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11. ANNUAL SUPPORT. 5nine's annual technical support and maintenance services (Support) is included with new license purchases. Support is provided under the Support policies then in effect. 5nine may change its Support terms, but Support will not materially degrade during any Support term. More details on Support are located at [www.5nine.com/support](http://www.5nine.com/support)

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A. **EXCLUSION OF INDIRECT DAMAGES.** 5nine is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss.

B. **TOTAL LIMIT ON LIABILITY.** 5nine's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer for the license to the Software.

C. **CONSUMER LAW NOTICE.** Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply. User may have additional consumer rights under local law.

13. **DEFENSE OF THIRD PARTY CLAIMS.** 5nine will defend or settle any third party claim against Customer to the extent that such claim alleges that the Software violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies 5nine of the claim in writing, cooperates with 5nine in the defense, and allows 5nine to solely control the defense or settlement of the claim. Costs. 5nine will pay infringement claim defense costs it incurs in defending Customer, and 5nine negotiated settlement amounts, and court awarded damages. Process. If such a claim appears likely, then 5nine may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If 5nine determines that none of these are reasonably available, then 5nine may terminate the Software and refund (as applicable) any prepaid and unused fees service fees and the license fee for perpetual licenses (amortized over a 5-year period from the date of the order). Exclusions. 5nine has no obligation for any claim arising from: 5nine's compliance with Customer's specifications; a combination of the Software with other technology or aspects where the infringement would not occur but for the combination; or technology or aspects not provided by 5nine. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND 5NINE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**

14. **GOVERNING LAW AND EXCLUSIVE FORUM.** This agreement is governed by the laws of the State of Florida (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Palm Beach County, Florida, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in litigation is entitled to recover its attorneys' fees and costs from the other party.

#### 15. **OTHER TERMS.**

a. **Remote Communication.** The Software may remotely communicate with 5nine servers for purposes of license compliance, and may transmit generic computer information to 5nine, such as host and VM OS type and versions, CPU and core counts, and feature usage. More

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b. Entire Agreement. This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding.

c. Non-Assignment. Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger, or sale of all or substantially all of the business or assets, of a party.

d. Independent Contractors. The parties are independent contractors with respect to each other.

e. Enforceability. If any term of this agreement is invalid or unenforceable, the other terms remain in effect.

f. Order of Precedence. If there is an inconsistency between an order and this agreement, the order prevails.

g. Survival of Terms. Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.

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i. Modification Only in Writing. No modification or waiver of any term of this agreement is effective unless signed by both parties.

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**Term; Termination.** If You are a Registered User this Agreement will remain in effect for as long as You use the Rules, subject to Section 7 and the termination provisions below. If You are a Subscriber this Agreement is effective for a term of one (1) year from the date of purchase of Your license and for all renewal terms thereafter, subject to Section 7 and the termination provisions below. This Agreement and the rights granted hereunder will terminate automatically if You breach any term herein and You fail to cure such breach within thirty (30) days of becoming aware of the breach. Additionally, Cisco may terminate this Agreement for convenience at any time by providing You thirty (30) days notice. If You are a Subscriber and Cisco terminates this Agreement for convenience, then Cisco will provide You a pro-rated refund for the license fees You prepaid for the remaining portion of the term that has been cancelled. Upon any termination or expiration of this Agreement, You must cease use of the Rules and destroy all copies of the Rules. Provisions which, by their nature, must remain in effect beyond the termination of this Agreement shall survive.

**United States Government Users.** The Rules provided under this Agreement are prepared entirely at private expense and are "Commercial Items" as that term is defined in 48 C.F.R. 2.101. The Rules are licensed to U.S. Government end users: (a) only as "Commercial Items"; and (b) with only those rights as are granted to all other users pursuant to the Cisco's standard license agreement. In case of conflict between any FAR and DFARS and this Agreement, the construction that provides greater limitations on the U.S. Government's rights shall control.

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The Rules are subject to export controls under the laws of the United States and other countries. You shall comply with all such laws governing export, re-export, transfer and use of the Rules. You agree not to use or transfer the Rules for any use relating to the operation of nuclear facilities, chemical or biological weapons or missile technology, unless authorized by the U.S. Government by regulation or specific written license. Headings and section references are used for reference only and shall not be used define, limit or describe such section.

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