



# STANDARDS FOR FACILITY SECURITY AND RULES OF CONDUCT

Confidential and Proprietary

February 4, 2010

These Rules and Regulations cover (1) Customer's (and its customers, agents and users) use of and access to 5NINES Center; facilities (e.g. Data Center); (2) Customer's (and its customers, agents and users) use of the 5NINES Center online services; and (3) 5NINES Center maintenance of the services it provides to its Customers.

## Access to Data Center

Only those individuals identified in writing by 5NINES on the Customer Registration Form ("Representatives") may access the Data Center. Customer shall deliver prior written notice to 5NINES of any changes to the Customer Registration Form and the list of Representatives. Customer and its Representatives shall not allow any unauthorized persons to have access to or enter any Data Center. Customer and its Representatives may only access that portion of a Data Center made available by 5NINES to Customer for the placement of Customer's equipment and use of the Data Center Services (the "Customer Area"), unless otherwise approved and accompanied by an authorized 5NINES representative.

## Use of Data Center Facility

Conduct at Data Center- Customer and its representatives agree to adhere to and abide by all security and safety measures established by 5NINES and set forth in the Customer Guide provided by 5NINES to Customer. Customer and its Representatives shall also not do or participate in any of the following:

- Misuse or abuse any 5NINES property or equipment or third party equipment;
- Make any unauthorized use of or interfere with any property or equipment of any other 5NINES Customer;
- Harass any individual, including 5NINES personnel and representatives of other 5NINES Customers;
- Engage in any activity that is in violation of the law or aids or assists any criminal activity while on 5NINES property or in connection with the Data Center Services.

## Prohibited Items

Customer and its Representatives shall keep each Customer Area clean at all times. It is each Customer's responsibility to keep its area clean and free and clear of debris and refuse. Customer shall not, except as otherwise agreed to in writing by 5NINES, (1) place any computer hardware or other equipment in the Customer Area that has not been identified in writing to 5NINES on the Equipment and Software List; (2) store any paper products or other combustible materials of any kind in the Customer Area including card board (other than equipment manuals); and (3) bring any Prohibited Materials (as defined below) into any Data Center. "Prohibited Materials" shall include, but be not limited to, the following and any similar items:

- Food and drink
- Tobacco products
- Explosives and weapons
- Hazardous materials

## STANDARDS FOR FACILITY SECURITY AND RULES OF CONDUCT

Confidential and Proprietary

February 4, 2010

- Alcohol, illegal drugs and other intoxicants
- Electro-magnetic devices which could unreasonably interfere with computer and telecommunications equipment
- Radioactive materials
- Photographic or recording equipment of any kind including web cameras (other than tape back-up equipment)

### Equipment and Connections

Each piece of Customer Equipment installed in a Customer Area (the "Customer Equipment") must be clearly labeled with Serial Number provided by 5NINES and individual component identification. Each connection to and from a piece of Customer Equipment shall be clearly labeled with Customer's name (or code name provided in writing to 5NINES) at the starting and ending point of the connection. Customer Equipment must be configured and run at all times in compliance with the manufacturer's specifications, including power outlet, power consumption and clearance requirements. Customer must use its best efforts to provide 5NINES with at least 48 hours prior notice any time it intends to connect or disconnect any Customer Equipment or other equipment.

### Scheduled Maintenance

5NINES will conduct routine scheduled maintenance of its Data Center and related Services. In the event a mission critical maintenance situation arises, 5NINES may be required to perform emergency maintenance at any time. During these scheduled and emergency maintenance periods, Customer's Equipment may be unable to transmit and receive data and Customer may be unable to access the Customer Equipment. Customer agrees to cooperate with 5NINES during the scheduled and emergency maintenance periods.

### Online Conduct

Customer Content- Customer acknowledges that 5NINES exercises no control whatsoever over the content of the information passing through Customer's site(s) and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and these Rules and Regulations.

Prohibited Activities- Customer will not, and will not permit any persons ("Users") using Customer's online facilities and/or services, including, but not limited to, Customer's Web site(s) and transmission capabilities, to do any of the following ("Prohibited Activities"):

Transmission, broadcast, any services in support of, or the hosting of any web sites, products, or services promoted by UBE (Unsolicited Bulk E-mail) a.k.a. "Spam" are not subject to 5NINES Center's three-tier complaint process and may result in any or all of the following:

- 1) Immediate and permanent termination of power, data, and KVM (Keyboard-Video-Mouse) connectivity.
- 2) Seizure and forfeiture of ownership of all equipment belonging to the individual or organization responsible for the UBE activity.
- 3) Immediate and permanent forfeiture of all pre-paid rack, cage, and connectivity charges.
- 4) Immediate revocation of physical access privileges to all 5NINES Center facilities.
- 5) The offending individual or organization will be held financially accountable for all residual financial liabilities incurred by 5NINES Center due to violation of any "upstream" carrier's

### Acceptable Use Policies.

6) The offending individual or organization will be held financially responsible for all residual financial liabilities and labor expense incurred by 5NINES Center repairing damage from the UBE activity, e.g. RBL (Realtime Blackhole List) de-listing activity.

- Engage in any activities or actions that infringe or misappropriate the intellectual property rights of others, including, but not limited to, using third party copyrighted materials without appropriate permission, using third party trademarks without appropriate permission or attribution, and using or distributing third party information protected as a trade secret information in violation of a duty of confidentiality.
- Engage in any activities or actions that would violate the personal privacy rights of others, including, but not limited to, collecting and distributing information about Internet users without their permission, except as permitted by applicable law.
- Send, post or host harassing, abusive, or libelous materials or assist in any similar activities related there to.
- Intentionally omit, delete, forge or misrepresent transmission information, including headers, return mailing and Internet protocol addresses.
- Engage in any activities or actions intended to withhold or cloak Customer's or its Users identity or contact information.
- Use the 5NINES connectivity services for any illegal purposes, in violation of any applicable laws or regulations or in violation of the rules of any other service providers, web sites, chat rooms or the like.
- Assist or permit any persons in engaging in any of the activities described above. If Customer becomes aware of any Prohibited Activities, Customer will use best efforts to remedy such Prohibited Activities immediately, including, if necessary, limiting or terminating User's access to Customer's online facilities.

### Third Party Complaint Process

5NINES routinely receives (at [abuse@enjoy5nines.com](mailto:abuse@enjoy5nines.com)) written complaints ("Complaints") from third parties regarding Prohibited Activities allegedly being conducted by a Customer or its Users. Due to the nature of 5NINES's business, it is 5NINES's experience, most legitimate complaints and actual Prohibited Activity is conducted by Customers' users, not by Customers themselves. 5NINES requires its Customers to use policies similar to these Rules and Regulations and will work with its Customers to resolve violations.

5NINES will take the following actions to document and resolve each Complaint received by 5NINES related to a Customer or its Users.

**First Complaint-** Upon receipt of the initial complaint from a third party regarding Prohibited Activity by a Customer or its User, 5NINES will send a letter (the "First Letter") to the complaining third party that describes 5NINES's policies related to the Prohibited Activity and lists the contact information for the Customer and encloses a copy of the original Complaint received by 5NINES. 5NINES also will deliver notice of the Complaint to the Customer by sending a copy of the same letter to the Customer via e-mail to its abuse address so that Customer can identify and remedy the Prohibited Activity. 5NINES's goal is to put the complainant directly in touch with the party in the best position to remedy the problem, 5NINES's Customer who has the relationship with the alleged violator.

## STANDARDS FOR FACILITY SECURITY AND RULES OF CONDUCT

Confidential and Proprietary

February 4, 2010

**Second Complaint-** Upon receipt of a second complaint after the date of the First Letter related to the same or similar Prohibited Activity of Customer described in the First Letter that clearly indicates that the Prohibited Activity continued after the date of the First Letter, 5NINES will send a second letter (the “Second Letter”) with a copy of the second complaint to the Customer and request that Customer respond in writing to 5NINES with an explanation and timeline of the actions to be taken by Customer to remedy Prohibited Activity. In the event that Customer does not respond to 5NINES’s letter and remedy the Prohibited Activity within ten (10) business days, 5NINES will bill Customer in the following month \$500 to cover 5NINES’s administrative costs associated with the Prohibited Activities of Customer.

**Third Complaint-** Upon receipt of a third complaint after the date of the Second Letter related to the same or similar Prohibited Activity of Customer described in the Second Letter that clearly indicates that the Prohibited Activity continued after the date of the First Letter, 5NINES will send a third and final letter (the “Third Letter”) with a copy of the third complaint to the Customer and request again that the Prohibited Activity cease immediately. In the event that the Prohibited Activity does not cease within five (5) business days, 5NINES will terminate or suspend its connectivity service to its Customer, and will only resume providing service when it receives adequate assurances that such activity will not continue. 5NINES will also bill its Customer \$5,000 to cover 5NINES’s administrative costs associated with the Prohibited Activities.

**Suspension and Termination of Service**

5NINES reserves the right to suspend and/or terminate a Customer’s Service at any time for any material failure of Customer, its Representatives or its Users to comply with these Rules and Regulations.

**Supplemental Services**

Subject to the terms and conditions set forth in the Service Agreement between 5NINES and the Customer, 5NINES may, from time to time, provide Customer with certain limited services and equipment needed and requested by Customer on a “one-off” or emergency basis (“Supplemental Services”) where such services are not included within the scope of the Services purchased by Customer. Customer will be charged for all Supplemental Services provided to Customer. 5NINES has no obligation to determine the need for or provide Supplemental Services. All Supplemental Services are provided on an “as-is” basis and exclude warranties of any kind, whether express or implied.

**Modification of Rules and Regulations**

5NINES may change these Rules and Regulations upon fifteen (15) days; notice to Customer, which notice shall be provided by posting such new Rules and Regulations.

STANDARDS FOR FACILITY SECURITY AND RULES OF CONDUCT

Confidential and Proprietary

February 4, 2010