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AGREEMENT (Terms & Conditions)

Five Nines Technology Group, Inc., a Nebraska Corporation ("FIVE NINES") has agreed to provide to () ("CLIENT") informational technology services as identified and described in the written service description documentation provided and agreed to by the Client. The service description documentation together with these Terms and Conditions are collectively referred to as the "Agreement".

1. **Services to be Provided.** FIVE NINES shall provide to CLIENT those services described in the service description documentation together with any commercially reasonable incidental services required to perform those services collectively, the "Services". FIVE NINES may amend and update at any time the CLIENT'S service description to reflect the actual services being provided to the CLIENT by FIVE NINES. Any modified service description, when described in and invoiced by FIVE NINES and paid by the Client, shall constitute an approved amendment to this Agreement as described in the invoice.

2. **Fees.** CLIENT shall pay FIVE NINES the fee for the Services as provided for in the Schedule "A" Financial Summary or as amended in any invoice. All invoices are due and payable upon as per invoice terms.

3. **Term.** This Agreement shall commence on the later of the date provided for in Schedule "A" or the date that both parties have signed and shall remain in effect until canceled by either party.

4. **Confidentiality.** CLIENT acknowledge and agrees that FIVE NINES may access any information (including personal information) contained in CLIENT'S IT environment in connection with the performance of the Services. FIVE NINES will handle the information that it may access in connection with the performance of the Services in a confidential manner and as provided for in the service description documentation.

5. **Cooperation of CLIENT.** CLIENT will allow FIVE NINES to use CLIENT'S machines, communications facilities, features and other equipment at no charge, as in the reasonable opinion of FIVE NINES and CLIENT, are necessary in order to enable FIVE NINES to perform the Services.

6. **Limitation of Liability.** FIVE NINES liability to CLIENT for any claim shall be limited to those claims that are covered through its "Insurance Policies" in effect at such time of a claim.

Commercial General Liability:

General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000

Business Automobile:

Each Occurrence	\$1,000,000
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Workers' Compensation:

Employers Liability

Bodily Injury by Accident	\$500,000 Each Accident
Bodily Injury by Disease	\$500,000 Policy Limit
Bodily Injury by Disease	\$500,000 Each Employee

Excess and Umbrella Liability:

Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$2,000,000
Personal and Advertising Injury	\$2,000,000

Information and Network Technology Liability:

Aggregate	\$2,000,000
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FIVE NINES will name Client as an additional Insured on their Commercial General Liability Insurance. FIVE NINES agrees that it will not reduce insurance coverage during the term of this agreement without at least thirty (30) days prior notice to the CLIENT. EXCEPT AS EXPRESSLY COVERED BY THE INSURANCE POLICIES, FIVE NINES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGE INCURRED OR SUFFERED BY CLIENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION LOSS OF DATA, LOSS OF REVENUE, LOSS OF INCOME, OR LOSS OF BUSINESS ADVANTAGE. CLIENT acknowledges that it has the opportunity to review the foregoing with FIVE NINES and that the foregoing is a material condition of FIVE NINES entering into this agreement.

7. **Cancellation.** After the initial or any renewal term of this Agreement, either party may terminate this Agreement by giving 30 days written notice to the other party. FIVE NINES may cancel this Agreement and discontinue all Services if CLIENT fails to timely pay any invoice or fails to perform any material term of this Agreement. If FIVE NINES elects to cancel this Agreement, it shall provide reasonable notice to the Client before terminating the Services.

8. **Employee Non-Solicitation Covenant.** FIVE NINES employees may not seek employment with or be offered employment by any CLIENT during the term of this Agreement and for the following one (1) year period. CLIENT acknowledges that FIVE NINES has a significant investment in the training and development of its employees and that FIVE NINES would be deprived of this benefit if CLIENT directly hired any of the FIVE NINES personnel.

CLIENT agrees that it shall not, without FIVE NINES written consent, solicit the employment of any FIVE NINES personnel during the term of this Agreement and for the following one (1) year period. CLIENT agrees that the actual damages suffered by FIVE NINES from the breach of this provision would be impracticable and difficult to determine. Accordingly, should this provision be violated by CLIENT, CLIENT shall pay to FIVE NINES as liquidated damages, an amount equal to 50% of the employee's total annual compensation. This amount is intended by the parties to be a reasonable calculation of the projected costs FIVE NINES would incur to identify, recruit, hire and train suitable replacement personnel.

9. **Indemnification.** CLIENT and FIVE NINES, shall defend, indemnify and hold harmless one another from and against any claims, damages, expenses, and liabilities, causes of action, and costs, including all reasonable costs of defense including attorney fees arising out of or resulting from the following:

- (a) Death, personal injury or property damage from the intentional or reckless acts of the indemnifying party, its employees, subcontractors or suppliers in connection with the obtaining or providing of the Services;
- (b) Claims of infringement of any intellectual property right in connection with the obtaining or providing of the Services; or
- (c) The unauthorized disclosure, use or infringement by the indemnifying party of any proprietary or confidential information of the other party or any third party. The indemnified party shall timely notify the indemnifying party of any claim(s) and shall cooperate with the indemnifying party and its agents in the defense of the claim(s). Each party's obligation to indemnify the other party shall survive the termination of this Agreement.

10. **General Provisions.**

- (a) **Notices.** All notices to be given under this Agreement shall be in writing and shall be deemed to have been given upon: personal delivery; or three (3) days after deposit in the mail with the United States Post Office; or 24 hours after emailing. Notices shall be sent to the addresses for the parties listed in Schedule "A" or at any other address provided by a Party pursuant to a written notice amending a Schedule "A" address in accordance with this paragraph.
- (b) **Entire Agreement.** This Agreement embodies the entire agreement between the parties with respect to the CLIENT'S information technology service needs and supersedes any prior proposals, agreements, commitments or representations of any kind.
- (c) **Modifications.** The terms of this Agreement shall not be amended or modified except by a writing executed by each of the parties or as provided in paragraph 1 of these Terms and Conditions.
- (d) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
- (e) **Binding Effect; Assignment.** This Agreement shall be binding on and shall inure to the benefit of the respective heirs, representatives, successors and permitted assigns of the parties. CLIENT may not assign its rights under this Agreement without the prior written consent of FIVE NINES. FIVE NINES may, with or without notice to the CLIENT, assign its rights under this Agreement provided both FIVE NINES and its successor remain obligated to provide the Services to the CLIENT.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- (g) **Severability.** If any provision of this Agreement shall be held invalid or unenforceable, the remainder shall remain in full force and effect.
- (h) **Effect of Headings.** The subject headings of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11. **Billing Policies.** Invoices Agreements are invoiced at the beginning of the month, and overages are billed at month-end along with all other hourly work. Time detail for service provided under an agreement will be delivered in a zero-balance invoice. Invoices are delivered via email within the first three to four business days of the month.

- (a) **Credits.** Credit memos will be communicated via email. Credits may be applied using one of the following methods: 1) Reduction of subsequent invoice payments until the full credit balance has been used. 2) Request for full reimbursement by check. Refund checks will automatically be mailed once a credit memo has aged 90 days past its issue date.
- (b) **Terms.** Payment for monthly services is due within 30 days of the invoice date, regardless of the date of receipt. We offer a 1% discount on agreement and hourly service invoices when payment is received by the 15th of the month. This 1% discount is only offered on project labor invoices when the labor fees are paid prior to project commencement. Payment for product is required in advance for orders over \$1,000 unless other arrangements have been made, in which case, 30 day terms and applicable late fees will apply. Product invoices are excluded from any early payment discounts.
- (c) **Payment Methods.** FIVE NINES accept payment via Check, Visa, MasterCard and ACH. ACH is available for monthly agreement and project payments only. Agreement ACH payments are processed on the 20th of the month. Once ACH authorization forms have been received, payment can be scheduled within two business days.
- (d) **Fees.** Payments made by check that are not honored by our bank will incur a returned check fee of \$35. A \$20.00 late fee will be assessed against invoices 7 days overdue, and finance charges (16% APR) will be imposed on balances 30 days past due and each month thereafter until the past due balance is paid in full. Monthly finance charges are computed by applying the periodic rate (1.3%) to the overdue balance of your account. Reasonable efforts will be made to collect past due amounts, however, if no payment resolution can be reached, collection services will be engaged. The client will be responsible for all reasonable costs of collection incurred with respect to unpaid balances. This includes legal and debt collection fees.