



SUBMITTED BY:

5NINES

222 W. WASHINGTON AVE. STE. 360

MADISON, WI 53703

RFI #: RFI 8349-O-2014/KS

**BRIDGING THE DIGITAL DIVIDE FOR UNDER-
RESOURCED NEIGHBORHOODS**

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I. COMPANY PROFILE

- a. 5NINES was founded in 2001 as Matador Consulting by Todd Streicher, Eric Mansfield, and Rylee Wedekind. With their combined backgrounds in enterprise level consulting, database administration, and IT project management, the three owners found a great need for their services in and around Madison and the business quickly grew. In 2004, a fourth owner Anton Kapela bought into the LLC. The four owners found an opportunity to invest in building a data center in the Network 222 building located at 222 W. Washington Avenue as a joint venture with building owner Fiore Company. Within a few years, the data center became an essential piece of the business venture. The company changed its name to 5NINES to reflect a growth beyond the sole provision of consulting services and bought Fiore out of the data center.

Today 5NINES employs 33 Wisconsinites and serves more than 200 customers in the greater Madison and Midwest region. The main offices remain at 222 W. Washington and a second office is currently being established in Milwaukee.

- b. For questions concerning our history, founding, or current service offerings, please contact CEO Todd Streicher at 608-512-1002 or tstreicher@5nines.com.
- c. 5NINES has a web presence at 5nines.com.
- d. 5NINES is an entrepreneurial technology company. We provide solutions and services to benefit and improve our customers. We show our customers how to enjoy technology – make it more fun and less work. We purposefully offer a wide range of services for a number of reasons: we can work with varied clients, we can handle a greater portion of their needs, and we don't get bored doing the same thing. We get to consistently grow our knowledge while keeping our customers on the innovative edge of technology.

We have formed strategic partnerships with several neighbors and vendors, including SoftwareONE, M3 Insurance, Three Pillars, Check Point Software Technologies, and more.

A major component of our business strategy is to support and enable local businesses and causes to benefit our community and greater Wisconsin. We believe in a teamwork approach to growing the economy of Wisconsin. Whenever possible, we use local vendors to meet our needs, from buying our office coffee through Just Coffee to gifting clients with Gail Ambrosia chocolates, we support our neighbors wherever possible. Many of our



customers are non-profits and we often discount our services or provide in-kind trade, recognizing the value that these organizations provide to our community. Some of our non-profit and in-kind trade partners include: 100state, Special Olympics, Goodman Community Center, Northstar Dog Rescue and Advocacy, and more.

- e. See Appendix A for Existing Client References.

II. TECHNICAL INFORMATION

- a. Historically, the most scalable and reliable form of internet connectivity has come in the form of a wireline or fiber based network. These networks can be scaled to an arbitrary level of density and speed, and on the top-end of the performance curve, there is no specific limit to deliverable speed on fiber-based networks. However, the effective minimum density remains fixed at one 'drop' or 'line' per residential location, no matter how fast or evolved the system. It is this 'minimum density' problem that all physical wire or fiber systems face - and this chiefly influences the final cost of a network deployment. Since every user of a traditional network must be connected physically to it, and since this is the primary source of capital and construction labor costs, initial construction costs for any substantially broad coverage area range in the hundreds of millions of dollars.

Recognizing the cost-prohibitive and fundamentally limiting nature of a wireline deployment, 5NINES proposes instead the construction of a hybrid, super-dense, 4G wireless data network, such that physical connection points are minimized, and are on the order of one 'site' per neighborhood block area. 4G generally refers to so-called fourth-generation mobile wireless data systems, the cutting-edge version of wireless data technology currently deployed globally by national cellular providers.

In most use cases, 4G technology enables 5-12 megabits per second (mbps) transfers in the downlink direction, assuming sparse coverage of towers and base stations. Today, typical deployment density for wireless carriers is one base station every two to three miles. If density is increased, one can expect effective data transfer rates that are more comparable to modern coaxial-cable based DOCSIS 3 networks, eclipsing 50 mbps in downlink performance. Uplink performance would be upwards of 1 mbps.

Using existing 5NINES network infrastructure access sites, 5NINES would deploy multiple 4G base stations at 7 to 8 points across the city of Madison. A 4G service broadcasted from these seven or eight points would



be adequate to provide the City of Madison with sufficient signal strength for users to achieve performance that exceeds cable and DSL.

Like fiber and cable networks, user equipment must convert the network “backbone” link into a user-friendly link; typically this takes the form of a “modem” or “router” -like device. Users of the 5NINES 4G network would likewise require a 4G modem, WiFi gateway, or other adapter device to support laptop and desktop computers, WiFi tablets, and other computer equipment.

- b. This solution requires 7 to 8 main radios sites to support the 4G network. At the individual user level, each household would require a gateway device to provide access to the 4G data network for devices that aren’t directly compatible with it (e.g. WiFi and wired Ethernet computer equipment).

- c. Important advantages of our architecture:

- i. Affordability

The deployment of a functional and accessible wireless internet signal across any significant (i.e. multiple square miles) geographic scale would require a substantial investment in equipment and construction, especially if such a system relied on traditional WiFi technology. The failure of the MadCity Broadband WiFi project taught us that we would need to deploy one access point radio approximately every 50 to 100 feet across the City to adequately serve communities - and even then, we learned that it would be unlikely for the network to achieve indoor coverage, or for the signal to penetrate any building structures.

In contrast, even a basic 7 site deployment using existing 5NINES rooftop access sites would achieve coverage of virtually the entire Madison Metro area (i.e. from Morey field to High Crossing Boulevard). To replicate this sort of pervasive, scalable access network with direct fiber or copper cabling access to end users would require many, many times the outlay -- very likely exceeding a \$100,000,000 deployment cost for complete metro area coverage.

- ii. Reliability

Interestingly, there is less active equipment required to support a 4G wireless solution than would be required by a cable, fiber, or DSL network with sufficient density. Additionally, 4G wireless requires exponentially less labor to maintain and repair in an on-going capacity. 5NINES’ current support capacity is adequate to



maintain and conduct any required repairs for the proposed access sites.

Additionally, this network would be built with the same network monitoring devices we deploy across all 5NINES network technology, ensuring us a 24/7 view of the network health and enabling proactive service.

Finally, 4G wireless systems are inherently “high availability” with respects to the end-user; if one tower went down completely, others are engineered to be near enough (i.e. sufficient cell overlap is designed in) to effectively cover the basic access needs of the user population.

- d. Resources ensuring service sustainability:
5NINES employs a team of 5 network technicians, 4 helpdesk/dispatch technicians, and a 24/7/365 call service empowered to escalate any trouble issue. The additional of 7 to 8 new radio sites would create no strain on our existing support infrastructure.
- e. Additional Details
It bears noting that our solution, using current technology, requires the deployment of a modem-like device at the point of use. The 4G system we propose deploying is forward-looking, with an eye on market innovations, flexible upgrade paths, and ease of use and scale. The newly-released iPhone 6 and some Android phones are now incorporating the technology necessary to access the 4G signal we would deploy. Newer laptops, too, can be assembled with the technology built-in. The majority of existing technology, however, would require a modem-like gateway device. A fiber or cable network would require the same deployment of a gateway device at the point of use – in this case a cable modem, DSL modem, or other sort of WiFi or router-like device. Thus, at basis, our deployments use-case and style is not substantially different from any other active network.
- f. Terms and Conditions – See Appendix B.

III. POTENTIAL SERVICE AREAS

5NINES’ principal assumption is that internet service should not stop at the boundaries of the neighborhoods noted in the City’s Request for Information. Rather, 5NINES encourages the City of Madison to think bigger about this potential project. We urge the City to consider this project an opportunity to innovate on a national scale. 5NINES proposes that this project expand its scope beyond destroying digital divides to building a community connected across its geography by high speed data



access. The value of this connectivity is immeasurable and lies at the heart of the City's motivation in creating this initial Request for Information.

5NINES believes that a city-wide scope for this project would achieve further important growth objectives for Madison. With recent expansions into Madison by Google, Amazon, Zendesk and other national technology leaders, Madison is establishing a national reputation as a center for growing and innovating technology. As the reputations of these national powerhouses adds a welcome shine to the Madison image, we believe in the value of local innovation and view this project as an opportunity to feature home-grown Wisconsin talent in a nationally notable way. 5NINES has the expertise, drive, and capacity to build a high-speed data network across Madison that innovates past fiber and into the new generation of technology.

IV. PRICING MODEL

The initial base station hardware investment is estimated at \$250,000 across 6 sites and initial user equipment investment is estimated at approximately \$150 per device. 5NINES proposes that, similar to current cellular pricing model, tiered, usage-based pricing be established for the network. We have found that use-based pricing, however low-cost as it may be, incentivizes users to think about and question the efficiency of Internet applications they may engage.

Today, pricing deployed by major carriers is arguably deceptive - so-called "unlimited" data plans are not truly unlimited, per gigabyte transfer fees are exorbitant, and the feedback cycle from increases in user activity to network enhancements is measured on the order of years, not months or weeks. Thus, our pricing model seeks to operate in a "cost-plus" space, whereby the capital cost, labor input, and network operations expenses are covered with a 15% profit margin. For 5NINES to ever substantially benefit its "bottom line," the network must scale to accommodate its busiest and most demanding users. In this model, to increase revenues, 5NINES must scale and support increased usage-based demands.

Initial estimates suggest that instead of the 10's of dollars pricing per gigabyte one finds on national 4G networks (replete with fine-print, usage caps on unlimited accounts, etc.), 5NINES can support a very conservative price point of 1 to 2 dollars per gigabyte, even at peak usage times of day or week, at the outset. As technology scales up, costs are reduced and capex requirements slacken, allowing 5NINES to either build more sites to meet demands, issue refunds and rebate offers, or reduce future rates to obtain the target of cost + 15%.



APPENDIX A: EXISTING CLIENT REFERENCES

COOPERATIVE RESOURCES INTERNATIONAL

GREG HUSTAD
Network Engineer
715-235-1128
ghustad@crinet.com

OVERTURE CENTER FOR THE ARTS

BRIAN ANDERSON
Theater Technician
608-258-4426
banderson@overturecenter.org

4TH WARD LOFTS

WILL COFFEY
Condominium Manager
608-237-7674
willc@madisonproperty.com

LORAIN HOME OWNERS ASSOCIATION

TOM GEIER
Director
608-256-4478
bache@bachefunding.com

KELLER REAL ESTATE GROUP, INC.

DAN GRUNEWALD
608-227-6543
grunewald@kellerrealestategroup.com



APPENDIX B: STANDARD TERMS AND CONDITIONS

CONFIDENTIAL AND PROPRIETARY

June 6, 2013

THE PARTIES HEREBY AGREE TO THE FOLLOWING:

Definitions. Except as set forth in this Section or as otherwise set forth in the Service Agreement, capitalized terms shall have the definitions assigned to them below. Except as otherwise set forth herein, technical terms commonly used in the industry that appear in these Standard Terms and Conditions shall be so construed.

“Authorized representative” means an employee, agent, contractor or other person that Customer designates in writing as having authority to have access to the 5NINES Center and Premises on Customer’s behalf. Customer may, at no additional charge, designate up to three (3) Authorized Representatives who will each be granted Data Center facility access badges. Any additional Authorized Representatives will be granted Data Center facility access badges at the price set forth in the “Additional Services” section of the Service Order Detail. Customer may replace an Authorized Representative upon ten (10) business days prior written notice.

“Change Management Order Form” (or “CMO Form”) means a valid 5NINES change order form that is submitted by Customer which requests certain additions, changes and deletions to the Services, service components and additional features contained in the Service Order Detail.

“Customer Provided Equipment” (or “CPE”) includes devices or components located within the customer premise or the Data Center which is owned by or provided by the customer.

“Data Center” means a particular 5NINES facility within which the Premises are located.

“Service Level Agreement (SLA)” means the 5NINES general service level agreement set forth on 5NINES’, as specified by this Service Agreement or by the Service Description.

“New Charges” means those new Monthly Recurring Costs (MRCs) and/or Non-recurring Costs (NRCs) that are associated with changes or additions that Customer wishes to make to any of its existing Service.

“Premises” means that area within a Data Center in which CPE is installed pursuant to the Service Agreement and the Service Order Detail.

“Service Agreement” means the agreement made between 5NINES, LLC and the Customer for 5NINES to provide for the services described in the Service Order Detail for the fees listed and according these Standard Terms and Conditions in exchange for the Customers commitment to use those services and pay the fees. The Service Agreement is articulated in the Service Agreement document signed by



a 5NINES LLC representative and a Customer representative and is a binding contract for such services and terms.

“Service Order Detail” means the listed details of the services ordered, service components and additional features, including the applicable rates, charges and quantities for each (i.e., the pricing tables) ordered by Customer, as documented in the Service Agreement and as may be amended in writing by the parties.

“Software” means software (including third party software) and related documentation, if any, provided by 5NINES to Customer in connection with any of the Services.

“Start of Service Date” means the date upon which 5NINES makes the applicable Service(s) available for Customer’s use.

“Statement Period” means the frequency in which invoicing and statements will be delivered and reflects the period in which the applicable Service(s) were delivered.

“Third Party Carrier Circuits” means data and/or voice teleco circuits that 5NINES has contracted for with a Telecom Carrier or other Network Provider on behalf of the customer.

2. Service Description.

The Service Agreement sets forth the description of 5NINES’ services referred to herein as the “Services” as provided pursuant to the Service Agreement and these Standard Terms & Conditions. Except for any changes made to the Service Order Detail pursuant to Section 6.2 of these Standard Terms & Conditions, all terms and conditions of the Service Agreement and the Service Order Detail Exhibit and the Service Agreement entered into between the parties shall prevail over any conditions in any other Order Form, Customer purchase orders, payments or other forms.

A detailed, technical description of the Service and its various components (the “Service Description”), which is subject to change at 5NINES’ sole discretion, is available upon request from the 5NINES sales representative. The Service Description is subject in all respects to the Service Agreement between Customer and 5NINES. In addition to the termination remedies set forth in these Standard Terms & Conditions, Customer may terminate the Service Agreement without liability (other than for charges accrued but unpaid as of the termination date) upon thirty (30) days prior written notice if 5NINES materially and adversely changes the Service Description, so long as written notice of such termination is delivered to 5NINES within thirty (30) days of the effective date of such material adverse change. If Customer does not deliver such notice to 5NINES within the specified period, Customer will be deemed to have waived its right to terminate the Service Agreement.

In general, the Service can be comprised of any of the following service components and features and will vary depending upon those Services, features and components that Customer orders pursuant to the Service Order Detail:

(a) Data Center Facilities - the structure, equipment and systems that make up the Data Center includes monitoring systems, power distribution, storage and backup infrastructure, LAN/WAN connectivity equipment, heating/ventilating/air



conditioning (HVAC) systems and fire detection and suppression systems provided for the delivery of the Service.

(b) Space - the Service includes the physical space (e.g. rack, cage, cabinet) which is provided for the installation and operation of the CPE.

(c) Power - all Premises are provided with standard amounts of power in order to power the CPE, as more fully detailed in the Service Description. Power circuits may be ordered for multiple diverse feeds and/or for high power consumption CPE.

(d) Management & Support Services - the management, consulting or administration services provided by 5NINES, for servers, user devices, applications and network equipment, and may include data storage, tape backup, remote access and ITIL management processes.

(e) Monitoring Services - the systems and personnel required to provide monitoring of CPE, which may include system checks, network hardware checks and other monitoring services.

(f) Notification and Reporting - the Service includes notification service of various Service-related events, including monitoring services and informational reports (e.g., bandwidth utilization, web server statistics and trouble ticket tracking).

(g) Network Services and Bandwidth - the Service includes a high-speed network connection via an Ethernet LAN connection, land line WAN connection, or Microwave connection. Services connect CPE to either the 5NINES backbone and upstream internet providers or telecommunications carrier peers.

(h) Web and Email Hosting - the Service includes access and use of shared and dedicated web hosting servers for world wide web sites and electronic mail.

(i) Application Hosting - the Service includes access and use of shared and dedicated application hosting servers.

(j) Telephony Services – the Service includes access and use of the telephone system functions and features and lines for voice communications.

(k) Dedicated Hardware and Software Services - the Service includes access and use of 5NINES hardware and software.

(l) Virtual Private Server and Cloud Hosting – the service includes access and use of virtual machines on 5NINES host servers.

(m) Storage Services – The service includes access and use of 5NINES Storage Area Network (SAN) and Network Attached Storage (NAS) devices.

(n) Other Services - additional services may include wiring cross-connects to other network services (e.g., frame relay or ATM networks), domain name registrations and transfers, and other ancillary services.

All Service is subject to facilities and capacity availability. Prior to providing Service, a completed Service Order Detail Exhibit must be submitted by Customer and accepted by 5NINES, if not already completed and attached hereto. 5NINES reserves the right to reject any Service Order Detail in its reasonable discretion. All



accepted Service Order Details shall be governed by the terms of the Service Agreement.

3. Obligations of the Parties.

3.1 Both parties agree that during the Term of the Service Agreement either party may publicly refer to each other orally and/or in writing, as a customer of 5NINES (e.g., sample Customer list), and upon termination of the Service Agreement, both parties right to publicly refer to each other as customer shall terminate. Any other public reference to one party by the other shall require the express written consent of the other party. Neither party shall disclose the terms of the Service Agreement to any third party without the prior written consent of the other party. Each party shall use reasonable precautions to protect the other's Confidential Information and employ at least those precautions that such party employs to protect its own confidential or proprietary information, but in no event shall the standard of care be less than the standard of care which a reasonable business person would use in protecting its own confidential information.

3.2 Subject to reasonable availability and in connection with the Service, 5NINES shall, at Customer's reasonable request, assign Service address space and/or order domain names for the benefit of Customer, and 5NINES will route those addresses on 5NINES network; it being understood and agreed that neither Customer nor any of its End Users shall have the right to route these addresses. 5NINES shall retain ownership of all such IP addresses, and upon termination of the Service Agreement, Customer's access to such IP addresses shall terminate. Customer shall directly pay any Monthly Recurring Costs "MRC's" and Non-recurring Costs "NRC's" associated with the domain names to the domain name registrar.

4. Term/Termination.

4.1 The term of the Service Agreement shall commence upon the Start of Service Date of the Service Agreement (or, if applicable, an amendment to the Service Agreement if added after its Start of Service Date) and conclude upon the expiration or termination of the last-to-expire (or terminate) Service ordered hereunder. The term for Service ordered hereunder will commence on the Start of Service Date and will continue for thirty-six (36) months from the Start of Service Date, unless another term commitment is indicated in the Service Order Detail (the "Minimum Service Term"). After the conclusion of the Minimum Service Term, the Service will automatically renew on a month to month basis at the then current monthly rates. Upon written notice to the other party at least thirty (30) days prior to the conclusion any such Minimum Service Term or the Renewal Term, as the case may be, either party may terminate the Service associated with the Service Agreement.

4.2 If Customer was granted a discount or waiver of any charges hereunder based upon Customer's Minimum Service Term commitment (a "Discount") and if the Services provisioned hereunder are terminated prior to the conclusion of such Minimum Service Term for reasons other than a default by 5NINES, Customer shall pay to 5NINES an amount equal to the Discount, in addition to any other applicable charges set forth in the Service Agreement.

4.3 If Customer requests a full or partial turn-down of Service prior to the conclusion of the Minimum Service Term, then Customer shall pay any applicable



early Cancellation Charges for the affected Services. "Cancellation Charge" means an early cancellation charge that is imposed if Service is terminated prior to the conclusion of the then-current term.

4.4 Cancellation charges for Dedicated Hardware & Software Services and third party Carrier Circuits shall be equal to one-hundred percent (100%) of the then-current MRCs multiplied by the number of months, or portion thereof, remaining in the then-current term. Cancellation charges for all other services shall be equal to fifty percent (50%) of the then-current MRCs multiplied by the number of months, or portion thereof, remaining in the then-current term.

5. Rates, Payment and Collection.

5.1 Pricing. Customer shall pay all applicable MRCs and NRCs as set forth in the Service Order Detail Exhibit listed as part of the signed Service Agreement, which will commence billing as of the Start of Service Date. 5NINES will not modify the rates set forth in the Service Order Detail Exhibit during the first twelve (12) months following the Start of Service Date ("Rate Lock Term"), unless such modification is based upon Regulatory Activity. After the expiration of the Rate Lock Term, 5NINES may modify the rates set forth in a Service Order Detail or eliminate certain components of the Service upon sixty (60) calendar days prior written notice to Customer; provided, however, 5NINES may reduce the sixty (60) day notice period, as necessary, if such modification is based upon Regulatory Activity. If 5NINES materially increases the rates set forth in a Service Order Detail for reasons outside of those of Regulatory Activity, Customer may terminate the affected Service without incurring cancellation charges, so long as written notice of such termination is delivered to 5NINES within thirty (30) calendar days of the effective date of such change. If Customer does not deliver such notice to 5NINES within such thirty (30) day period, Customer will be deemed to have waived its right to terminate the affected Service. All rates and charges for new Services will be quoted by 5NINES on an "individual case basis." Pricing for nonstandard services that are not set forth in the Service Order Detail and/or the Service Description (including, without limitation, any non-standard professional or consulting service requested by Customer or its Authorized Representative) are provided by 5NINES at 5NINES then-current rates. The rates set forth in the Service Order Detail do not include any costs associated with CPE, all of which charges shall be additional.

5.2 Payment. 5NINES requires payment in advance of the Statement Period. Customer shall pay 5NINES for any sales taxes based on or measured by this Agreement. Any payment not made within fifteen (15) days of its due date is considered late and shall accrue compound interest at a rate of 1.5% per month. If payments are not made within the terms described, 5NINES shall have the right to disconnect services after 20 days of the due date. Service reactivation fees may apply. 5NINES retains the right to commence and prosecute suits for the collection of payments due under this Agreement. Customer agrees that Customer shall be responsible for any costs, including but not limited to attorneys' fees, incurred by 5NINES as a result of 5NINES' efforts to collect payments due under this Agreement. 5NINES may withhold future performance in the event timely payments are not received when due.

5.3 Miscellaneous. Unless the parties shall otherwise agree in writing, Customer shall have sole responsibility for ordering, securing installation and ensuring proper operation of any and all equipment required to enable Customer to receive the



Service. Customer shall not be eligible for any discounts or promotional offers other than those specifically set forth in the Service Agreement, the Service Order Detail or in an attachment to the Service Agreement, all of which shall be signed by Customer and accepted by 5NINES.

7. Service Level Agreement (SLA).

The Service provided hereunder is subject to the Service Level Agreement (SLA), which is effective as of the first day of the second month after initial installation of Services. 5NINES guarantees the "Service Availability Goal" that the Service will be available 99.9% each month or that level specified in the Service Description. If 5NINES fails to meet this guarantee due to "5NINES Service Unavailability", 5NINES will credit the Customer's account as follows. For each cumulative hour of 5NINES Service Unavailability or fraction thereof below the 99.9% availability guarantee, within a calendar month, Customer's account shall be credited with one day's worth of usage / access fees. Fees will be calculated on a pro rata basis from the actual fees billed at the end of the calendar month in which the 5NINES Service Unavailability occurred. If the Service does not include Monitoring Services as part of the Service or as an additional Service, Customer must report the Service Unavailability via 5NINES emergency phone number and report the incident as "critical" or "911" priority in order to be eligible for credit. 5NINES Service Unavailability does not include any unavailability attributable to: (a) scheduled maintenance; (b) acts or omissions of Customer or any user authorized by the Customer; (c) failure in customer-end equipment or telecommunication lines connecting the customer to the 5NINES network; or (d) any force majeure event. In any calendar month, credits provided to Customer with respect to 5NINES Service Unavailability may not exceed one month's usage / access fees. In order for the Customer to receive credit for 5NINES Service Unavailability, claims by Customer must be submitted by the Customer's authorized technical contact within 10 calendar days of the end of the month in which the 5NINES Service Unavailability occurred. All claims are subject to review and verification by 5NINES prior to any credits being granted. Credit requests should be sent via e-mail and addressed to support@5NINESdata.com and should reference the date and time of the event. Each event must be reported and verified by a 5NINES authorized representative. 5NINES will acknowledge credit requests within 2 business days of receipt and will inform Customer via e-mail or U.S. Postal Mail within 10 days of this acknowledgment whether the claim request is approved or denied. Approved credits will appear on the Customer's next monthly bill. 5NINES does not warrant that the services provided hereunder will be uninterrupted, error-free, or completely secure. The service level credits referred to in this section shall be 5NINES's sole liability and Customer's exclusive remedy for interruptions, delays, impairments, inadequacies or other defects in service with regard to any and all of the services. 5NINES does not make, and hereby disclaims, any and all other warranties whether express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

8. Outages; Processing of Credits.

If an Outage occurs, a trouble ticket will be issued. The Outage duration is measured from the time the trouble ticket is opened to the time the affected service is Operational again. Moreover, for purposes of measuring the duration of any Outage(s), the applicable non-overlapping time periods shall be aggregated each month. Once the Outage is resolved, Customer will be notified and a root



cause analysis will be performed and a report will be delivered. The credits associated with the specific Outage are subject to the terms of this Section. Customer must initiate a written request within five (5) business days of the last day of the month in which the Outage occurred and, upon such request, and at the conclusion of the calendar month, 5NINES will measure the cumulative Outages for each affected service for that calendar month. Credits shall be applied to the month in which the event giving rise to the credit occurred. Outages spanning month-end will be handled as a single outage and credits will be applied appropriately for time in each month the outage occurred. Any SLA credits will be promptly issued against Customer's invoice.

8.1 Maximum Service Credits; Exceptions.

(a) Under no circumstances will Customer be entitled to SLA credits in any one calendar month in excess of charges for seven (7) days of MRCs for the affected service. Notwithstanding the foregoing, in the event that, in any single calendar month, Customer would be eligible to receive SLA credits totaling twenty-four (24) or more days (but for the limitation set forth in this Section), then, Customer may, at its option and without penalty, either: (i) cancel the affected service only, but leave the Service Agreement and the remaining services in full effect; or (ii) terminate this entire Agreement, including all services. In either event, Customer must provide 5NINES with written notice of cancellation/termination to the Call Management Center with a courtesy copy to the attention of the General Counsel to the 5NINES facility address within five (5) business days following the end of such calendar month. Such termination will be effective thirty (30) days after receipt of written notice by 5NINES. Customer will be required to pay all outstanding balances, less any SLA credits issued by 5NINES, and Customer shall pay any de-install charges applicable to the return of the CPE (e.g., shipping, etc.). Customer's remedies for any and all claims relating to the services (e.g., interruptions, deficiencies, etc.) shall be limited to those set forth in the SLAs set forth in this Section.

(b) In the event of a Service-related outage, as defined in the Service Level Agreement (SLA) section, those specific terms, measurements, SLAs, and remedies shall apply. In the event that Customer is entitled to multiple SLA credits under the SLAs in this Section arising from the same event, then such SLA credits shall not be cumulative. Customer shall be entitled to receive only the maximum single SLA credit available for such event (e.g., Customer shall not be entitled to "double credits" in the event of Service unavailability).

(c) SLA credits will not be available in cases where the SLA in this Section is not met as a result of: (i) the negligence, acts or omissions of Customer, its Authorized Representatives, employees, contractors or agents or its End Users; (ii) the failure or malfunction of equipment, applications or systems not controlled by 5NINES; (iii) circumstances or causes beyond the control of 5NINES, including instances of Force Majeure; or (iv) scheduled service maintenance, alteration, or implementation, including Normal Maintenance (as defined in these Standard Terms & Conditions). The SLAs set forth in these Standard Terms & Conditions only apply to services provided by 5NINES. Accordingly, Customer is solely responsible for administering and managing all aspects of its application(s). There are no SLAs associated with the availability (or unavailability), administration, monitoring or management of Customer's application(s).



8.2 Maintenance Window Definition.

(a) Normal Maintenance. Normal Maintenance shall refer to: (i) upgrades of hardware or software; (ii) preventative and necessary maintenance (such as upgrading power supplies), or (iii) upgrades to increase capacity. Normal Maintenance while being conducted may degrade the quality of services provided which may include a disruption of the services; provided, however, that a disruption related to Normal Maintenance shall not be deemed to be an Outage. Normal Maintenance shall be undertaken at a time mutually negotiated and agreed upon by Customer and 5NINES during implementation. For maintenance not covered under mutually agreed upon Normal Maintenance hours, 5NINES shall provide two (2) days prior notice.

(b) Urgent Maintenance. Urgent Maintenance shall refer to efforts to correct hosting conditions which are likely to cause an Outage and which require immediate correction. Urgent Maintenance, while being conducted, may degrade the quality of the services provided, and which may include an Outage. An outage related to Urgent Maintenance shall be deemed an Outage for purposes of determining whether the service is Operational. 5NINES may undertake Urgent Maintenance at any time deemed necessary. 5NINES shall provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

9. Data Center Specific Terms.

9.1 Premises.

(a) License Grant. If the Service requires, 5NINES hereby grants to Customer a limited, personal, non-exclusive, non-transferable license ("License") to access the Data Center as reasonably necessary in order to install, maintain and operate Customer's CPE and the Customer Web Site (if applicable) within the Premises. Customer and its Authorized Representatives shall access and use the Data Center and Premises only for the foregoing purposes and to interconnect with 5NINES' network. Customer has not been granted any real property interest in the Premises or Data Center and has no rights as a tenant or otherwise under any property or landlord/tenant laws, rules or regulations. The following items are prohibited in the Data Center: explosives, tobacco-related products, weapons, cameras (e.g., video, web, etc.), video tape recorders, flammable liquid or gases or similar materials, electro-magnetic devices, or other materials or equipment that 5NINES, at any time and at its reasonable discretion, deems prohibited. Customer and its Authorized Representatives shall not alter or tamper with any property or space within the Data Center other than the Customer's CPE. Customer is solely responsible for assessing its own computer and transmission network needs and the results to be obtained there from. The License is co-terminus with the term of Service ordered hereunder and is subject and subordinate to the underlying ground or facilities lease or other superior right by which 5NINES has acquired its interest in the Data Center. Neither the License, nor the use of the Data Center or payment of any charges by Customer shall: (a) create or vest in Customer any easement or other property right, including any roof or subfloor rights, of any nature in the Premises or Data Center; nor (b) limit or restrict 5NINES' right to access, operate and use the Premises, Data Center and facilities therein. Any additional access or property rights including, but not limited to, any roof or subfloor rights shall be contemplated and granted under separate agreement.



(b) Access to Premises. Customer and its Authorized Representatives shall comply with the requirements of any lease, rules and regulations of 5NINES or its lessor, including, but not limited to, the 5NINES Standards for Facility Security and Rules of Conduct (the “Standards”). A current copy of the Standards, which are subject to change at 5NINES’ reasonable discretion, is available upon request from the 5NINES Call Management Center. Customers will be give notice of any changes to the Standards and allowed at least ten (10) days grace period for compliance with such changes. Only Authorized Representatives shall be permitted to access the Premises and the Data Center on Customer’s behalf. 5NINES, at its sole discretion may refuse to allow an Authorized Representative to enter the Data Center. Authorized Representatives entering the Data Center in order to access the Premises may, at 5NINES’ sole discretion, be required to be accompanied by an authorized employee or agent of 5NINES (the “Escort”). All of Customer’s work in the Data Center and Premises shall be performed in a safe and workmanlike manner. Customer’s work operations in and around the Premises may be suspended if, in Escort’s reasonable discretion, any hazardous conditions arise or any unsafe or insecure practices are being conducted by an Authorized Representative. Customer shall defend, indemnify and hold harmless 5NINES from any claims, liabilities, costs and expenses (including reasonable attorney’s fees), arising out of or related to any damages caused by Customer, its Authorized Representatives, employees, agents and contractors to any part of the Data Center, 5NINES’ equipment or equipment of 5NINES customers.

9.2 Customer Premises Equipment (CPE).

(a) CPE and Software Ordering. Except as set forth in the Service Description or unless the parties agree in writing otherwise, Customer is solely responsibility for the ordering, installation, operation and Service compatibility of all CPE required to enable Customer to receive the Service. Prior to installation and thereafter upon 5NINES’ reasonable request, Customer will provide 5NINES an updated list of all CPE installed or to be installed in the Premises. If requested by Customer, 5NINES shall, subject to availability and on Customer’s behalf, obtain certain CPE (which also may include Software and/or other materials). Any CPE provided to Customer by 5NINES shall be provided pursuant to the terms and conditions of a separate agreement or order form. If any CPE or Software not provided by 5NINES impairs Customer’s use of any Service: (a) Customer shall remain liable for the payment of all Service charges; and (b) any applicable Service specifications or service levels may not apply. All CPE and Software provided by 5NINES are subject to the terms, rights and warranties set forth in the manufacturer’s or publisher’s warranty or end-user license applicable to such CPE or Software, with no warranty of any kind from 5NINES. In the event that Customer files a petition in bankruptcy, has an involuntary petition in bankruptcy filed against it, becomes insolvent, is unable to pay its liabilities when and as due, or if any of the foregoing are announced by Customer as planned or expected, then in such event 5NINES will have a security interest in the CPE and other Customer property located in the Data Center for purposes of securing any amounts owed by Customer to 5NINES.

(b) Installation and Changing of CPE. Except as otherwise set forth in the Service Description, Customer shall engineer, furnish, install and test, at its sole cost and expense, all CPE. If, however, 5NINES is installing CPE on Customer’s behalf, then certain provisions of this Subsection may not apply. Prior to installing CPE (“CPE Installation”) or making any CPE or logical configuration changes (“CPE Change”),



Customer must so notify 5NINES in writing. In the case of CPE Installation, Customer must submit engineering plans and specifications ("CPE Installation Plans") pertaining to the CPE Installation for 5NINES approval in the form required by 5NINES. In the case of CPE Change, Customer must advise 5NINES in writing of the nature of such CPE Change and may not attempt to make such CPE Change until 5NINES approves such CPE Change in writing. 5NINES shall notify Customer of its approval of such CPE Installation Plans or CPE Change as soon as commercially reasonable (which in some cases will be immediate approval, but will not be later than five (5) business days after receiving Customer's written notice). In the case of CPE Installation, 5NINES shall also provide a written response ("5NINES Response") that will include space assignment, any applicable NRCs in order to prepare the Data Center or Premises for Customer's use (such as custom wiring, custom construction of cage or dividing walls, etc.), and the date when the Premises will be ready for installation of the CPE. CPE Installation and any CPE Changes shall not begin until 5NINES grants permission to commence same and may, at 5NINES sole discretion, be under the direct supervision of an Escort. All CPE shall be clearly labeled with Customer's name and contact information. Upon completion of CPE Installation, Customer shall remove all installation material from the Data Center and Premises and shall restore same to their pre-installation condition.

(c) Maintenance. 5NINES will conduct routine, scheduled maintenance within its Data Centers as set forth in the SLA, during which time the CPE may be inaccessible by Customer or unable to transmit or receive data. Unless 5NINES expressly agrees otherwise in writing, 5NINES shall have no obligation to maintain the CPE and/or any Customer software. Customer will be notified in advance of scheduled Maintenance activity that could affect Customer operations.

(d) CPE Relocation. 5NINES may, upon thirty (30) days prior written notice, relocate any CPE ("Non-Emergency CPE Relocation") and will relocate such CPE to a location which will afford comparable environmental conditions and accessibility. The parties will work together in good faith to minimize any potential, resulting disruption of Service. If an emergency event requires the immediate rearrangement or relocation of CPE ("Emergency CPE Relocation"), 5NINES may rearrange or relocate the CPE (with the same care used by 5NINES in handling its own equipment) as is reasonably necessary to respond to the emergency and Customer authorizes 5NINES to take such remedial actions. 5NINES shall use reasonable commercial efforts to notify Customer prior to performing the necessary Emergency CPE Relocation. Notwithstanding the foregoing, in the event of an emergency in the Data Center, 5NINES work shall take precedence over Customer's operations in the Premises. 5NINES will bear the cost of any Emergency CPE Relocation of any Non-Emergency CPE Relocation and will reimburse Customer for any damages caused to the CPE or Customer as a result of the CPE relocation where such damage is the result of 5NINES negligence or willful misconduct.

(e) 5NINES Inspection and Remedial Rights. 5NINES may (but is not obligated to) make periodic inspections of CPE ("CPE Inspection") upon reasonable advance notice to Customer, and Customer shall have the right to be present during CPE Inspection. If, however, such prior notice is not commercially practicable, 5NINES may make such CPE Inspection immediately, but shall thereafter provide notice of the CPE Inspection to Customer. The making of, or failure to make, CPE Inspections shall not give rise to any new, or alter any existing, obligations or liabilities of the parties under the Service Agreement. If the CPE is not installed and maintained in accordance with the terms of the Service Agreement, and Customer has not



corrected such non-compliance within ten (10) days after receipt of notice thereof from 5NINES, 5NINES may either: (i) suspend the Services; or (ii) correct such non-compliance at Customer's expense. If such condition poses either an immediate safety threat to people or an immediate threat to 5NINES Center or network facilities, 5NINES may, immediately and without notice perform such work and take such action that it deems reasonably necessary ("Corrective Action"). If 5NINES engages in such Corrective Action, 5NINES shall not be liable for any CPE damage or Service interruption. As soon as practicable after taking such Corrective Action, 5NINES will so notify Customer in writing and Customer shall reimburse all expenses reasonable incurred by 5NINES in connection therewith.

(f) Removal of CPE. Within thirty (30) calendar days of the expiration or termination of the Service Agreement, Customer shall: (i) remove all CPE (including any other Customer property located in the Data Center, but excluding any CPE that is owned or leased by 5NINES) from the Data Center at its own cost and expense (except where 5NINES provides such CPE removal service in the case of certain managed services ordered by Customer, as defined in the Service Description); and (ii) return to a 5NINES Center employee any CPE that is owned or leased by 5NINES. If Customer fails to remove its CPE as required by this Subsection, 5NINES may, upon thirty (30) calendar days written notice, either (a) return such CPE to Customer's address set forth in the Service Agreement; or (b) deem such CPE to be abandoned and move any such CPE to secure storage, and/or liquidate or otherwise dispose of the CPE in any commercially reasonable manner. If 5NINES elects to pursue any of these remedies, 5NINES shall have no liability to Customer and Customer shall bear risk of loss and shall be responsible for all associated costs and expenses (including reasonable attorneys' fees). Notwithstanding anything to the contrary contained in this subsection, if Customer owes 5NINES an outstanding balance at the expiration or termination of the Service Agreement, 5NINES may, in addition to the foregoing remedies, retain any CPE or other Customer property located in the Data Center and, upon thirty (30) calendar days written notice to Customer, sell them to satisfy such unpaid sums. Any proceeds of such sale that remain after costs of sale (including reasonable attorneys' fees) and satisfaction of any outstanding balance owed by Customer to 5NINES will be returned to Customer.

9.3 Miscellaneous.

(a) Insurance. In order to provide Customer with physical access to the Data Center and proximity to equipment owned by third parties, Customer shall at all times during the Term of the Service Agreement, at its own cost and expense, carry and maintain the following insurance coverage with insurers having a minimum "Best's" rating of A-VII (A-7):

(b) "All Risk" Property insurance covering all CPE located in the Premises in an amount not less than its full replacement cost;

(c) Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of the license, use or occupancy of the Data Center or Premises by Customer, including coverage for premises-operation, products/completed operations and contractual liability with respect to the liability assumed by Customer hereunder. The limits of insurance shall not be less than: (1) Each Occurrence - \$1,000,000, (2) General Aggregate - \$2,000,000, (3) Products/Completed Operations - \$1,000,000, and (4) Personal & Advertising Injury - \$1,000,000;



The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. If applicable, Customer shall require its subcontractors and agents to maintain the same insurance. Upon request, customer shall forward to 5NINES certificate(s) of such insurance upon the effectiveness of the Service Agreement and upon any renewal of such insurance during the Term. The certificate(s) shall provide that: (i) 5NINES LLC (and its participating affiliates) be named as additional insured as their interest may appear with respects the Service Agreement; (ii) thirty (30) days prior written notice of cancellation, material change or exclusion to any required policy shall be given to 5NINES; and (iii) coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by 5NINES. This requirement of insurance is not applicable for services, such as shared hosting or dedicated server hosting, that do not require physical access to equipment.

10. Limitation of Liability.

In no event will either party be liable to the other party for any losses, lost profits, loss of business, lost revenues, lost data, delays, loss of technology, rights or services, consequential, indirect, incidental, special, reliance, exemplary or punitive damages, or viruses arising out of or related to the Service Agreement, or any other type of damages other than direct damages (and with direct damages, only to the extent permitted in the Service Agreement). Except for causes of action involving non-payment of sums due under the Service Agreement or damages caused by Customer, its Authorized Representatives, employees, agents and contractors to any part of the Data Center, 5NINES' equipment or equipment of 5NINES customers, both party's aggregate liability (including attorneys' fees) to each other, if any, shall not exceed the amount of fees actually paid to 5NINES by Customer under the Service Agreement during the two months immediately preceding the date on which such claim (or related claims) first accrued.