

2017-21

Partnership Agreement

Keith County Nebraska

Author: Renae Zimmer

Date: June 21, 2017

FIVE  NINES



Vision & Mission

- Love what we do and be the best at it.
- Build strong relationships with our clients to drive their success.
- Recognize what is most important in life and live each day to its fullest.

Fundamentals

Cultural Core Values

- **Be an "A" player** - Treat everything you touch as a personal statement bearing your signature. Take pride in the quality of what you do and insist on excellence.
- **Trust each other** - People are good, fair, honest, and genuinely want to do the right thing. Always start from a place of trust when considering why someone does something or when addressing conflict.
- **Act from integrity** - We are upfront and honest in all of our interactions. Our clients depend on our integrity and trust us to do what's best for their business.
- **Know your clients** - We learn as much as we can about our clients. Knowing the people and their business puts us in the position to contribute to their success. These relationships and the resulting knowledge are key reasons clients choose to stay with us.
- **Have fun** - We spend a large amount of time with our work family; we are intentional about building relationships with those around us and finding ways to enjoy our workplace.
- **We care** - We are intentional about helping those in need, be it our family, peers, clients, or our community. We are always on the lookout for these impactful opportunities.
- **Unplug** - We believe in a healthy work / life balance. Putting in long hours, while occasionally necessary, is not a badge of honor. Deliver excellence while working, then get out and enjoy life.

Customer Service Excellence

- **Treat every situation as an opportunity for goodwill** - Take total ownership of our role in every situation by staying committed and attentive to the issue until you are absolutely sure it is resolved.
- **Always offer a solution** - Clients engage us to solve IT problems; not to experience reoccurring issues. We should always be looking for and offering a solution. When presenting ideas, be sure to stress the recommended solution.
- **Communicate clearly and frequently** - Communicate so that others will understand. Frequent and clear communication relieves stress and grows relationships.
- **Pick up the phone and call** - Service generally begins and ends with a phone call. Go the extra mile and understand many times that means picking up the phone and calling.
- **Follow up on everything** - Utilize the proper systems to ensure that you never put yourself in a position to drop the ball. Proper follow up and execution are key reasons clients love Five Nines.



Five Nines Complete Support

The Five Nines Partnership Agreement is a proactive IT Support agreement that fully supports the IT needs of our clients. This agreement includes proactive work to keep your network running smoothly, combined with reactive support for issues that pop up from time to time. Five Nines is able to deliver a best-in-class solution to our clients through our Primary Engineering team model. A Five Nines Partnership will drive technology to be a leveraged asset within your organization.

Approach and Methodology

Team

- **Primary Engineer (Tier 2)** - This is a dedicated resource for your business as your primary contact. They are equipped with a higher knowledge and experience level. This means you will get results more quickly when you have issues. Someone that learns who you are, and what matters most to your business. You don't have to speak to a different person each time.
- **Account Management** - Another dedicated resource that understands your business needs. Your account manager works alongside your primary engineer, and across all teams at Five Nines to deliver the best service.
- **Escalation Team (Tier 3)** - This is critical, and also viewed as an insurance policy. This is the extraordinary talent that, in the event of an unforeseeable disaster, can have you up and running more quickly than anyone else. These are the guys that watch FBI reports, and by the time you've seen it on CNN, they've already protected you against it. They prevent, and respond to outages of the entire site.
- **Support Team (Tier 1)** - If you submit a ticket with a low level issue, and your primary engineer is working with another client, the support desk could quickly resolve your issue.
- **Healthcare Consulting** - As part of the Five Nines & OneHealth partnership, Five Nines provides dedicated Healthcare Consulting. Our Healthcare Consultant will perform an annual review of your Risk Analysis after completion of the initial Risk Analysis project. We'll also review your HIPAA policies and procedures to ensure compliance with rules and regulations. Additional services such as Meaningful Use Attestation or HIPAA staff training are available but subject to additional charge.

Process

- **Collaboration** - Our process is results driven. With the size of our team, and the diversity of knowledge, we are able to deliver results more quickly. The hours we log are not a measure of our success.
- **Budgeting (Annual) & Business Reviews (Quarterly, Semi-Annual, or Annual)** - Our team creates a business plan and budget for your IT investment over the next 1, 2, 3, even out to 5 years if needed. This allows you to plan, understand, and budget for the lifecycle of your infrastructure, licensing, and support. Business reviews are conducted on a regular basis including your account manager and primary engineer. These reviews allow our partners to stay connected with their IT plan.
- **R&D Process** - Five Nines has evolved and embraced that we do not want to be a "jack of all trades", we are a master in what we offer, and that is why we have a "standard stack". For every solution we offer, we are highly certified and trained. We put our solutions (equipment) through rigorous testing, and only provide solutions to partners that we have personally proven.

Culture

- We spend great amounts of time and energy on maintaining a great culture. Why does this matter to our clients, because we are able to retain talent much longer than industry standards.
- All team members, tools, each process, and even our culture is all directed towards maximizing our partners' uptime. When we do this, we can deliver a more predictable future.

Tools

- **Remote Monitoring & Management (RMM)** - Our technicians can perform any IT support or management task remotely, efficiently and non-intrusively. This enables us to get to the bottom of problems quickly via root cause analysis. Provides for easy mapping of IT infrastructure to supported IT services, and predictive analytics for monitoring.
- **Five Nines Support Application** - This application is installed on our client's computers to provide them a superior portal experience, enabling submission of tickets, tracking, and final resolution. Active Directory integration is used to prevent the need for login.



Five Nines Complete Support

24/7/365 Onsite and Remote Support

The Five Nines Partnership is a 24/7/365 support agreement that includes both onsite and remote troubleshooting. Depending on the needs of the client and the urgency of the issues Five Nines will determine the appropriate way to interact on the issue.

Hardware Support

- Servers - Five Nines will monitor and maintain all aspects of your physical and virtual server environments. Only operating system versions currently supported by Microsoft are covered. Linux and other similar operating systems are supported on a best-effort, time-and-materials basis only, and only if a support contract with the OS vendor is maintained. Hardware vendor support contracts for production-class servers must be maintained to ensure timely hardware service. Support contracts for virtualization platforms such as VMware must also be maintained, where applicable.
- Networking - Five Nines will monitor and maintain all your routers, switches, firewalls, wireless access points, and related devices. Vendor support contracts must be maintained to ensure timely hardware and software service.
- Networked Printers and Scanners - Five Nines will provide basic support for the network aspects of your networked printers, scanners, and other multi-function devices. Our support ability does not extend past the basic networking of these devices, and support contracts with a third-party printing solution company are highly encouraged.
- Endpoints -Five Nines will support workstations, laptops, tablets and thin clients for all Windows based Operating Systems devices. This agreement includes labor for replacing up to 4 devices in one month. All workstation, laptops and tablets that have a Windows based operating system must be Active Directory domain compatible and have an operating system installed that is still supported by Microsoft.

Software Support

- Security Patches and Software Updates - Software/firmware updates on physical servers and networking equipment as long as vendor support is maintained. Excludes major version or release upgrades that require reconfiguration.
- Third Party Software - Management and maintenance of other Operating Systems and third-party software, as long as vendor support contracts are maintained.
- Antivirus - Five Nines antivirus will be provided for all Windows-based servers, workstations, and laptops. Management of the antivirus software and updates to the software will be covered as part of this agreement.

Description	Qty	Recurring	Ext. Recurring
Five Nines Complete Support	1	\$4,280.00	\$4,280.00
If Keith County chooses to employ local Tier1 IT Support, this contract will be renegotiated to account for the activities and expectations of the individual hired.			
		Recurring Subtotal	\$4,280.00



Five Nines Backup Solution

- Backups are taken every hour from 8am to 6pm (customizable). Many other backup solutions run only once a day, late in the evening. That spreadsheet you started at 8am, finished at 11, and then accidentally deleted over lunch is protected under the Five Nines solution
- These hourly backups are light on resource usage, and finish quickly, making them a great fit for use during the day, where a traditional backup would cause servers, workstations, and network to slow down for hours (hence why they run late at night)
- The Five Nines solution is image-based. An entire snapshot of your machine is taken, facilitating a rapid restore of the fully-functioning computer in the event of a major problem, even when restoring to different hardware or to a virtual environment.
- Five Nines has developed a central monitoring solution to obtain granular information about the state of backups, enabling quick identification and remediation of any issues
- Backup software on all specified servers and workstations
- Backup maintenance and monitoring
- Updates to backup software
- Data recovery: Five Nines will maintain a minimum of two weeks of data from local as well as offsite repository, if applicable
- Secure location where offsite backups will be replicated, if applicable

* Five Nines Backup Solution does not include labor to perform restorations; any data restoration will be performed at an hourly rate.

** Critical data should never be kept solely on a mobile device such as a laptop or smart phone. Mobile devices should only be accessing data being backed up on a server platform.

Description	Qty	Recurring	Ext. Recurring
Physical Server Backups	11	\$20.00	\$220.00
		Recurring Subtotal	\$220.00

Partnership Agreement



Renae Zimmer

Prepared by:
Five Nines Technology Group, Inc.
 Renae Zimmer
 308-455-4003
 renae.zimmer@gonines.com

Prepared for:
Keith County Nebraska
 511 N. Spruce
 Ogallala, NE 69153
 Caleb Johnson
 calebjohnson@atcjet.net

Quote Information:
Quote #: 030586
 Version: 1
 Delivery Date: 06-21-2017
 Expiration Date: 06-30-2017

Recurring Expense Summary

Description	Amount
Five Nines Complete Support	\$4,280.00
Five Nines Backup Solution	\$220.00
Recurring Total	\$4,500.00

Term Options

Description	Billing Cycle	Payments	Amount
Partnership Agreement			
7/1/2017 - 6/30/2018	Monthly	12	\$4,500.00

Keith County Nebraska

Five Nines Technology Group, Inc.

Signed

Caleb Johnson

Signed

Renae Zimmer

Name

Caleb Johnson

Name

Renae Zimmer

Title

Chairman

Title

Account Executive

Date

June 21, 2017

Date

June 21, 2017

June 28, 2017
CJ



Master Services Agreement

THE TERMS AND CONDITIONS OF PRODUCT SALES AND SERVICE PROJECTS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CLIENT") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS OR BY ENGAGING FIVE NINES ON AN INVOICE, STATEMENT OF WORK OR OTHER FIVE NINES DOCUMENTATION TO PROVIDE PRODUCT OR PERFORM OR PROCURE ANY SERVICES, CLIENT AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CLIENT AND FIVE NINES HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

Important Information About These Terms and Conditions

These Terms and Conditions constitute a binding contract between Keith County Nebraska ("Client") and Five Nines Technology Group, Inc., ("FIVE NINES") and are referred to herein as either "Terms and Conditions" or this "Agreement". Client accepts these Terms and Conditions by making a purchase from or placing an order with FIVE NINES or requesting products (the "Products") or engaging FIVE NINES to perform or procure any Services (as this and all capitalized terms are defined herein). These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions delivered at the time Client places an order or signs a Statement of Work will govern the order in question, unless otherwise agreed in writing by FIVE NINES and Client.

Client consents to receiving electronic records, which may be provided via a Web browser or email application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting FIVE NINES. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of Services other than Third Party Services (each, a "Statement of Service"). This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

1. Term and Termination of Agreement

This Agreement is effective upon the date signed. This Agreement shall remain in force for the duration of the term of any attached Statement of Service, unless either party gives the other prior written notice of its intent to terminate this Agreement. This Agreement may only be terminated by Client upon giving sixty (60) days written notice to FIVE NINES and in addition, pay one-hundred percent (100%) of the remaining agreement amount for that contract year. This Agreement may be terminated by FIVE NINES upon sixty (60) days written notice to Client. If either party terminates this Agreement, FIVE NINES will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay FIVE NINES the actual costs of rendering such assistance.

2. Statements of Service; Fees and Payments; Taxes

2.1 Invoices. Statements of Service shall describe in detail the services to be performed by FIVE NINES, and this Agreement hereby incorporates all attached and subsequent Statements of Service that refer specifically to this Agreement by name and date of execution, or the MSA Number. Statements of Service are invoiced and delivered via email at the beginning of the month, and overages are billed at month-end along with all other hourly work.

2.2 Payment Terms. Payment for monthly services is due within thirty (30) days of the invoice date, regardless of the date of receipt. Payment for product is required in advance for orders over \$1,000 unless other arrangements have been made, in which case, thirty (30) day terms and applicable late fees will apply. Product invoices are excluded from any early payment discounts. Project Labor: Payment of at least fifty percent (50%) of project labor is required before a project can begin.

2.3 Taxes. It is understood that any applicable federal, state or local taxes shall be added to each invoice for services or materials rendered under this Agreement. Client shall pay all such taxes unless a valid exemption state certificate is furnished to FIVE NINES.

2.4 Payment Methods. FIVE NINES accepts payments made by Check, Visa, MasterCard and ACH. Recurring agreement ACH payments are processed on the 15th of the month. Once ACH authorization forms have been received, payment can be scheduled within two (2) business days.

2.5 Fees. A \$35.00 fee will be assessed on any checks not honored by our bank. A \$20.00 late fee will be assessed against invoices seven (7) days overdue, and finance charges (16% APR) will be imposed on balances thirty (30) days past due and each month thereafter until the past due balance is paid in full.



2.6 **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.

3. Coverage

Unless modified by a Statement of Service associated with this agreement, all contracted services will be provided to Client by FIVE NINES between the hours of 8:00 am and 5:00 pm Monday through Friday, Central Standard Time, excluding holidays. FIVE NINES will make reasonable efforts to respond to emergency requests.

4. Nondisclosure

4.1 **Confidential Information.** Except as provided in Section 4.2, as used in this Agreement, "Confidential Information" means any information furnished or disclosed, in whatever form or medium, by FIVE NINES to Client relating to the business of FIVE NINES, and includes, without limitation, contract terms, financial information, business procedures, processes, techniques, methods, ideas, discoveries, inventions, developments, records, product designs, source codes, product planning, trade secrets, customer lists, material samples, and the fact that FIVE NINES and Client are negotiating or are parties to this Agreement, all of which is deemed confidential and proprietary.

4.2 **Use of Confidential Information.** FIVE NINES and Client shall only use Confidential Information for the purpose of performing services under this Agreement, and shall make no use of the Confidential Information, in whole or in part, for any other purpose. Both parties agree to refrain from disclosing the Confidential Information to third parties, unless one of the parties has given its prior written authorization to the other. The parties further agree to take all reasonable steps to preserve the confidential and proprietary nature of the Confidential Information. However, if the parties are required by subpoena or other court order to disclose any of the Confidential Information, the party shall provide immediate notice of such request to the other party and shall use reasonable efforts to resist disclosure. If, in the absence of a protective order or the receipt of a waiver under this Agreement, the parties are legally required to disclose any Confidential Information, then the parties may disclose such information without liability under this Agreement.

4.3 **Remedies for Breach of Nondisclosure.** The Confidential Information protected by this Agreement is of a special character, such that money damages, although available, would not be sufficient to award or compensate for any unauthorized use or disclosure of the Confidential Information. The parties agree that injunctive and other equitable relief would be appropriate to prevent any such actual or threatened unauthorized use or disclosure.

5. Ownership of Work Product

5.1 **General.** All intellectual property rights associated with any ideas, concepts, techniques, processes or other work product created by FIVE NINES during the course of performing the services shall belong exclusively to FIVE NINES, and Client shall have no right or interest therein.

5.2 **Managed Services Tools.** Notwithstanding anything to the contrary in this Agreement, FIVE NINES will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in providing the managed services which are based on trade secrets or proprietary information of FIVE NINES or are otherwise owned or licensed by FIVE NINES. Licenses will not be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require FIVE NINES or Client to violate the proprietary rights of any third party in any software or otherwise.

6. Indemnity

6.1 **Indemnification of FIVE NINES.** Client acknowledges that by entering into and performing its obligations under this Agreement and each Statement of Service, FIVE NINES will not assume and shall not be exposed to the business and operational risks associated with Client's business, and Client therefore agrees to indemnify, defend and hold FIVE NINES harmless from any and all claims, actions, damages, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or related to the conduct of Client's business except as a result of gross negligence on the part of FIVE NINES.

6.2 **Procedures.** All indemnification obligations under this Section 6 shall be subject to the following requirements: (a) the indemnified party shall provide the indemnifying party with prompt written notice of any claim; (b) the indemnified party shall permit the indemnifying party to assume and control the defense of any action upon the indemnifying party's written acknowledgment of the obligation to indemnify (unless, in the opinion of counsel of the indemnified party, such assumption would result in a material conflict of interest); and (c) the indemnifying party shall not enter into any settlement or compromise of any claim without the indemnified party's prior written consent, which shall not be unreasonably withheld. In addition, the indemnified party may, at its own expense, participate in its defense of any claim. In the event that the indemnifying party assumes the defense of any such claim, the indemnifying party is not liable for attorney's fees and costs incurred by the indemnified party.

7. Representation and Warranties

7.1 FIVE NINES represents and warrants that it (a) has the right, power and authority to enter into the Agreement and to fully perform all of the obligations hereunder, (b) will use commercially reasonable efforts to provide all services required of it under the Agreement in accordance with prevailing industry standards, and (c) owns or has acquired the requisite rights from third parties to the FIVE NINES property.



7.2 FIVE NINES does not manufacture hardware or commercial off-the-shelf (COTS) software covered under this Agreement. Any warranty provisions are passed through from the manufacturer and are subject to the manufacturer's limitations. Any labor supplied by FIVE NINES is not covered under the terms of the manufacturer's warranty.

7.3 FIVE NINES may provide equipment owned by FIVE NINES and housed at Client's premises. Such equipment may include, but is not limited to routers, desktops, servers, software, and remote backup devices. Such equipment shall be treated with the same care and security as similar equipment owned by Client. Client shall be held liable for any damage or loss not covered by the manufacturer's warranty. If such loss or damage occurs, Client will be invoiced the current replacement cost of the equipment plus shipping and handling and related installation charges.

8. Disclaimer of Warranties; Limitation of Damages

8.1 **THE EXPRESS, BUT LIMITED, WARRANTY IN SECTION 7 ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING FIVE NINES SERVICES. FIVE NINES AND ITS AFFILIATES SPECIFICALLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE.**

8.2 **FIVE NINES AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST DATA, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION ARISING FROM OR RELATING TO THIS AGREEMENT OR ARISING FROM OR RELATING TO THE USE OF THE SOFTWARE WHICH HAS BEEN MODIFIED BY ANYONE OTHER THAN FIVE NINES, LOSS OF PROGRAMS, AND THE LIKE, THAT RESULT FROM THE USE OR INABILITY TO USE THE SERVICES OR FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, LOSS OF DATA, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR OTHER TORTS), TO THE EXTENT ALLOWED BY LAW, EVEN IF FIVE NINES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

8.3 CLIENT ACKNOWLEDGES AND AGREES THAT CLIENT HAS RELIED ON NO WARRANTIES EXCEPT THE LIMITED EXPRESS WARRANTY IN SECTION 7.

8.4 Client agrees that the total liability of FIVE NINES and its affiliates and the sole remedy of Client and any End User for any claims regarding FIVE NINES services is limited to Client's right to terminate this Agreement. Unless determined otherwise by a Court or adjudicator, Client agrees that the total liability of FIVES NINES and its affiliates for any claims regarding FIVE NINES services is limited to Client's right to terminate this Agreement. However, should it be determined that this remedy is not exclusive, or that FIVE NINES liability is limited to the claims covered by FIVE NINES' "insurance policies" and coverage amounts listed in this Agreement, and the Clients right to terminate this Agreement (collectively "Full Liability Limits"), then the Full Liability Limits listed in this section shall constitute FIVE NINES' total liability under this Agreement. The existence of more than one claim shall not enlarge the limitation of liability.

8.5 Except as expressly provided in the Agreement, Client acknowledges that (a) FIVE NINES is in no manner responsible for any action or inaction of any third party; (b) FIVE NINES has not represented that the services shall be uninterrupted, error-free, or without delay; and (c) FIVE NINES does not and cannot control the flow of data through the Internet, and such flow depends in large part on the performance of third parties whose actions or inaction can, at times, produce situations in which connections to the Internet (or portions thereof) may be impaired or disrupted. ACCORDINGLY, CLIENT ACKNOWLEDGES THAT FIVE NINES DISCLAIMS ALL LIABILITY RELATED TO EVENTS OUTSIDE OF ITS CONTROL AND/OR IN THE CONTROL OF THIRD PARTIES, AND CLIENT SHALL HAVE NO RIGHT TO RELY UPON ANY REPRESENTATION OR WARRANTY OF ANY THIRD PARTY IN RESPECT TO THE SERVICES. Further, Client acknowledges that, in providing the services, FIVE NINES shall necessarily rely upon information, instructions, and services from Client, its administrator, employees and agents, and other third parties providing computer and communications hardware, software, and Internet services. Except as expressly provided in the Agreement, Client fully assumes the risk associated with errors in such information, instructions, and services.

9. Non Solicitation of Employees

Client acknowledges that FIVE NINES has a substantial investment in its employees that provide services to Client under this Agreement and that such employees are subject to FIVE NINES's control and supervision. In consideration of this investment, Client agrees not to solicit, hire, employ, retain, or contract with any employee of FIVE NINES, without first receiving FIVE NINES's written consent. If any employee involved with the delivering of these services terminates his or her employment with FIVE NINES (regardless of the reason for termination), and is employed by Client (or any affiliate or subsidiary of Client) in any capacity either during the term of this agreement or within a 12 month period thereafter, Client shall immediately pay FIVE NINES an amount equal to 200% of the then current yearly salary or wage paid by FIVE NINES to such employee. 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.



10. General Provisions

10.1 Equipment & Facilities. Client agrees that FIVE NINES may utilize certain items of Client's equipment and may gain access to Client facilities. Client retains title and ownership in all of Client's equipment owned by Client and utilized by FIVE NINES. Facility access may be denied for any reason at any time, however if access to facilities is denied, Client understands that FIVE NINES may be unable to perform their duties adequately and if such a situation should exist, FIVE NINES will be held harmless.

10.2 Passwords. Client acknowledges that FIVE NINES may need access to any and all systems and resources to perform their duties under this contract. As such, FIVE NINES must have access to any and all passwords necessary to perform duties under this agreement.

10.3 Waiver. The failure or forbearance of FIVE NINES or Client to enforce any right or claim against the other party shall not be deemed to be a waiver by FIVE NINES or Client of such right or claim or any other right or claim hereunder. The waiver by FIVE NINES or Client of a breach hereof shall not operate or be construed as a waiver of any subsequent breaches of the same or any other provision.

10.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject hereof and supersedes all prior proposals, agreements, negotiations, correspondence, demonstrations, and other communications, whether written or oral, between FIVE NINES and Client. No modification or waiver of any provision hereof shall be effective unless made in writing signed by both FIVE NINES and Client.

10.5 Severability. If any provision hereof is determined in any proceeding binding upon the parties hereto to be invalid or unenforceable, that provision shall be deemed severed from the remainder of the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect.

10.6 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the obligation for the payment of money) on account of any cause that is beyond the reasonable control of such party.

10.7 Applicable Law and Venue. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Nebraska.

10.8 Notices. Except where provided otherwise, notices hereunder shall be in writing and shall be deemed to have been fully given and received when mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the offices of the respective parties as specified in the first paragraph of this Agreement, or at such address as the parties may later specify in writing for such purposes. The foregoing shall apply regardless of whether such mail is accepted or unclaimed.

10.9 Assignment. This Agreement shall inure to the benefit of, and be binding upon, any successor to or purchaser of FIVE NINES whether by contract, merger or operation of law. Except for this limited right of assignment, neither party shall assign this Agreement or any right or interest under this Agreement, nor delegate any work or obligation to be performed under this Agreement, without the other party's prior written consent. Any attempted assignment or delegation in contravention of this provision shall be void and ineffective.

10.10 Arbitration. Except for the right of either party to apply to a court of competent jurisdiction for a Temporary Restraining Order, Preliminary Injunction, or other equitable relief to preserve the status quo or prevent irreparable harm pending the selection and confirmation of the arbitrator, any and all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association (AAA) then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties or in accordance with AAA rules. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Legal fees shall be awarded to the prevailing party in the arbitration.

10.11 Liquidated Damages. Client acknowledges that FIVE NINES is relying on Client to perform as promised under this agreement and therefore makes significant investments in time, equipment, and personnel accordingly. To protect this investment, FIVE NINES has the right to collect liquidated damages in case of breach by Client. If Client fails to perform as promised under this agreement, Client agrees to pay liquidated damages in an amount equal to six times the monthly amount due to FIVE NINES for services rendered at the time of breach.

11. Pricing Information; Availability Disclaimer

11.1 FIVE NINES reserves the right to make adjustments to pricing, Products and Service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes and errors in advertisements. All orders are subject to Product availability and the availability of Personnel to perform the Services. Therefore, FIVE NINES cannot guarantee that it will be able to fulfill Client's orders. If Services are performed on a time and materials basis, any estimates provided by FIVE NINES are for planning purposes only.

12. Title; Transfer of Ownership

12.1 Client agrees that Transfer of Ownership will pass from FIVE NINES to the Client upon receipt of goods and identification (set aside, marked and labeled) by FIVE NINES.