

# North49 Business Solutions Inc.

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THIS MERCHANT END USER LICENSE AGREEMENT ("Agreement") IS A LEGAL AND BINDING AGREEMENT BETWEEN NORTH49 BUSINESS SOLUTIONS INC. ("NORTH49") AND THE PARTY ("LICENSEE") FOR USE OF NORTH49 SERVICES. BY USING THE NORTH49 SERVICES, LICENSEE AGREES TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS HEREIN. THIS AGREEMENT CONTAINS THE FOLLOWING GENERAL TERMS AND CONDITIONS AND ORDER FORM(S). NORTH49 AND LICENSEE MAY BE REFERRED TO INDIVIDUALLY AS A "PARTY" AND COLLECTIVELY AS THE "PARTIES."

## 1. Definitions.

- a. **Content** means all North49 computer files, software, visual or audible information, spreadsheet or similar templates, database forms, structure, tables and format or related items, documentation, used in providing the Services. The Content shall not include the Data.
  - b. **Data** means any data, information or materials that Licensee gathers or compiles and uploads onto or submits to the Services. Data shall include, but not be limited to, customer information, sales and sales history data, all part numbers, descriptions, photographic depictions, product images, digital assets and similar cataloguing information compiled by or on behalf of Licensee while using the Services.
  - c. **Service(s)** means North49 Webtelligence which is comprised of a hosted application service provider solution designed to deliver and manage website content, eCommerce and publishing software applications, domain hosting, storage, transaction processing and other related computer services from a remote data center to multiple users via the Internet as set forth in (an) Order Form(s).
  - d. **Additional Services** means any other services which may include any consulting, technical support or trouble shooting services offered or supplied by North49 and shall include, for the purposes of this Agreement, any ancillary or included products, including without limitation golden master disks, kiosks or other hardware, that are either included in the attached Order Form(s), separately invoiced pursuant to a request form or otherwise agreed to by the Parties.
2. **Master Agreement.** It is the intent of this Agreement that it shall be a master agreement, and shall govern the relationship between the parties from this point forward. All subsequent orders, supply of other Services, modifications, additions and deletions shall not vary the terms of this Agreement other than as expressly set out in writing between the Parties and agreed to by North49.
  3. **Use of Service.** Licensee shall be entitled to populate the Content on the Service with Data and accepts sole responsibility for so doing. Licensee is responsible for obtaining and maintaining all computer hardware, software, communications equipment, and Data needed to access and use the Service(s), and for paying all third-party access charges for such computer hardware, software, communications equipment and Data, if applicable, incurred while using the Service(s). Subject to Section 9, Licensee may NOT rent, lease, sub-license or lend the Services to any party.
  4. **Term.** This Agreement shall commence on the Effective Date and shall continue for a one (1) year period (the "Initial Term") and shall automatically renew for successive one (1) year periods, unless earlier terminated as set forth below (collectively with the Initial Term, the "Term").
  5. **Termination.** Licensee may terminate this Agreement at any time upon 30 days notice in writing to North49. This Agreement may be terminated immediately by North49, with cause, upon the occurrence of any one or more of the following events:
    - a. upon Licensee becoming insolvent, or being adjudged a bankrupt, or making a general assignment for the benefit of its creditors or taking the benefit of any statute relating to insolvency or if a receiver or trustee shall be appointed for all or any portion of its property;
    - b. in the event of any default or failure by Licensee to observe the provisions of this Agreement, other than a failure to pay as set forth in section 8, if such default or failure is not fully remedied by Licensee within thirty (30) days of North49 providing Licensee with a written notice demanding that Licensee remedy such other default or failure.

Upon termination of this Agreement for any reason, Licensee is responsible for payment of any costs or charges that may arise in connection with such termination and payment of all Fees up to the effective date of the Termination of this Agreement. Upon termination for any reason, Licensee agrees to immediately cease using the Service. Upon termination, North49 shall make available to Licensee a file of such portion or portions of the Data as may be available at that time to North49 for that purpose. To obtain such file, Licensee must first make a written request to North49 at the time that notification of termination is issued by either Party to receive such file within (30) days of termination. Further, upon any termination of the Agreement, North49 reserves the right to remove, purge, delete and destroy any and all Data that exists in the terminated or cancelled account after an

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elapsed period of thirty (30) days, and North49 shall have no further obligation to Licensee after any termination of this agreement.

6. **Price and Payment.** Licensee agrees to pay North49 the agreed upon fees, as set forth by North49 during the Initial Term and any additional fees as set forth in any subsequent agreement during the remainder of the Term for the licenses granted and Services provided under this Agreement (collectively, the "Fees"). Licensee must also report and pay any applicable taxes to the appropriate governmental agency with the exception of any taxes on North49's net income.
7. **Charges.** Invoices for all fees and charges will be sent as PDF attachments by email. Monthly Managed Services fees are payable in advance by credit card or EFT as agreed to by North49. All other fees are due within 7 days of invoice. If Licensee elects to purchase Additional services, Licensee agrees to pay North49 the then applicable North49 list price. North49 reserves the right to change the fees or applicable charges and to institute new charges at any time, upon thirty (30) days prior notice to Licensee (which will be sent by email). In the event of a dispute concerning amounts owing, the Licensee shall nevertheless make payment to North49 and may thereafter raise any issue for clarification, which must be done within a period of 5 days of payment.
8. **Fee Increases.** North49 may increase its license and other fees at any time without notice so fees due for new or additional Software license, Managed Services or subscription purchases may be more than a previous purchase.
  - a. North49 may not increase any License or Managed Services fees more than once in any 12 month period following Your initial purchase by more than:
    - a. Ten percent (10%), or
    - b. The percentage increase in the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, [1982]-[84]=100 (as published by the United States Bureau of Labor Statistics) for the 12 months preceding the date a price increase is announced for Subscription Licensees generally, whichever is greater.
9. **Non-Payment.** If timely payment is not received for any reason, and if Licensee fails to make any payment due hereunder within ten (10) days after written notice (which may be sent by email) from North49 that such payment is delinquent, North49, at its option, shall have the right to either suspend or terminate Licensee's access to the Service and account and terminate this Agreement. If North49 receives a cancellation notice from Licensee, Licensee will be obligated to pay the balance due on Licensee's account. North49 may charge such unpaid fees to Licensee's credit card or otherwise bill Licensee for such unpaid fees. North49 may also charge a fee to restore any archived or disabled data from delinquent accounts. Unpaid invoices are subject to interest of 24% per annum on any outstanding balance, or any lesser maximum permitted by law, plus all costs and expenses of collection efforts, including all costs of legal counsel, if necessary. Licensee's North49 account will be considered delinquent if, for any reason, the amount billed to Licensee remains unpaid at the beginning of the next billing cycle. Any Services may be disabled, archived or removed from the system if the account is delinquent for more than thirty (30) days.
10. **Non-Transferable License.** North49 grants to Licensee a non-exclusive, non-transferable and revocable license to use and display the Content contained in or made available through the Service solely for Licensee's own business purposes. All rights not expressly granted by North49 to Licensee are retained. In the event Licensee requests and receives from North49 a golden master disk containing the Content, and where applicable the Data, Licensee shall have the limited right to distribute copies of the Content on such disks to Licensee customers in order for such customers to access Licensee's marketplace.
11. **Restrictions.** Licensee is permitted to use the Content only for its personal or business use. Unauthorized use of the Services, or the resale of the Services or Content, is expressly prohibited. Licensee shall not copy, license, sell, transfer, make available, distribute, or assign this license or the Content to any third party. Licensee also shall not create an Internet "link" to the Services or "frame" or "mirror" any Content contained on, or accessible from, the Services on any other server or Internet-based device.
12. **Third Party Interaction.** In the use of the Services, Licensee may enter into correspondence with, purchase goods and/or services, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Services. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between Licensee and the applicable third-party. North49 shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Licensee and any such third-party.
13. **Links to Third Party Sites.** North49 does not endorse any sites on the Internet which are linked through the Service. North49 provides any such links to Licensee only as a matter of convenience, and in no event shall North49 be responsible for any content, products, or other materials on or available from such sites, or for any inability to access such sites.
14. **Password Protection.** Licensee must safeguard the user name and password Licensee uses to access the Service and not disclose it to any unauthorized person. Licensee represents and warrants to North49 that any person using the Service with Licensee's user identification and password either is Licensee or is authorized to act for Licensee.

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Licensee agrees to notify North49 immediately of any unauthorized use of Licensee's password or account or any other breach of security or confidentiality.

15. **User Responsibilities.** Licensee is solely responsible for any and all activities that occur under Licensee's account and ensuring that Licensee exit or log-off from Licensee's account at the end of each session of use. Licensee shall also use commercially reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Licensee under Licensee's account. Unless it is by another customer of North49 or other third party, North49 shall not be responsible for any unauthorized access to, or alteration of, Licensee's transmissions or data, any material, information or data sent or received, regardless of whether the data is actually received by North49, or any transactions entered into through the Service or failure to abide by this Agreement.
16. **Account Information and Data.** North49 does not own or obtain any right, title or interest in the Data. North49 will not monitor, edit, or disclose any information regarding Licensee or Licensee's account, including any Data, without Licensee's prior permission except in accordance with this Agreement or applicable laws or directions of legal authorities. North49 may access Licensee's account, including the Data, to respond to service or technical problems or as stated in this Agreement. Licensee, not North49, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Data and North49 shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data. North49 shall not be responsible for adequate security, archival and back-up procedures on behalf of Licensee. North49 may delete customer credit card information from North49 servers 30 days after Licensee retrieves such information, and may delete other information by providing written request to Licensee and receiving written approval from Licensee.
17. **Use, Storage and Other Limitations.** North49 reserves the right to establish or modify general practices and limits concerning use of the Services, including without limitation the maximum disk space that will be allotted on North49 servers on Licensee's behalf as well as total number of bytes transmitted over the internet.
18. **User Conduct.** Licensee agrees to abide by all applicable local, provincial, state, national and foreign laws, treaties and regulations in connection with the Service. In addition, without limitation, Licensee agree not to use the Service to: (a) transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, patent, trade secrets, copyright, confidentiality or right of publicity; (b) transmit any material that contains software viruses or other harmful or deleterious computer code; (c) interfere with or disrupt servers or networks connected to the Service or violate the regulations, policies or procedures of such networks; (d) attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means; (e) harass or interfere with another user's use and enjoyment of the Service; (f) to post any content that is obscene, pornographic, contains nudity or sexual acts, is violent, exploits any group, or otherwise is objectionable; (g) to sell any products or services that it is unlawful to sell in the location at which the content is posted, received, or delivered; (h) to post any content that advocates, promotes, or otherwise encourages violence or hate against any governments; or, (i) generate or transmit bulk unsolicited commercial email or "spam." In the event of any breach by Licensee of this Section 17, North49 shall have the right, at its reasonable discretion, to Licensee suspend the use of the Services immediately until such time as the offending materials can be removed by Licensee or the offending conduct ceased by Licensee.
19. **Privacy Policy.** North49 does not disclose personally identifiable information to any third party, unless required to do so by law or governmental authority. Subject to the terms of Section 15, personally identifiable information is obtained for credit and contracting purposes and is archived for a period of one (1) year from posting. Questions concerning information held and the ability to do so should be addressed to North49 at the address for Service herein. North49 uses a persistent cookie to help save and retrieve usernames used on the Service. North49 issues a session cookie only to record encrypted authentication information for the duration of a specific session. The session cookie does not include either the username or password of the user. North49 does provide certain user registration and statistical information such as usage or user traffic patterns in aggregate form to third parties, but such information will not include personally identifying information and Licensee's Internet protocol address is not transmitted with each message sent from Licensee's North49 account.
20. **Proprietary Rights.** Except for the limited license granted herein, Licensee shall have no right, title or interest in or to the Services or any Content and North49 retains all proprietary right, title and interest, including copyright and all other intellectual property rights, in and to the Services and Content, including all components and portions thereof. North49 Services referenced herein are either trademarks or registered trademarks of North49. All right title and interest in and to the Data shall belong to Licensee or its licensors.
21. **Force Majeure.** Neither party will bear any responsibility or liability to the other party arising out of any delay or interruption of its performance of obligations under this Agreement due to any act of God, act of governmental authority, act of the public enemy, or due to war, riot, flood, civil commotion, insurrection, labor difficulty, severe or adverse weather conditions, utility or communications failure, or any other cause beyond the reasonable control of the party delayed (collectively, "Force Majeure Condition"). Any party claiming that a Force Majeure Condition has arisen shall immediately notify the other party of the same and shall act diligently to overcome and remove the effects of the event of the Force Majeure Condition. Such party shall notify the other party immediately when such Force Majeure Condition has ceased.

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22. **Indemnification of North49.** LICENSEE SHALL INDEMNIFY AND HOLD NORTH49, AND NORTH49'S PARENT CORPORATION, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, AND AGENTS, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, DAMAGES, LOSSES, LIABILITIES, AND EXPENSES (INCLUDING LAWYERS' FEES AND COSTS) ARISING OUT OF OR IN CONNECTION WITH ITS USE OF THE SERVICES AND POSTING OF THE DATA (INCLUDING WITHOUT LIMITATION INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR TRADEMARK RIGHTS OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS) OR BREACH OF THIS AGREEMENT.
23. **Indemnification of Licensee.** NORTH49 SHALL INDEMNIFY AND HOLD LICENSEE, AND LICENSEE'S PARENT CORPORATION, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, AND AGENTS, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, DAMAGES, LOSSES, LIABILITIES, AND EXPENSES (INCLUDING LAWYERS' FEES AND COSTS) ARISING OUT OF OR IN CONNECTION WITH NORTH49'S PROVISION OF THE SERVICES AND CONTENT (INCLUDING WITHOUT LIMITATION INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR TRADEMARK RIGHTS) OR BREACH OF THIS AGREEMENT.
24. **Disclaimer of Warranties.** NORTH49 MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE, ADDITIONAL SERVICES OR ANY CONTENT. LICENSEE ACKNOWLEDGES AND AGREES THAT NORTH49 DOES NOT REPRESENT OR WARRANT THAT: (I) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (II) THE SERVICE(S) OR ADDITIONAL SERVICES WILL MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS, (III) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, ADDITIONAL SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY LICENSEE THROUGH THE SERVICE WILL MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS, (V) ERRORS OR DEFECTS WILL BE CORRECTED, (VI) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO LICENSEE STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED BY NORTH49 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY NORTH49.
25. **LIMITATION OF LIABILITY.** NEITHER PARTY'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE DATA, REGARDLESS OF THE FORM OF THE ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL EXCEED THE LICENSE FEES PAID BY LICENSEE TO NORTH49 UNDER THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO SECTION 20 AND 21, NORTH49 SHALL NOT BE LIABLE FOR ANY CLAIMS OF THIRD PARTIES RELATING TO THE SERVICES AND ADDITIONAL SERVICES. AND WHILST WE TAKE ALL NECESSARY PRECAUTION TO ENSURE THE SUITABILITY OF OUR PRODUCT, AND THAT THE SERVER IS PROPERLY MAINTAINED WITH THE NECESSARY BACKUPS AND ENCRYPTION SOFTWARE, WE ARE NOT RESPONSIBLE FOR CLIENT'S DATA FILES UPLOADED BY CLIENTS, OR ACCESSIBILITY TO THEIR PASSWORDS, OR EVEN HACKING INTO THE DATA BASE, OR ONTO THE SERVER. IF ERRORS OR DEFECTS ARE ATTRIBUTABLE TO NORTH49 WE UNDERTAKE TO CORRECT SUCH ERRORS.
26. **Submissions.** Unless otherwise agreed by the Parties in advance, North49 will own all right, title and interest, including copyrights and all intellectual property rights, to any and all suggestions, ideas, feedback, recommendations, or other information provided by Licensee to North49 relating to the Service ("Submissions") and Licensee agrees to assign such Submissions to North49 and waive all moral rights therein or to ensure its employees are bound to waive all moral rights therein free of charge. North49 may use, copy and distribute such Submissions as it deems appropriate in its sole discretion.
27. **Notice.** All notices may be served personally, by facsimile, by email, or mailed to Licensee at its address set forth on the Order Form, to North49 at its office supplied for that purpose, or such other address as either Party may provide in writing from time to time. Any such mailed notice shall be effective five (5) days following mailing, properly addressed, with first class postage prepaid. Fax communications shall be deemed received on the next business day following transmission, other than where the sender receives confirmation of an error in transmission. Email communications shall be deemed received twenty-four hours following transmission, other than where the sender receives confirmation of an error in transmission.
28. **General Matters.**
  - a. This Agreement shall in all cases be deemed an Agreement made in the province of British Columbia, Canada. All questions concerning the validity and operation of this Agreement and the performance of the

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obligations imposed upon Licensee hereunder shall be governed by the laws of the Province of British Columbia. Licensee irrevocably submits and attorns to the jurisdiction of the Court of Queen's Bench of the Province of British Columbia, or its successor, and promises and undertakes to bring no action or proceedings in any other court whatsoever. Licensee agrees that any Judgment or Order of a British Columbia Court shall be fully enforceable against Licensee in Licensee's jurisdiction of residence or business. Notwithstanding the foregoing, in the event of breach of this Agreement by either Party requiring the other party to seek injunctive or other equitable relief, such Party shall be entitled to such injunctive relief in any court of competent jurisdiction.

- b. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- c. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
- d. No joint venture, partnership, employment, or agency relationship exists between Licensee and North49 as a result of this agreement or use of the Services.
- e. The failure of either Party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the other Party in writing.
- f. This Agreement, together with any attached or referenced schedules, documents, forms or exhibits accepted by the parties at the time of entering into this Agreement comprises the entire agreement between Licensee and North49 and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.
- g. In the event of any conflict between this Agreement and any such attachments, this Agreement shall prevail.
- h. Neither Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control and the obligations and rights of the excused Party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.