

TERMS OF SERVICE AND END USER LICENSE AGREEMENT

PLEASE READ THESE TERMS OF SERVICE AND END USER LICENSE AGREEMENT ("AGREEMENT") CAREFULLY.

YOU AGREE TO THIS AGREEMENT BY (A) CLICKING TO ACCEPT OR AGREE WHERE SUCH OPTION IS MADE AVAILABLE TO YOU OR (B) ACTUALLY USING OR ACCESSING THE SERVICE. IF YOU DO NOT AGREE TO THIS AGREEMENT, DO NOT USE THE SERVICE.

1. APPLICATION

1.1 The terms of this Agreement constitute an agreement by and between Licensor (defined below) and the End User (defined below) and apply to End User's use of and Licensor's provision of the Service (defined below).

1.2 In respect of the same subject matter, any printed License terms for the Service signed by both Parties shall take the place of and prevail over any on-screen License terms for the Service (including the terms and conditions of this Agreement).

1.3 This Agreement also applies to any trial period for the Service, which begins when YOU first access the Service. During any such trial period, certain usage restrictions may apply. ANY OF YOUR DATA ENTERED OR UPLOADED INTO THE SERVICE WILL BE UNAVAILABLE TO YOU UNLESS YOU AGREE TO A PAID SERVICE PRIOR TO THE CLOSE OF THE TRIAL PERIOD. YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU WILL NOT BE ENTITLED TO RECEIVE ANY ADDITIONAL FREE TRIALS ONCE THE INITIAL TRIAL PERIOD HAS EXPIRED.

2. DEFINITIONS

2.1 Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this [Section 2](#) or as defined elsewhere in this Agreement.

2.2 "Account Administrator" means an individual who is authorized by YOU to access, manage and use the Service on YOUR behalf.

2.3 "Agreement" means this Terms of Service and End User License Agreement.

2.4 "Confidential Information" means material, data, systems, and other information concerning the operation, business projections, market goals, financial affairs, products, services, customers, and Intellectual Property Rights of the other Party that may not be accessible or known to the general public, regardless of the medium in which the information is stored. Confidential Information shall include YOUR Data and any information that concerns technical details of operation of the Service.

2.5 "YOUR Data" means (i) any data resident within YOUR SoRs; and (ii) any data and materials supplied, uploaded, created, modified in, or stored in or through the Service by YOU or your End Users.

2.6 "Documentation" means the written, printed or electronic materials, which LICENSOR provides to its customers generally that document the operation, access to and use of the Service.

2.7 "Effective Date" means in relation to this Agreement, the date this Agreement is accepted by YOU by (i) clicking to accept or agree where such option is made available to YOU or (ii) YOU actually using or accessing the Service.

2.8 "End User" means any individual(s) who access and use the Service.

2.9 "Intellectual Property Rights" means any and all now known or hereafter existing rights associated with intangible property, including but not limited to registered and unregistered, United States and foreign copyrights, trade secrets, trademarks, service marks, patents, trade dress, trade names, registrations and applications for any of the foregoing, domain names, corporate names, logos, inventions, databases, inventions, processes, procedures, know-how, computer applications, programs, and other software, including operating software, network software, firmware, middleware, design software, design tools, systems documentation, Documentation, manuals, and instructions, and all other intellectual property and proprietary rights of every kind and nature throughout the universe and however designated.

2.10 "License" means a license or subscription for the Service.

2.11 "LICENSOR" means New BI US Gaming, LLC or such other VizExplorer entity that has provided you with the Service.

2.12 "Party" means the LICENSOR and YOU.

2.13 "Privacy Policy" means the VizExplorer Privacy Policy located at <https://www.vizexplorer.com/privacy-policy>.

2.14 "Service" means the VizExplorer cloud-based casino analytics solution(s), including all updates, modifications, and enhancements thereto, as made generally by LICENSOR.

2.15 "Site" mean's LICENSOR'S website located at <https://www.vizexplorer.com/>.

2.16 "SoRs" means any third party or YOUR systems-of-record.

2.17 "Term" means that period commencing on the Effective Date and ending on the earlier of (i) the date that the License of the Service expires, or (ii) the date this Agreement is terminated under [Section 11](#) of this Agreement.

2.18 "Terms of Use" means the VizExplorer General Use Restrictions located at <https://www.vizexplorer.com/terms-of-use>.

2.19 "Venue" means the properties owned or operated by YOU for which LICENSOR has granted to you a License to use the Service.

2.20 "VizExplorer" means New BI US Gaming, LLC, and includes each Affiliate. For the purposes of this Section, in relation to a Party "Affiliate" means an entity that owns or controls, is owned or controlled by or is under common control or ownership with that Party, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

2.21 "YOU" or "YOUR" means an individual or legal entity exercising rights or permissions granted by this Agreement.

2.22 "YOUR Application" means an application, created by YOU, used to perform specific functionality that operates in conjunction with, or otherwise utilizes, the Service.

3. LICENSOR OBLIGATIONS

3.1 Rights of Access to and Use of the Service. Subject to the terms and conditions of this Agreement and payment of the applicable fees, for the duration of the Term LICENSOR hereby grants YOU the right to access and use the Service in connection with YOUR operation of the Venue(s). The rights of access and use in this [Section 3.1](#) are non-exclusive, non-transferable, and non-sublicensable. This Agreement does not record a sale or transfer of a copy of the Service and does not render YOU the owner of the Service.

3.2 Provision of Access. LICENSOR will provide YOU with the necessary passwords and network links or connections to allow YOU to access and use the Service.

3.3 Updates; Modifications. LICENSOR reserves the right, in its sole discretion, to update, modify, or remove the features, functionality, or other aspects of the Service at any time without prior notice.

4. CUSTOMER OBLIGATIONS

4.1 Pricing and Payments.

4.1.1 Fees. YOU will pay LICENSOR the non-refundable fees (the "Fees") for the Services set forth in any Order Form or Statement of Work or as otherwise agreed by the Parties via the Site or other pricing agreement.

4.1.2 Expenses. The Fees do not include expenses or disbursements, which are additional to any Fees shown. YOU will reimburse all reasonable travel and other expenses incurred by LICENSOR in performance of the Services at actual cost. Expenses will be invoiced to YOU at monthly intervals as Services are performed and expenses are incurred.

4.1.3 Taxes. All payments for the Services are exclusive of all national, state, municipal, tribal authority, or other governmental excise, sales, value-added, use, personal property, and occupational taxes, excises, withholding taxes and obligations, imports, duties, and other levies now in force or enacted in the future, all of which YOU will be responsible for and will pay in full.

4.1.4 Payment Terms. YOU will pay all Fees and expenses in United States Dollars within **seven (7)** days after the specified due date, without deduction, setoff, or delay for any reason.

4.1.5 Late Charges. Late payments will accrue late charges at a rate of one and one half percent (1.5%) of the outstanding balance per month, or the maximum rate allowed under law, whichever is lower, from the date such payment was due until the date paid.

4.1.6 No Refunds. All Fees associated with the Service are non-refundable. YOU understand and agree that no credits, refunds, or prorated discounts will be issued for unused amounts even if prepaid via a subscription for the Service.

4.2 Restrictions. YOU shall not, and shall not allow or permit others to: (i) sell, resell, rent, or lease use of the Service, nor provide service bureau or similar services that use, or operate with, the Service; (ii) permit either direct or indirect use of the Service by any third party; (iii) copy, distribute, disclose, reproduce, use or allow access to the Service except as set forth herein; (iv) remove, obscure or alter any copyright notices affixed to or contained in the Service; (v) disclose or publish the results of any Service performance benchmarks to any third party without LICENSOR's prior written consent; (vi) Reverse engineer, disassemble, decompile, translate, create derivative works of, or make any other attempt to discover or obtain the source code for the Service (and YOU will take all reasonable steps to prohibit its employees, agents, subcontractors, and contractors from doing so); (vii) use or deal with the Service in any manner or combine the Service with any other software, hardware, or product where such use, dealing, or combination could cause Customer to be in breach of any obligation under any third party license agreement, cause Supplier to be in breach of any obligation under any third party license agreement where Customer was made aware of the terms of the relevant third party license agreement by Supplier, or infringe any third party Intellectual Property Rights; or (viii) use the Service to engage in any illegal activity. All rights not expressly granted hereunder are retained by LICENSOR.

4.3 Provision of Resources; System Requirements. YOU will be responsible for providing necessary bandwidth and hardware that meets the Service system requirements. A stable internet connection and modern browser such as Firefox or Google Chrome is required to access and use the Service. The Service may work in a

limited manner on other web browsers, but the Service is designed for use on modern browsers. YOU will be responsible for providing all YOUR Data for use with the Service.

4.4 Responsibility for Account Administrators and End Users. YOU will use all reasonable efforts to ensure compliance with the terms and conditions of this Agreement by YOUR Account Administrator(s) and End Users. YOU will be solely responsible and liable for any non-compliance by Account Administrators and End Users.

4.5 Compliance with Laws and Regulations. YOU will comply with all applicable local, state, national, tribal, and foreign laws in connection with YOUR use of the Service, including those laws related to vendor licensing and compliance, data privacy, international communications, and the transmission of technical or personal data.

4.6 No Consents Required. YOU represent and warrant that no consent, approval, authorization, or order of any court or governmental agency or body (each, a "Consent") is required under federal, state, local, or tribal law for YOU to use the Service, for LICENSOR to provide the Service to YOU, or for YOU to comply with the terms and conditions of this Agreement, or if any such Consent required, has been obtained prior to your acceptance of this Agreement and use of the Service.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 Ownership of Intellectual Property Rights. Except for the rights expressly granted herein, all rights, title, and interests to any and all proprietary rights and Intellectual Property Rights used, or embodied in, or delivered in connection with the Service will remain with and be the exclusive property of VizExplorer.

5.2 No Other Rights. Except as otherwise expressly provided herein, nothing in this Agreement shall create any right of ownership or license in and to the other Party's Intellectual Property Rights and each Party shall continue to independently own and maintain its Intellectual Property Rights.

6. THIRD PARTY SOFTWARE

6.1 Thirdware Information Disclosure Statement. The Service contains, or is used with other software that contains, that third party software ("Thirdware") set out in VizExplorer'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.

6.2 Changes to Third Party Software. From time to time as it deems appropriate, VizExplorer or VizExplorer's licensor may change or remove third party software from the Service, for the better operation of the Service, without notice to YOU. The terms and conditions set forth in the Thirdware Information Disclosure Statement may be varied from time to time by VizExplorer 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.

7. WARRANTY DISCLAIMERS

7.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND DURABILITY; ANY WARRANTY WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT; AND ANY WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

7.2 THE SERVICE IS PROVIDED ON AN "AS IS" BASIS, AND YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. LICENSOR DOES NOT WARRANT THAT THE SERVICE WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, OR THAT THE USE OF THE SERVICE WILL BE UNINTERRUPTED (FOR WHATEVER REASON), BE FREE FROM PROGRAMMING OR OTHER ERRORS, OR WILL BE SAFE FROM VIRUSES, WORMS, OR SECURITY BREACHES. LICENSOR HAS NOT AUTHORIZED AND DOES NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON LICENSOR'S BEHALF.

8. INDEMNIFICATION

8.1 By LICENSOR.

8.1.1 LICENSOR will defend at its expense or settle any third-party claim, demand, suits, or proceedings ("Claims") brought against YOU alleging that the Service infringes a copyright, trade secret, trademark, or issued U.S. patent and pay infringement Claim defense costs, LICENSOR-negotiated settlement amounts, and damages finally awarded by a court; in each case, provided that YOU promptly notify LICENSOR in writing of the Claim; allow LICENSOR to control, and cooperate with LICENSOR in, the defense and any related settlement negotiations; and are and remain in compliance with the Service's applicable license terms and YOUR other obligations under this Agreement.

8.1.2 LICENSOR has no obligation for any Claim of infringement arising from: (i) LICENSOR's compliance with YOUR or third party designs, specifications, instructions, or technical information; (ii) modifications of the Service not made or authorized in writing by LICENSOR; (iii) the combination, operation, or use of the Service with any other product, hardware device, program, data, apparatus, method, or process not provided by LICENSOR; (iv) the Service's use other than in accordance with its applicable licenses or subscriptions; (v) use of the

Service for purposes not contemplated by this Agreement or the applicable Documentation; (vi) use of a non-current version or release of the Service, to the extent a Claim could have been avoided by using the current release or version; or (vii) any unauthorized distribution, operation, or use of the Service.

8.1.3 Subject to Section 8.1.4 below, if LICENSOR believes the Service may infringe a third party's Intellectual Property Rights, then LICENSOR may: (i) procure for YOU a right to continue to use the Service; or (ii) replace the Service with a service of comparable functionality acceptable to YOU; or (iii) modify the Service to avoid the infringement.

8.1.4 If LICENSOR believes the options in Section 8.1.3 above are not commercially reasonable, then LICENSOR may terminate YOUR subscription for the infringing Service and refund to YOU any subscription or license fees Customer has paid in advance to LICENSOR in respect of a subscription or license period falling after the date of termination.

8.2 By YOU. YOU will defend at YOUR expense or settle any Claim brought against VizExplorer or any of its directors, officers, employees, agents, contractors, representatives, successors, and assignees (collectively "LICENSOR Parties") and pay or reimburse them for any and all third party damages, costs, fines, penalties, and expenses incurred by LICENSOR Parties in connection with any such Claim (including reasonable attorneys' fees) to the extent such Claim arises from: (i) LICENSOR's use of YOUR Data (including without limitation a Claim alleging infringement by YOUR Data of Intellectual Property Rights; that any of YOUR Data is defamatory or infringes a right of publicity or privacy; or that any of YOUR Data is obscene or otherwise offensive); (ii) unauthorized access to the Service through the fault of or misuse of the Service by YOU, End Users, or their respective employees, contractors, or agents; (iii) the acts or omissions of YOU, End Users, or their respective employees, contractors, or agents in the use of the Service; or (iv) YOUR breach of the representation and warranty related to Consents in Section 4.6 of this Agreement; in each case, provided that LICENSOR Party promptly notifies YOU in writing of the Claim and cooperates with YOU in, the defense and any related settlement negotiations.

8.3 Entire Liability. THIS SECTION 8 STATES THE ENTIRE LIABILITY AND OBLIGATION OF THE PARTIES WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF ANY KIND OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

9. LIMITATIONS OF LIABILITY

9.1 No Consequential Damages. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY, OR OTHERWISE, WHETHER OR NOT THE LIABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER OR NOT THE DAMAGES WERE FORESEEABLE. THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

9.2 Aggregate Limitation. IN NO EVENT WILL LICENSOR'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF THIS AGREEMENT UNDER ANY THEORY OF LAW EXCEED THE SUM OF FEES PAID BY YOU UNDER THE APPLICABLE AGREEMENT DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE LIABILITY AROSE. THE EXISTENCE OF ONE OR MORE CLAIMS SHALL NOT EXPAND SUCH LIMIT.

9.3 NO ACTION ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO YEARS AFTER THE LIABILITY AROSE.

9.4 Exclusions. The provisions of Sections 9.1, 9.2 and 9.3 shall not apply to claims arising out of a wrongful Party's gross negligence or willful, intentional or fraudulent misconduct.

10. CONFIDENTIALITY AND DATA PROTECTION

10.1 Confidential Information.

10.1.1 The Parties acknowledge that by reason of their relationship under this Agreement, they may have access to and acquire Confidential Information of the other Party. Each Party receiving Confidential Information (the "Receiving Party") agrees: (i) to protect all such Confidential Information received from the other Party (the "Disclosing Party"), both orally and in writing, with at least the same stringency of measures with which it protects its own confidential information of a similar, but in no event less than reasonable care; (ii) not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the terms of this Agreement to its legal advisors, business advisors, and potential investors if such third parties agree to maintain the confidentiality of such Confidential Information under terms no less restrictive than those set forth herein. The Receiving Party further agrees to use the Confidential Information only for the purpose of performing this Agreement.

10.1.2 Notwithstanding the foregoing, the obligations set forth herein shall not apply to Confidential Information that: (i) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (ii) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction; or (iii) is required by law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure.

10.2 Ownership of YOUR Data. Except for the rights expressly granted herein, YOU retain all right, title, and interest in and to any and all proprietary rights in YOUR Data. LICENSOR will at all times deploy and maintain data security systems at least commensurate with high industry standards as a part of the Service in order to protect the confidentiality and integrity of YOUR Data. LICENSOR will not access, use, or disclose YOUR Data unless expressly agreed to in writing by YOU and except as provided herein. This Agreement and use of the Service and Site are subject to the Privacy Policy and Terms of Use; the terms and conditions of this Agreement shall prevail in the event of any conflict between the Privacy Policy or Terms of Use and this Agreement.

10.3 Processing of YOUR Data. Subject to the terms of this Agreement, LICENSOR shall use commercially reasonable efforts to process YOUR Data in accordance with the normal functions of the Service. Notwithstanding the foregoing, YOU understand and acknowledge that due to file type, file corruption, encryption, or conversion issues, there may be times when: (i) YOUR Data cannot be extracted and processed; or (ii) a certain amount of YOUR Data may not be suitable or available for extraction from text, metadata, or other information (collectively, "Exception" or "Exceptions"). Such Exceptions may limit the function of any searching, filtering or other analysis of YOUR Data within the Service. Additionally, YOU understand that in processing data there are times data is lost or damaged. YOU will be responsible for and shall maintain adequate back-up and archival copies of all YOUR Data. LICENSOR shall bear no liability with respect to any of YOUR Data that is lost or damaged as a result of the processing of YOUR Data.

10.4 Performance and Usage Data; Aggregated Data. Notwithstanding the foregoing, YOU acknowledge and agree that Licensor shall have the right to (i) collect and use data related to YOUR use of the Service, including the number of End Users and the amounts and types of inquiries and transactions conducted through the Service and data relating to the performance of the Service for its internal business purposes; (ii) aggregate and anonymize YOUR Data with other customers' data so that the results are non-personally identifiable with respect to, and it would be impossible to derive the identity of, YOU, YOUR End Users, and YOUR patrons, and use such data to analyze, improve, support, and operate the Service, make recommendations, and otherwise for any purpose, during and after the term of this Agreement.

11. TERM AND TERMINATION

11.1 Term. This Agreement is effective from the Effective Date and will remain in full force and effect during the Term.

11.2 Termination for Material Breach. If either Party materially breaches any term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching Party, the non-breaching Party may terminate this Agreement on written notice at any time following the end of such thirty (30) day period.

11.3 Termination or Suspension for Non-Payment. LICENSOR may terminate this Agreement or suspend access to the Service by YOU upon fifteen (15) days prior written notice to YOU on YOUR failure to pay LICENSOR any amounts due in respect of the Service.

11.4 Termination for Bankruptcy or Insolvency. 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.

11.5 Effect of Termination. In the event of any termination or expiration of this Agreement: (i) YOUR access to and use of the Service shall immediately terminate; (ii) YOU will pay to LICENSOR all amounts previously invoiced and all amounts accrued prior to the termination date; and (iii) each Party shall return the other Party's Confidential Information. Except as otherwise provided in this Agreement, termination of this Agreement shall not limit either Party from pursuing other remedies available to it, including injunctive relief. The obligations of the Parties under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration only and not limitation, those in the sections Indemnification, Intellectual Property Rights, and Confidentiality and Data Protection, and such other sections that by their nature must survive termination to affect their intended purpose shall survive termination of this Agreement.

12. GENERAL TERMS

12.1 Technology Export. YOU shall not (i) permit any third party to access or use the Service in violation on any U.S. law or regulation; or (ii) export the Service or any part of the Service or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, YOU shall not permit any third party to access or use the Service in, or export the Service to, a country subject to a United States embargo.

12.2 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.

12.3 Amendment and Waiver. 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 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 each of the Parties hereto.

12.4 Governing Law and Jurisdiction This Agreement shall be governed by the laws of the State of California, without giving effect to any conflict-of-laws rules requiring the application of the substantive law of any other jurisdiction. YOU and LICENSOR knowingly and voluntarily intend and agree that the mandatory, exclusive venue for any action in any way related to this Agreement or its enforcement shall be the U.S. District Court, Southern District of California, or any state court located in San Diego County, California. All Parties hereby knowingly and voluntarily waive any and all objections to venue and personal jurisdiction in the foregoing and submit themselves thereto. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section and stipulates that the aforementioned courts shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. YOU hereby expressly, unequivocally, and irrevocably waive sovereign immunity and any and all defenses based thereon with respect to any claims asserted by Supplier arising from the duties and obligations of YOU as defined in in this Agreement and any other disputes related to this Agreement or the use of the Service.

12.5 Disputes. The Parties agree that before, and as a condition precedent to, the initiation of any legal action or proceeding, all claims, controversies and disputes ("Disputes") arising out of or in relation to the performance, interpretation, application or enforcement of this Agreement, the Parties, their respective counsel and their representatives familiar with the issue will schedule a meeting (by telephone or in person) to discuss the Dispute and attempt in good faith to resolve it. If the Dispute is not resolved after the completion of such meeting, the Parties may then pursue any available legal remedy, action, or proceeding.

12.6 Notices. All notices shall be in writing. Any such notice may be served personally or by certified mail (postage prepaid), commercially recognized overnight delivery service (such as Federal Express or DHL), courier, or email. Notice shall be deemed served upon personal delivery or delivery by courier, upon the second business day after the date sent for notices sent via overnight delivery, upon the fifth business day after the date sent for notices sent via certified mail, or upon the first business day after the date sent for notices sent by email.

12.7 Severability. In the event that any provision of this Agreement should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained shall not, in any way, be affected or impaired thereby.

12.8 Remedies. Unless expressly set forth herein, the remedies set forth herein are non-exclusive.

12.9 Force Majeure. Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for any cessation, interruption or delay in the performance of its obligations hereunder (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, riot, civil disorder, terrorism, armed conflict, labor strike, lockout, boycott, embargoes or other similar events beyond the reasonable control of such Party.

12.10 UCITA. The Parties agree that to the fullest extent permitted by applicable law (i) the provisions of the Uniform Computer Information Transactions Act (UCITA), and (ii) the United Nations Convention on Contracts for the International Sale of Goods, are specifically excluded from application to this Agreement and the Service.