customer Termination*"). In the event of a Customer Termination, Customer shall pay (1) all outstanding amounts payable through the effective date of such termination and (2) if the Products and Services include software for which ChicagoKVM does not then provide general customer support, Customer shall pay to ChicagoKVM an amount equal to ChicagoKVM's cost of such software for the entire Initial Term and any applicable Renewal Periods. If Customer terminates this Agreement for any reason

other than a Customer Termination, Customer shall pay to ChicagoKVM an amount equal to all unpaid Charges through the effective date of such termination and (A) in the case of any Product and Service subscribed for on a month-to-month basis, all Charges for the Products and Services through the remainder of the Initial Term or the then-current Renewal Term, as applicable and (B) in the case of any Product and Service subscribed for other than on a month-to-month basis, all Charges for the Products and Services through the remainder of the Initial Term or the then-current Renewal Term, as applicable. CUSTOMER ACKNOWLEDGES THAT CUSTOMER WILL NOT BE ENTITLED TO ANY REFUND OR CREDIT IN THE EVENT THAT ANY PRODUCT OR SERVICE THAT IS PROVIDED ON THE BASIS OF A ONE-YEAR TERM IS TERMINATED, WITH OR WITHOUT CAUSE, PRIOR TO THE EXPIRATION OF THE ONE-YEAR TERM. CUSTOMER HEREBY WAIVES ALL RIGHTS TO ANY SUCH REFUND OR CREDIT.

C. Obligations and Consequences of Termination. Upon termination of this Agreement, ChicagoKVM and Customer shall have no further obligations to each other, except as provided in this Agreement. Upon termination of this Agreement, Customer shall (i) pay all Charges and other amounts due and owing to ChicagoKVM under these Terms of Service, (ii) immediately remove from ChicagoKVM's premises all property owned by Customer, including, but not limited to, immediately removing all of Customer's data from ChicagoKVM Network (including all servers owned or operated by ChicagoKVM), and (iii) return to ChicagoKVM all software, access keys, and any other property provided to Customer by ChicagoKVM under this Agreement. Any physical property of Customer not removed from ChicagoKVM's premises within forty-five (45) days after such termination shall become the property of ChicagoKVM, which may, among other things, dispose of such property without the payment of any compensation to Customer. Sections 4, 5, 6, 9, 10 and 11 shall survive the expiration, cancellation and termination of this Agreement for any reason.

5. Payment.

A.　　Payment Terms. Customer agrees to pay all charges, fees, penalties, early cancellation charges, reconnection fees, service interruption fees, installation fees and other amounts due under this Agreement (collectively, "*Charges*") in US dollars. Except as otherwise provided for in this Agreement, all Charges for the Products and Services, and for any additional services described in this Agreement, shall be invoiced to the Customer and paid in advance of the Initial Term and each Renewal Term (but may include any applicable pro-rated amounts for partial months of for Products and Services provided on a month-to-month basis) and shall be due and payable upon receipt. Any additional one-time charges, including early cancellation charges, accrued interest, late fees, service reinstatement fees, and any usage-based charges (installation or set-up fees) shall be invoiced in arrears and appear on either regular monthly invoices or separate invoices. Server rental charges are incurred immediately at signup and are prorated by two (2) days to allow for server provisioning and delivery. Customer also shall pay to ChicagoKVM all expenses incurred by ChicagoKVM in exercising any of its rights under this Agreement or applicable law with respect to the collection of a payment default, including attorneys' fees, court costs, and collection agency fees. If Customer fails to pay any past due amount within two (2) days after written notice by ChicagoKVM is given to Customer, ChicagoKVM may suspend performance under this Agreement and if such past due amounts remain unpaid for an additional five (5) days thereafter, ChicagoKVM may terminate this Agreement. ChicagoKVM may charge interest on any invoice amounts that are overdue by more than ten (10) days at the lesser of (a) 1.5% per month or (b) the maximum non-usurious rate under applicable law. Customer shall be deemed to have accepted as conclusively accurate any invoice that it has not disputed in a writing delivered to ChicagoKVM within ten (10) business days of the invoice date. Customer may withhold the disputed portions of payments that are properly and timely disputed under this Agreement as long as Customer timely pays all undisputed charges that are

outstanding. The parties shall work together in good faith to resolve any such disputed charge. In the event that this Agreement is terminated by ChicagoKVM for any reason constituting "*ChicagoKVM Termination*" (as defined above) or by Customer for any reason other than "*Customer Termination*" (as defined above), all Charges under the Agreement, including all remaining monthly or yearly fees due for the remaining portion of the Initial Term and each applicable Renewal Period, shall accelerate and are immediately due and payable. All set-up fees, monthly service fees and usage fees are non-refundable. Customer shall not be entitled to any refunds or credits, pro-rated or otherwise, in the event of early termination of this Agreement by ChicagoKVM according to the terms in this Agreement.

B.   Taxes.   The payments owed by the Customer are exclusive of (i) any tax including but not limited to withholding, sales, use, property, goods, services, exercise and value added tax, levies, duties which may be chargeable on any of the Products and Services provided to the Customer and (ii) any Charges with respect to any third party/add on products. Neither party shall be liable for the other party's taxes based on income. If withholding tax applies to any payments for the Products and Services, the Customer may deduct such taxes and pay them to the appropriate tax authority; provided that the Customer shall notify ChicagoKVM prior to payment and the Customer pays to ChicagoKVM any additional amount to ensure that ChicagoKVM receives the full amount of the invoice. If ChicagoKVM has the legal obligation to pay or collect taxes for which the Customer is responsible, the Customer must pay the appropriate amount in addition to the amount of the invoice, unless the Customer provides ChicagoKVM with a valid tax exemption certificate.

C.   Promotional Rates & Special Offers. ChicagoKVM may offer subsequent promotional rates or specials offers, where the terms of such offers may or may not be more favorable than the terms of Customer's Products and Services. Customer may not replace its current Products and Services with a promotional rate or special offer service, unless agreed to in writing by ChicagoKVM. Different promotional fees and special offers may not be combined together.

6. **Intellectual Property Rights.**

Customer acknowledges and agrees that ChicagoKVM (or its licensors) owns all legal rights to the ChicagoKVM's website and ChicagoKVM's Products and Services, including any intellectual property or other proprietary rights which subsist in the ChicagoKVM's website and ChicagoKVM's Products and Services (whether such rights are registered or unregistered, and wherever in the world those rights may exist).

7. **Network Security.**

ChicagoKVM agrees to maintain reasonable and appropriate measures related to physical security to protect Customer Content. For purposes of this Agreement, "*Customer Content*" shall mean all data, software and information created, uploaded or transferred by the Customer or its end users in connection with the Customer's Products and Services. **Customer is solely responsible for maintenance, integrity, retention, security and backup of Customer Content.** Customer is solely responsible for compliance with all applicable security and privacy laws, rules and regulations (including any requirements regarding cryptography) in any applicable regions or countries regarding the Customer Content.

8. **Lawful Purpose.**

ChicagoKVM reserves the right to refuse service to anyone for any reason or no reason at all. Customer may only use ChicagoKVM's Products and Services for lawful purposes and to support legal activities. ChicagoKVM reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrongdoing. If anything is not legal in the United States of America, it is not permitted to reside on ChicagoKVM's network. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited, which includes, but it is not limited to, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. If illegal content or usage is found, the account will be suspended and/or terminated. Additional details related to prohibited activities or content is set forth in the ChicagoKVM AUP.

9. **Indemnification.**

Customer agrees to indemnify, defend and hold harmless ChicagoKVM, its subsidiaries, their affiliates and each of their respective directors, officers, employees, shareholders and agents (each an "*Indemnified Party*") against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, or any and all costs thereof (collectively, "*Losses*") to which an Indemnified Party may become subject and which Losses arise out of, or relate to the Agreement, Customer Content, Customer's use of the Products and Services, or any alleged infringement of any trademark, copyright, patent or other intellectual property right and will reimburse an Indemnified Party for all legal and other expenses, including reasonable attorneys' fees incurred by such Indemnified Party, in connection with investigating, defending, or settling any Loss, whether or not in connection with pending or threatened litigation in which such Indemnified Party is a party.

ChicagoKVM agrees to indemnify, defend and hold harmless Customer against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, or any and all costs thereof (collectively, "*Losses*") to which the Customer may become subject and which Losses arise out of, or relate to the alleged infringement of any third party patent or other third-party intellectual property right by ChicagoKVM. ChicagoKVM will reimburse the Customer for all legal and other expenses, including reasonable attorneys' fees incurred by such Customer subject to the limitation of liability in Section 10(B).

10. **Disclaimers; Limitation on ChicagoKVM Liability; Statute of Limitations.**

A. <u>Disclaimers</u>. **CHICAGOKVM SHALL NOT BE LIABLE FOR (I) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE RESULTING FROM THE USE OF THE PRODUCTS AND SERVICES BY THE CUSTOMER OR ANY THIRD PARTIES OR ANY FAILURE OF THE PRODUCTS AND SERVICES OR (II) ANY LOSS OF DATA OR CORRUPTION OF DATA, INCLUDING LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS, FAILURE OF CHICAGOKVM NETWORK, RECLAMATION OF SERVES BY CHICAGOKVM, FAILURE OF SERVERS, THE RELOADING OF AN OPERATING SYSTEM OR OTHER SOFTWARE ON A SERVER OR THE NEGLIGENCE OF CHICAGOKVM. CUSTOMER IS SOLELY RESPONSIBLE FOR SAFEGUARDING, BACKING UP AND ARCHIVING ALL DATA OWNED, CONTROLLED OR TRANSMITTED BY CUSTOMER THAT RESIDES ON CHICAGOKVM NETWORK OR ANY SERVER OWNED OR OPERATED BY CHICAGOKVM. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE PRODUCTS AND SERVICES AND CHICAGOKVM HAS NO LIABILITY RELATED TO SUCH SELECTION, USE OR SUITABILITY.**

B.   Limitation on Liability. **IN NO EVENT SHALL CHICAGOKVM'S AGGREGATE LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY CUSTOMER TO CHICAGOKVM IN THE BILLING CYCLE IMMEDIATELY PRECEEDING SUCH CLAIM.**

C.   Statute of Limitation. **NO CLAIM MAY BE ASSERTED BY CUSTOMER AGAINST CHICAGOKVM MORE THAN TWO (2) YEARS FOLLOWING THE DATE OF THE EVENT THAT UNDERLIES ANY SUCH CLAIM.**

D.   Applicability of SLA. **CUSTOMER ACKNOWLEDGES AND AGREES THAT THE RECEIPT OF A SERVICE CREDIT AS PROVIDED FOR IN THE SLA CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND CHICAGOKVM'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY FAILURE OF CHICAGOKVM NETWORK, CHICAGOKVM HARDWARE OR CHICAGOKVM INFRASTRUCTURE OR THE FAILURE BY CHICAGOKVM TO PROVIDE CUSTOMER WITH THE PRODUCTS AND SERVICES PURCHASED BY CUSTOMER IN ACCORDANCE WITH THIS AGREEMENT WHICH RESULTS FROM A QUALIFIED NETWORK DOWNTIME EVENT OR ANY OTHER QUALIFIED DOWNTIME EVENT.**

11. No Warranty.

TO THE FULLEST EXTENT ALLOWED BY LAW, CHICAGOKVM PROVIDES ALL PRODUCTS AND SERVICES "AS IS", WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. Miscellaneous Terms.

A.   Bandwidth and Disk Usage. Customer agrees that bandwidth and disk usage shall not exceed the number of megabytes per month for the products and Services ordered by Customer on the Order Form (the "*Agreed Usage*"). ChicagoKVM will monitor Customer's bandwidth, storage and disk usage. ChicagoKVM shall have the right to take corrective action if Customer's bandwidth, storage or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Products and Services, or termination of these Terms of Service, which actions may be taken by ChicagoKVM in its sole and absolute discretion. If ChicagoKVM takes any corrective action under these Terms of Service, Customer shall not be entitled to a refund of any fees paid in advance prior to such action. Bandwidth usage is measured on a calendar month basis. Both incoming and outgoing traffic is counted and applied towards the Agreed Usage. In the event that Customer exceeds the Agreed Usage, ChicagoKVM may, in its sole discretion, collect a deposit, in the amount of $0.20 per GB from Customer, or to the extent that Customer has a credit card on file with ChicagoKVM, apply such charge against Customer's credit card. Data transfer in excess of the Agreed Usage shall be automatically billed to Customer. Unused Agreed Usage or bandwidth allocations cannot be carried over to future months or applied to other services.

B.   Notices. Unless otherwise specified in this Agreement, all notices, requests and other communications required under this Agreement shall be given in writing by electronic mail **AND** first-class mail to the address and email address below. Communications about Services shall be given in writing via the Customer Portal.

> **ChicagoKVM**
> 600 Third Avenue, Floor 2
> New York, NY 10016

Email: billing@ChicagoKVM.com

[Customer Name]

[ENTER ADDRESS]
Email: _____

C.   Waiver. It is agreed that no waiver by any party of any breach or default of any of the covenants or agreements in this Agreement set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

D.   Severability. If one or more of the provisions contained in this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected.

E.   Force Majeure. Except for payment obligations, neither party shall lose any rights under this Agreement or be liable to the other party for damages or losses on account of failure of performance by the defaulting party if the failure is occasioned by any occurrence or contingency beyond its reasonable control, including war, strike, fire, Act of God, earthquake, flood, lockout, embargo, governmental acts or orders or restrictions, failure of suppliers, terrorist acts, sabotage, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party; provided that such party shall use commercially reasonable efforts to promptly mitigate any damages or losses.

F.   ChicagoKVM's Use of Customer's Name. Customer agrees that ChicagoKVM may publicly disclose that ChicagoKVM is providing services to Customer and may include Customer's name in any promotional materials, such as press releases or ChicagoKVM's website. Except as set forth in this section, neither party may publicly use the other party's logo or other trade or service mark without that party's written consent.

G.   Export Compliance. Customer agrees to be responsible for compliance with all applicable laws, regulations and restrictions of the U.S. Department of Commerce and any other United States' or foreign agencies and authorities in connection with Customer and Customer End Users' use of ChicagoKVM's Products and Services and to not, in violation of any laws, transfer, or authorize the transfer of, any Services (a) into or for the benefit of an entity located in a country subject to a U.S. and/or U.N. embargo, or (b) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List of proliferation concern, or the U.S. State Department's Debarred Parties List. By using ChicagoKVM's Products and Services, Customer represents and warrants that neither Customer nor any of Customer End Users are located in, under the control of, or a national or resident of, any such country or on any such list. Customer assumes responsibility for compliance with laws and regulations applicable to Customer Content, export, re-export or import of products, technology or technical data provided under this Agreement and for obtaining required export and import authorizations. For purposes of this Agreement, Customer End Users shall mean a third party, which the Customer provides services through ChicagoKVM's Products and Services.

H.   Non-Solicitation. During the term of this Agreement and for twelve (12) months following termination of this Agreement, Customer agrees that it shall not solicit for employment with Customer (or with any other party) any employee of ChicagoKVM or interfere in the employment relationship between ChicagoKVM and any of its employees with whom Customer has had contact in connection with this Agreement.

I.   Ownership. ChicagoKVM is the sole owner of all intellectual property, and all derivatives thereof that ChicagoKVM may develop in the course of providing the Products and Services. Customer is the sole owner of its Customer Content. Each party to this Agreement retains exclusive ownership and rights in its trade secrets, inventions, copyrights, and other intellectual property. Upon termination of the Agreement, Customer agrees to promptly release any Internet Protocol numbers, addresses, or address blocks

assigned to Customer in connection with the Products and Services. For clarification purposes, ChicagoKVM shall maintain and control ownership of all IP numbers and addresses that may be assigned to Customer. ChicagoKVM reserves, in its sole discretion, the right to change or remove any and all such Internet Protocol numbers and addresses.

J.   Third-Party Beneficiaries. There shall be no third party beneficiaries to the Agreement, including customers, employees, agents, or insurers.

K.   Assignment. This Agreement is not to be assignable by Customer without ChicagoKVM's prior written consent. ChicagoKVM may assign the Agreement in whole or in part upon written notice to Customer, where such notice may be provided via the Customer Portal. This Agreement is binding upon and accrues to the benefit of any permitted assignee, and any such assignee will agree to perform the obligations of the assignor.

L.   Confidentiality. The parties agree to maintain the terms of this Agreement confidential.

M.   Governing Law; Jurisdiction; Venue. THIS AGREEMENT AND ANY DISPUTE ARISING FROM THE PERFORMANCE OR BREACH OF THIS AGREEMENT WILL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS PRINCIPLES AND EXCLUDING ANY APPLICATION OF THE UNITED STATES CONVENTION ON THE INTERNATIONAL SALE OF GOODS. CUSTOMER (I) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, LOCATED IN NEW YORK CITY AND NEW YORK COUNTY, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT OR ANY OF THE TRANSACTINS CONTEMPLATED BY THIS AGREEMENT BROUGHT BY THE CUSTOMER OR CHICAGOKVM OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, (II) IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH SUITS, ACTIONS OR PROCEEDINGS MAY BE HEARD AND DETERMINED IN SUCH STATE COURT IN NEW YORK CITY, NEW YORK COUNTY OR THE FEDERAL DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN NEW YORK COUNTY AND (III) IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL OBJECTIONS TO THIS VENUE, AND AGREES NOT DISPUTE PERSONAL JURISDICTION OR VENUE IN THESE COURTS.

N.   Exclusion of UN Convention and UCITA. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.

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CHICAGOKVM

COPYRIGHT AND TRADEMARK INFRINGEMENT POLICY

ChicagoKVM ("*ChicagoKVM*") is committed to respecting and protecting the intellectual property rights of third parties. To that end, ChicagoKVM developed this Copyright and Trademark Infringement Policy (the "*Copyright and Trademark Policy*") so third parties who believe their copyright or trademark rights have been violated can submit copyright and trademark complaints to ChicagoKVM. If you believe in good faith that materials hosted by ChicagoKVM infringe your copyright or trademark rights, you (or your agent) may send us notice requesting that the material be removed, or access to it blocked. The notice must include the following information:

(a) physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

(b) identification of the copyrighted work or trademark claimed to have been infringed (or if multiple copyrighted works or trademarks located on the Website are covered by a single notification, a representative list of such works);

(c) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to allow ChicagoKVM to locate the material on the Website;

(d) the name, address, telephone number, and email address of the complaining party;

(e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright or trademark owner, its agent, or the law; and

(f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please be advised that ChicagoKVM will not respond to complaints that do not meet these requirements. If ChicagoKVM determines that the materials alleged to infringe your copyright or trademark rights do not require removal, ChicagoKVM will remove those materials only pursuant to a court order declaring the content or use of the materials unlawful.

If ChicagoKVM's Customer or a Customer's end user believes in good faith that a notice of copyright infringement has been wrongly filed against it, the Digital Millennium Copyright Act ("DMCA") permits the Customer or end user to send a counter-notice to ChicagoKVM. Counter-notices must include the following information:

(a) name, address, and telephone number;

(b) the source of the content that was removed;

(c) a statement under penalty of perjury that the Customer or end user has a good faith belief that the content was removed in error;

(d) a statement that the Customer or end user consents to the jurisdiction of the Federal District Court for the judicial district in which the complaining party's address is located, or if the complaining party's address is outside of the United States, for any judicial district in which ChicagoKVM may be found, and that the Customer or end user will accept service of process from

the person who provided the original complaint; and

(e) a physical or electronic signature (for example, typing the Customer's or end user's full name).

Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA and should be sent to the agent identified below. We suggest that you consult your legal advisor before filing a notice or counter-notice. Also, be aware that there can be penalties for false claims under the DMCA.

Agent to Receive Notices of Claimed Infringement:

copyright@chicagokvm.com
DMCA Complaints
ChicagoKVM
600 Third Aveue, 2nd Floor, New York, NY 10016

CHICAGOKVM

ACCEPTABLE USE POLICY

This Acceptable Use Policy (as amended, modified or supplemented from time to time, this "*AUP*") of ChicagoKVM, ("*ChicagoKVM*"), is designed to (i) protect ChicagoKVM's customers, users of ChicagoKVM's website, Products and Services, ChicagoKVM Network (as defined in the SLA) and physical infrastructure, (ii) further compliance with all relevant laws and regulations, (iii) promote the security and availability of ChicagoKVM's website and (iv) regulate and restrict the use of all Products and Services provided by ChicagoKVM and its website. This AUP incorporates by reference ChicagoKVM Terms of Service, Privacy Policy and SLA (collectively referred to herein as the "*Agreement*"). Capitalized terms used in this AUP and not otherwise defined in this AUP shall have the meaning ascribed to such capitalized term in the SLA or Terms of Service, as applicable. **CHICAGOKVM RESERVES THE RIGHT TO AMEND, ALTER, MODIFY, REPLACE OR SUSPEND, FROM TIME TO TIME IN ITS SOLE DISCRETION, ALL OR ANY PORTION OF THE SLA, THE AUP AND ITS PRIVACY POLICY AND CUSTOMER'S USE OF CHICAGOKVM'S SERVICE AFTER CHANGES TO THE AUP ARE POSTED ON THE LEGAL PAGE OF CHICAGOKVM'S WEBSITE WILL CONSTITUTE CUSTOMER'S ACCEPTANCE OF ANY SUCH AMENDMENTS AND MODIFICATIONS. CUSTOMER REPRESENTS AND WARRANTS THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THIS AGREEMENT.**

This AUP does not obligate ChicagoKVM to monitor, review, or police the data and content stored or transmitted through ChicagoKVM website or ChicagoKVM Services. Unless and until notified, ChicagoKVM is not likely to be aware of any violations of this AUP or any violations of law. CHICAGOKVM EXPRESSLY DISCLAIMS ANY LIABILITY FOR THE DATA AND CONTENT TRANSMITTED THROUGH OR INTERMEDIATELY, TEMPORARILY OR PERMANENTLY SOTRED ON CHICAGOKVM NETWORK AND FOR THE ACTIONS OR OMISSION OF ANY CUSTOMER OR CUSTOMER END USER.

Prohibited Activities.

Customer is responsible for complying with this AUP. ChicagoKVM prohibits the use of its Products and Services, its website or its network to foster, promote illegal, abusive or irresponsible behavior, including, but not limited to, the following:

- Any activity or conduct that is likely to be in breach of any applicable laws or regulations, including data protection and privacy laws and laws relating to unsolicited commercial electronic messages, specifically, including, but not limited to, spam, child pornography, intellectual property;
- Obtaining unauthorized access to, or interfering by any means with, any user, system, network, service, or account, including evasion of filters or violation of the security or integrity of any network or system;
- Use of any false, misleading, or deceptive TCP-IP packet header information in an email or a newsgroup posting;
- Introducing knowingly or recklessly any virus or other contaminating code into the Services;
- Collecting or using information, including email addresses, screen names or other identifiers, by deceit, (such as, phishing, Internet scamming, password robbery, spidering, and harvesting);
- Distributing software that covertly gathers or transmits information about a user;
- Distributing computer viruses or malware of any kind. Example of non-acceptable content or links: "Pirated Warez", OGG, AVI, MPEG, ISO, "Hacker programs or archives", "Copyrighted Digital Movie Copies (DIVX)" and "Unlicensed MP3";
- Any conduct that is likely to result in retaliation against the ChicagoKVM network or website, or

ChicagoKVM's employees, officers or other agents, including engaging in behavior that results in any server being the target of a denial of service attack (DoS);

- Any activity intended to withhold or cloak identity or contact information, including the omission, deletion, forgery or misreporting of any transmission or identification information, such as return mailing and IP addresses;
- Interference with service to any user of the ChicagoKVM or other network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
- Harassing or engaging in any sort of cyber bullying or advocating or encouraging violence of any kind against any individual, group, entity, or government.
- Any action which directly or indirectly results in any of our IP space being listed on any abuse database (i.e. Spamhaus); or
- Any action that is otherwise illegal or solicits conduct that is illegal under laws applicable to Customer or to ChicagoKVM.

Legal Investigations.

ChicagoKVM will respond to all valid subpoenas or court orders from entities and courts that have proper jurisdiction over ChicagoKVM. ChicagoKVM will always attempt to notify the Customer of subpoenas or court orders, unless legally prohibited; however, CHICAGOKVM RESERVES THE RIGHT TO COMPLY WITH ANY VALID SUBPOENAS AND COURT ORDERS WITHOUT NOTICE TO THE CUSTOMER.

Violations of AUP.

ChicagoKVM may enforce this AUP with or without notice to the Customer, by any action it deems reasonable, in its sole discretion. In addition to the remedial provisions provided elsewhere in this AUP, ChicagoKVM may suspend or terminate a Customer's access to ChicagoKVM's Products and Services and take legal action against a Customer to enforce compliance with this AUP.

Reporting Violations.

ChicagoKVM accepts reports of alleged violations of this AUP via email sent to abuse@chicagokvm.com . Reports of alleged violations must be verified and must include the name and contact information of the complaining party and a description of the content allegedly in violation.

Consequences of Violation of AUP.

By violating this AUP, or otherwise creating possible legal exposure for ChicagoKVM, ChicagoKVM may suspend or terminate all or any part of the ChicagoKVM's Products and Services provided to Customer in accordance with this Agreement. ChicagoKVM may intercept or block any content or traffic belonging to Customer or to Customer End Users where ChicagoKVM Products and Services are being used unlawfully or not in accordance with this AUP.