

**Should the Terms of Use of BusinessDirectorySolutions policy change, we intend to take every reasonable step to ensure that these changes are brought to your attention by posting all changes prominently on our web site for a reasonable period of time.**

## **1. Definitions**

1.1 "Documentation" means any documentation Nicayla Enterprises, Inc. provides with the Original Code.

1.2 "Nicayla" means Nicayla Enterprises, Inc.

1.3 "Agreement" means this document.

1.4 "Modifications" means any addition to or deletion from the substance or structure of either the Original Code or any previous Modifications.

1.5 "Services and Software" means the source code to Nicayla's proprietary computer software entitled BusinessDirectorySolutions that is provided to You for use on your website in the operating environments designated by Nicayla Enterprises, Inc. This includes, but is not limited to the administration area of the software, all feature functionality, directory listings, upgrade options, email sender and related software.

1.6 "Services and Software" means the source code to Nicayla's proprietary computer software entitled BusinessDirectorySolutions that is provided to You for use on your website in the operating environments designated by Nicayla Enterprises, Inc. This includes, but is not limited to the administration area of the software, all feature functionality, directory listings, upgrade options, email sender and related software.

1.7 "Client Intellectual Property" means the graphical design of Your website, all graphical images, content, logo and trademarks provided by You.

1.9 "Client Confidential Information" means the names, email addresses, phone number and other personal identifying information of persons who purchase or create an account at the Your website.

1.8 "You" means an individual or a legal entity exercising rights under, and complying with all of the terms of, this license or a future version of this license. For legal entities, "You" includes any entity that controls, is controlled by, or is under common control with You. For purposes of this definition, "control" means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

## **2. Restrictions and Responsibilities**

2.1 Nicayla grants to You a worldwide, nonexclusive, nontransferable, internal use object (executable) code only license to use such Objects, Tools and Nicayla's Intellectual Property that are incorporated into the Client's Intellectual Property to maintain the Client's Intellectual Property. Nothing in this paragraph shall be deemed to permit Client to transfer Nicayla Intellectual Property to a subsidiary, 3<sup>rd</sup> party or other affiliate without the prior written consent of Nicayla. Nothing herein shall be deemed to transfer rights for any Client Confidential Information to Nicayla. You will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the ("Software"); remove any proprietary notices or labels from the Services or any Software, modify, translate, or create derivative works based on the Services or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software. The Services and Software shall be used for Your website in connection with the operating environments designated by Nicayla Enterprises, Inc. for use with, but not included with, the Software and Services. You shall not use the Services and Software for timesharing or service bureau purposes or otherwise for the benefit of a third party other than your website. If you are using the Services in any country in the European Community, the prohibition against modifying, translating, reverse engineering,

decompiling, disassembling or creating derivative works based on the Services or the Software does not affect your rights under any legislation implementing the E.C. Council Directive on the Legal Protection of Computer Programs.

2.2 You acknowledge and agree that the Software and Services and the Nicayla Enterprises, Inc. company names and logos and all related product and service names, design marks and slogans, are the property of Nicayla Enterprises, Inc. or its affiliates or suppliers (collectively, the "Marks"). You are not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of Nicayla Enterprises, Inc.. Your use of the Software and Services confers no title or ownership in the Service, the Software or the Marks and is not a sale of any rights in the Service, the Software or the Marks. All ownership rights remain in Nicayla Enterprises, Inc.

2.3 You represent, covenant, and warrant that you will use the Software and Services only in compliance with the Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You hereby agree to indemnify and hold harmless Nicayla Enterprises, Inc. against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the Software and Services. Although Nicayla Enterprises, Inc. has no obligation to monitor the content provided by you or your use of the Software and Services, Nicayla Enterprises, Inc. may do so and may remove any such content or prohibit any use of the Software and Services it believes may be (or is alleged to be) in violation of the foregoing.

2.4 The Software and Services may only be used for lawful purposes. Transmission or solicitation of any material that violates European Community or United States federal, state or other laws that may apply in your local area is prohibited. This may include material that is obscene, threatening, harassing, libellous, or in any way a violation of intellectual property laws or a third party's intellectual property rights.

2.5 In using the varied features of the Software and Services, you may provide information (such as name, contact information, or other registration information) to Nicayla Enterprises, Inc.. Nicayla Enterprises, Inc. may use this information and any technical information about your use of the Software and Services to tailor its presentations to you, facilitate your movement through the Software, or communicate separately with you.

2.6 Nicayla Enterprises, Inc. will not use your customer list or any other customer information for any other purposes than those intended with the Software and Services. Your customer information will not be shared with any other parties.

2.7 Scope of Use. This is a License to use the Product in executable or interpretive form, as applicable, in connection with the operating environments designated by Nicayla Enterprises, Inc. for use with, but not included with, the Software and Services.

### **3. Warranty Disclaimer; Remedies**

USE OF THE SERVICES AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. NICAYLA ENTERPRISES, INC. DOES NOT WARRANT THAT THE SOFTWARE AND SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE AND SERVICES. THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND NICAYLA ENTERPRISES, INC. DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

Your sole and exclusive remedy for any failure or nonperformance of the Software and Services shall be for Nicayla Enterprises, Inc. to use commercially reasonable efforts to adjust or repair the Software and Services.

### **4. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL NICAYLA ENTERPRISES, INC. OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "NICAYLA ENTERPRISES, INC.") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF NICAYLA ENTERPRISES, INC. SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, NICAYLA ENTERPRISES, INC. IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF NICAYLA ENTERPRISES, INC. TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SOFTWARE AND SERVICE MINUS THE MANHOUR COST ASSOCIATED WITH GRAPHICAL DESIGN OF YOUR WEBSITE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

Subject to the exception set out above and to the extent permissible by law, Nicayla Enterprises, Inc. will not be liable to you whether in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise for any (whether direct or indirect):

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of sales;
- (d) loss of anticipated savings;
- (e) loss or corruption of data;
- (f) loss of contract or opportunity;
- (g) loss of goodwill;
- (h) costs incurred in modifying Nicayla Enterprises, Inc. Software (whether in accordance with the software documentation or not); or
- (i) indirect or consequential loss or damages.

Subject to the exception set out in paragraph 1 of this section and to the extent permissible by law, in the event that Nicayla Enterprises, Inc. is liable to you in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise its total aggregate liability shall be limited to the amount actually received by Nicayla Enterprises, Inc. for the copy of Software giving rise to such liability or \$3,000 USD, whichever is the lower.

## **5. Miscellaneous**

4.1 If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

5.2 Nicayla Enterprises, Inc. and you agree that the Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

5.3 No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind Nicayla Enterprises, Inc. in any respect whatsoever.

5.4 The Agreement shall be governed by the laws of the United States of America without regard to its choice or law or conflict of laws provisions