

**THIS LICENSE AGREEMENT IS PROVIDED FOR YOUR REFERENCE. IT IS WHAT YOU WILL FIND IN THE VIZEXPLORER SOFTWARE PRODUCT WHEN IT IS INSTALLED AND GOVERNS THE USE OF THE VIZEXPLORER SOFTWARE PRODUCT. TO COMPLETE THE INSTALLATION OF AND USE THE VIZEXPLORER SOFTWARE PRODUCT, YOU WILL BE REQUIRED TO AGREE TO THE TERMS SET FORTH BELOW.**

## END USER SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS END USER SOFTWARE LICENSE AGREEMENT ("AGREEMENT") CAREFULLY.

BY CLICKING ON THE "ACCEPT TERMS" BUTTON YOU ARE AGREEING TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT YOU MUST CLICK THE "DO NOT ACCEPT TERMS" BUTTON.

### 1. LICENSE GRANT

- 1.1 Unless the context otherwise requires; in this Agreement:  
"Agreement" means: this End User Software License Agreement;  
"Licensor" means: NEW BI US GAMING, LLC if the Software has been provided to you by NEW BI US GAMING, LLC, or NEW BI US, LLC if this Software has been provided to you by NEW BI US, LLC;  
"Software" means: Licensor's client application and/or server application software (as applicable, and in executable form only) provided to you by Licensor or with Licensor's written consent, and (i) all user guides, manuals and other user documentation relating to the Software (whether provided in hard-copy, electronically or on-line); (ii) all enhancements, modifications, updates, new releases that may, from time to time, be provided to you by Licensor or with Licensor's written consent; and (iii) all additional Licensor software code (including, but not limited to, SQL interface code) but excluding all source code, that may, from time to time, be provided to you by Licensor or with Licensor's written consent;  
"You" or "Your" means: an individual or legal entity exercising rights or permissions granted by this Agreement.
- 1.2 Unless the context provides otherwise; in this Agreement a reference to a "party" shall be a reference to Licensor or you, as the case may be, and a reference to the "parties" shall mean both Licensor and you.
- 1.3 The terms and conditions of this Agreement apply to all Software provided to you by Licensor or with Licensor's written consent, unless other terms and conditions accompany those items; if so, those other terms and conditions apply.
- 1.4 **Subscription** - If you are acquiring or have acquired a subscription of the Software, then, subject to payment of the applicable subscription fees, you may use the Software subject to the terms and conditions of this Agreement. Your right to use the Software is a personal, non-exclusive, non-transferable, non-sub-licensable right and will cease at the end of the subscription term (unless your right to use the Software is terminated earlier under the provisions of this Agreement). Your right to use the Software automatically terminates if you fail to comply with any of the terms and conditions of this Agreement.
- 1.5 **License** - If you are acquiring or have acquired a license of the Software, then, subject to payment of the applicable license fees, Licensor grants to you a personal, non-exclusive, non-transferable, non-sub-licensable license for you to use the Software, subject to the terms and conditions of this Agreement. If you have acquired a Software license for a specified license term, your right to use the Software will cease at the end of the specified license term (unless your right to use the Software is terminated earlier under the provisions of this Agreement). The Software licenses granted under this Agreement automatically terminate if you fail to comply with any of the terms and conditions of this Agreement.
- 1.6 No license or subscription is granted for any source code and no license or right is granted to modify, adapt, create a derivative work, merge, or translate the Software without the prior written consent of Licensor.
- 1.7 This Agreement records a subscription or license and does not record a sale of a copy of the Software and does not render you the owner of a copy of the Software.

### 2. RESTRICTIONS ON SOFTWARE USE

- 2.1 As a condition of your subscription or license, you must not:
- use the Software other than solely for your internal business purposes;
  - cause the number of permitted users of the Software to be exceeded;
  - copy the Software; except, if you are in physical possession of the Software you may make one copy of the Software solely for backup or archival purposes;
  - modify or adapt the Software or merge it into another program;
  - reverse engineer, disassemble, decompile, translate or make any attempt to discover the source code of the Software. If applicable law expressly

allows you to have additional information for interoperability, please contact Licensor directly for such information;

- use the Software for any facility management service, time-share, rental or service bureau or place the Software onto a server so that it is accessible via a public network such as the Internet;
- cause any marking or wording on the Software or its packaging that refers to Licensor or Licensor's licensor as the developer or author of the Software or copyright holder or otherwise as the holder of proprietary rights in the Software, to be removed, concealed, altered or obscured;
- license, sublicense, rent, lease, lend, assign, transfer or otherwise deal in the Software or any portion of the Software;
- use or deal with the Software in any manner or combine the Software with any other software, hardware or product where such use, dealing or combination could (i) cause you to be in breach of any obligation under any third party license agreement, or (ii) cause Licensor or Licensor's licensor to be in breach of any obligation under any third party license agreement where you were made aware of the terms of the relevant third party license agreement by Licensor or Licensor's licensor or (iii) infringe any third party intellectual property rights;
- use the Software to engage in any illegal activity.

2.2 Specific licensors and third parties are identified in the documentation and in other material distributed with the Software. You agree to any additional terms and conditions specific to particular licensors, as described in the documentation, which are incorporated herein by reference.

### 3. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

3.1 You acknowledge that any and all of the trademarks, trade names, copyrights, patents and other Intellectual Property Rights used or embodied in or in connection with the Software are and remain the exclusive property of Licensor and/or its licensors as applicable, regardless of who may be the owner of the tangible media in or on which the Software may be stored.

3.2 For the purposes of Clause 3, "Intellectual Property Rights" means any patent, registered design, copyright, design right, topography right, trade mark, service mark, application to register such rights, rights in nature of any of the aforementioned rights, trade secrets, rights to unpatented know-how, right of confidence and any other intellectual or industrial property rights of any kind whatsoever in any part of the world.

### 4. CONFIDENTIAL INFORMATION

4.1 The Software, its source code, and all information, data, drawings, specifications, documentation, source or object code which Licensor may have disclosed or given to or may from time to time disclose or give to you relating to the Software are proprietary, secret and confidential to Licensor or Licensor's licensors as applicable. You agree with Licensor that you shall use such information and materials disclosed to you solely in accordance with the provisions of this Agreement and that you will not at any time during or after the termination of this Agreement disclose the same to any third party without Licensor's prior written consent, or use the same for other than the purposes of this Agreement.

4.2 All information relating to the parties' respective businesses which they may have disclosed or given to or may from time to time disclose or give to the other party must be kept strictly confidential by the recipient party and used only for the purposes of this Agreement.

4.3 Irreparable Harm. Each party acknowledges that in the event of that party's misappropriation or other breach of any obligation with respect to the other party's proprietary, secret or confidential information such other party will not have adequate remedy in money or damages and will suffer irreparable harm. Therefore, such other party will be entitled to obtain an injunction against such infringement, misappropriation or other breach from any court of competent jurisdiction immediately upon request. A party's right to obtain injunctive relief will not limit its right to seek further remedies.

### 5. INFRINGEMENT

5.1 Subject to Clause 5.2, if Licensor believes the Software may infringe a third party's intellectual property rights, then Licensor may: (i) procure for you a right to continue to use the Software; or (ii) replace the Software with software of comparable functionality acceptable to you; or (iii) modify the Software to avoid the infringement.

5.2 If Licensor believes the options in Clause 5.1 are not commercially reasonable, then Licensor may terminate your subscription or license for the infringing Software and (i) in the case of a subscription of the Software, refund to you any subscription fees you

have paid in advance to Licensor in respect of a subscription period falling after the date of termination, and (ii) in the case of a license of the Software, refund the license fees paid by you to Licensor for the infringing Software, less depreciation for use assuming straight line depreciation over twenty-four months.

## 6. LIMITED WARRANTY

6.1 Licensor warrants that for a period of thirty (30) days after installation of the Software, the Software will substantially conform to its technical documentation and specifications in all material respects, provided the Software is used in accordance with the documentation and with compatible computer hardware and operating systems. This limited warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Licensor's entire liability, and your sole and exclusive remedy will be, at Licensor's option, either to (a) correct or help you work around or avoid a reproducible error, (b) replace defective media or documentation or (c) authorize a refund in respect of the nonconforming period. Any replacement Software will be warranted for the remainder of the original warranty period only.

6.2 EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER, THE WARRANTY GIVEN IN CLAUSE 6.1 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND LICENSOR DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (REGARDLESS OF WHETHER LICENSOR KNOWS OR HAD REASON TO KNOW OF YOUR PARTICULAR NEEDS) AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS; EXCEPT TO THE EXTENT OF THE WARRANTY GIVEN IN CLAUSE 6.1, THE SOFTWARE IS PROVIDED "AS IS".

6.3 You acknowledge that your rights under this Agreement, in the nature of warranty or otherwise, are solely against Licensor. NO THIRD PARTY MAKES ANY WARRANTY, ASSUMES ANY LIABILITY, OR UNDERTAKES TO FURNISH YOU WITH ANY SUPPORT OR INFORMATION CONCERNING THE SOFTWARE OR ANY PORTION OF THE SOFTWARE OR IS LIABLE FOR ANY DAMAGES WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR OTHERWISE. You hereby release all third parties from any claims, damages or losses arising from the use of the Software, regardless of the form of action.

## 7. LIMITATION OF LIABILITY

7.1 EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER, IN NO EVENT WILL LICENSOR BE LIABLE TO YOU FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, ANY INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF DATA, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT THIS AGREEMENT OR CONNECTED IN ANY WAY WITH THE SOFTWARE OR USE OF THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER, LICENSOR'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) SHALL NOT EXCEED AND IS HEREBY LIMITED TO A MAXIMUM OF (i) IN RELATION TO A SUBSCRIPTION OF THE SOFTWARE, THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY YOU FOR THE SOFTWARE IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE TIME SUCH DAMAGES OR LOSSES WERE INCURRED, AND (ii) IN RELATION TO A LICENSE OF THE SOFTWARE, THE AMOUNT OF LICENSE FEES PAID BY YOU FOR THE SOFTWARE PRECEDING THE TIME SUCH DAMAGES OR LOSSES WERE INCURRED, LESS DEPRECIATION FOR USE ASSUMING STRAIGHT LINE DEPRECIATION OVER TWENTY-FOUR MONTHS.

7.3 NO ACTION ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY YOU MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION AROSE.

## 8. INDEMNIFICATION

8.1 You shall defend, indemnify and hold harmless Licensor and Licensor's officers, employees and agents, from and against, any claim, action or proceeding brought by a third party and any liability, loss, damage, cost or expense (including, without limitation, legal costs and expenses) arising out of such claim, action or proceeding, in each case, in connection with your use of the Software or a breach of your obligations under this Agreement.

## 9. OEM SOFTWARE

9.1 THE PROVISIONS OF THIS CLAUSE 9 ONLY APPLY IF LICENSOR HAS PROVIDED ANY OF THE FOLLOWING TO YOU:

- (a) that software product commonly known as "MapQuest";
- (b) that software product commonly known as "WebSphere"; or
- (c) that software product commonly known as "JBoss".

9.2 If you have requested Licensor to provide "MapQuest", "WebSphere" or "JBoss" to you, then Licensor may do so through any company in the Licensor group of

companies (by license sale or otherwise) in which case each reference to Licensor in this Clause 9 shall be a reference to such company in the Licensor group of companies.

9.3 If Licensor has provided "WebSphere" to you, then your subscription or license is conditioned on you reviewing, accepting and complying at all times with the following terms and conditions ("IBM Terms"):

- (a) the terms and conditions of the IBM International Program License Agreement currently located at <http://www-03.ibm.com/software/sla/slabd.nsf/sla/bla>, which may be modified from time to time;
- (b) the terms and conditions of the License Information Document for the relevant WebSphere product currently located at <http://www-03.ibm.com/software/sla/slabd.nsf>, which may be modified from time to time;
- (c) the relevant WebSphere product's "NOTICES" file (or substantially similar title);
- (d) any file or files referenced in such "NOTICES" file; and
- (e) any file or files contained in or accompanying third party code entitled "README", "COPYING", "NON-IBM LICENSE", or substantially similar title.

9.4 If Licensor has provided "MapQuest" to you, then your subscription or license is conditioned on you reviewing, accepting and complying at all times with MapQuest's end-user terms and conditions currently located at [http://cdn.mapquest.com/mq\\_legal/termsofuse.html](http://cdn.mapquest.com/mq_legal/termsofuse.html), which may be modified from time to time ("MapQuest Terms").

9.5 If Licensor has provided "JBoss" to you, then your subscription or license is conditioned on you reviewing, accepting and complying at all times with the terms and conditions of the JBoss License Agreement currently located at the following website link: <http://www.redhat.com/licenses/>, which may be modified from time to time ("JBoss Terms").

9.6 By accepting the terms and conditions of this Agreement you agree and acknowledge that you have reviewed and also accept:

- (a) the MapQuest Terms, if Licensor has provided "MapQuest" to you;
- (b) the JBoss Terms, if Licensor has provided "JBoss" to you;
- (c) the IBM Terms, if Licensor has provided "WebSphere" to you.

9.7 Any breach of the MapQuest Terms, the IBM Terms or the JBoss Terms shall be deemed to be also a breach of this Agreement.

## 10. THIRD PARTY SOFTWARE

10.1 The Software contains, or is used with other software that contains, that third party software ("Thirdware") set out in Licensor's "Thirdware Information Disclosure Statement". A copy of the current Thirdware Information Disclosure Statement is located at <http://www.vizexplorer.com/license-agreements/>. By accepting the terms and conditions of this Agreement, you agree that you have read, and agree to be bound by, the terms and conditions contained in the Thirdware Information Disclosure Statement.

10.2 From time to time as it deems appropriate, Licensor may change or remove third party software from the Software, for the better operation of the Software, without notice to Customer. The terms and conditions set forth in the Thirdware Information Disclosure Statement may be varied from time to time by Licensor posting the new terms on its website or by Licensor providing a copy of the new terms directly to you; however no changes will be retroactive.

## 11. TERMINATION

11.1 Either party may terminate this Agreement if the other party is in breach of any of its obligations under this Agreement and fails to remedy such breach within thirty (30) days after being given written notice from the non-breaching party to remedy the breach; except that upon a breach of Clauses 2 or 4, no remedy period is required and termination shall be effective upon notice from the non-breaching party.

11.2 Either party may by notice and without remedy period immediately terminate this Agreement if the other party ceases its business, is subject to bankruptcy, liquidation (except for the purpose of a solvent reconstruction or amalgamation) or insolvency proceedings, a receiver or statutory manager is appointed in respect of the whole or any part of its assets, it makes an assignment for the benefit of or composition or arrangement with its creditors or threatens to do any of these things.

11.3 Upon termination of this Agreement all licenses and subscriptions granted by Licensor under this Agreement shall automatically terminate and you shall cease all use of the Software.

11.4 Within 15 days of termination or expiry of this Agreement you shall deliver to Licensor, or destroy (at Licensor's discretion), all copies of any Software in your possession or control.

## 12. NOTICES

12.1 Each notice or other communication given under this Agreement:

- (a) must be in writing and given by hand delivery, courier such as FedEx, DHL, UPS and the like, certified mail with return receipt requested or email. All overseas notices shall be sent by such courier or email; and

- (b) must be addressed to the recipient party at its address or email address from time to time notified to the other party; and
- (c) will be treated as having been received by the recipient party:
  - (i) if delivered by hand or by courier, on delivery;
  - (ii) if sent by mail, 3 Business Days after posting;
  - (iii) if sent by email, when the sender receives an acknowledgment or receipt confirming the successful transmission of the email or when the recipient acknowledges receipt of the notice (whether orally or in writing).

12.2 Any notice received or treated as having been received in the place to which it is sent (a) after 5.00 p.m. on a Business Day; or (b) on a day that is not a Business Day, will be treated as having been received by the recipient at 9.00 a.m. on the next Business Day in that place. "Business Day" means any day (other than a Saturday, Sunday) on which all registered banks are open for general banking business in the place where Licensor is situated.

### **13. LATE PAYMENT CHARGES**

13.1 Without restriction to Licensor's other remedies, for all amounts payable under this Agreement that are overdue, at Licensor's request you shall pay thereon a late payment charge equivalent to the lower of (i) 1.5% per month or (ii) the highest rate permitted by law, until such time as the relevant overdue amount is actually paid.

### **14. GENERAL TERMS**

14.1 **Printed terms** – Any printed paper subscription or license terms for the Software signed by both parties shall take the place of and prevail over any on-screen subscription or license terms for the Software.

14.2 **Export restrictions** – You shall comply with all applicable export and re-export restrictions and regulations relating to the Software.

14.3 **Force Majeure** - Without affecting your payment obligations under this Agreement, neither party will be liable for any delay or failure to perform its obligations under this Agreement if the delay is due to an event beyond that party's reasonable control.

14.4 **Assignment** - You may not assign or transfer any of your rights or obligations under this Agreement without the prior written consent of Licensor; any such assignment or transfer without Licensor's prior written consent will be null and void. Licensor may assign or transfer all or any of its rights or obligations under this Agreement without your prior written consent or approval.

14.5 **Severance** - If any provision or part of a provision of this Agreement is or becomes invalid, void or unenforceable in any respect under any applicable law for any reason, it will not affect the legality, validity or enforceability of the other provisions or other part of any provision of this Agreement and will be severed from this Agreement so that the remaining provisions or other part of any provision will remain in force and effect and will be valid and enforceable to the fullest extent permitted by the law.

14.6 **Surviving clauses** – Clauses 2, 3, 4, 6, 7, 8, 11.3, 11.4, 14.5, 14.6, 14.8 and 14.10 will survive the termination of this Agreement. Also all other terms of this Agreement susceptible to survival, will survive termination of this Agreement.

14.7 **Waiver and amendment** - A waiver of any provision of this Agreement by any of the parties will only be effective if in writing and will only apply to the specific instance and purpose for which it was given. No waiver of any breach or failure to enforce any provision of this Agreement at any time by either party will in any way limit or waive the right of that party to subsequently enforce and compel strict compliance. No modification or addition to this Agreement will be effective unless it is in writing signed by all of the parties hereto.

14.8 **UCITA** - The parties agree that to the fullest extent permitted by applicable law (1) the provisions of the Uniform Computer Information Transactions Act (UCITA), and (2) the United Nations Convention on Contracts for the International Sale of Goods, are specifically excluded from application to this Agreement.

14.9 **No partnership** – Each party is an independent contractor and this Agreement does not create or constitute a joint venture, partnership or agency between the parties.

14.10 **Governing law and jurisdiction** – This Agreement will be governed by and construed in accordance with the laws of the State of California and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of the State of California in relation to any disputes, actions, suits or proceedings arising out of or in connection to this Agreement. The parties unconditionally and irrevocably waive and agree not to raise, plead, or make any objection to proceedings arising out of or in connection with this Agreement in the Courts of the State of California on the grounds that those Courts are not the forum in which the dispute, action, suit or proceedings can be most suitably tried for the interests of all the parties and for the ends of justice. Notwithstanding the foregoing, Licensor may bring and maintain an action for injunctive relief pursuant to Clause 4.3 ("Irreparable Harm") in any court of competent jurisdiction.

**END**