



CAPTIVE PORTAL TERMS & CONDITIONS

UPDATED OCTOBER 1, 2016

5NINES, llc (“5NINES”) is pleased to offer the Captive Portal, a Wi-Fi marketing solution with access to personalized offers and promotions along with its wireless access to the Internet (the “Services”). We make the Services available to you through a variety of Internet-enabled devices, including computers, tablets, smart phones, and personal Internet devices (collectively, “Devices”). Portions of the Services may also be available to you through our website at <http://www.5nines.com> (the “Website”).

We provide our Services to you subject to the following Terms of Use, which may be updated by us without notice to you. By accessing and using the Website or the Services, you acknowledge that you have read, understood, and agree to be legally bound by the terms and conditions of these Terms of Use and the terms and conditions of our Privacy Policy, which is hereby incorporated by reference (collectively, this “Agreement”). You also acknowledge and agree that you will be bound by any additional terms and conditions and/or privacy policy that participating Venues (as defined below) may impose, for which 5NINES is not responsible. In such case, you will be provided with such additional terms and conditions and/ or privacy policy and will be required to accept them in order to access and use the Services. By accessing the Website or the Services, you warrant that all registration information you have provided is true, accurate, and complete. If you do not agree to any of these terms, then please do not access or use the Website or the Services.

Capitalized terms not defined in these Terms of Use shall have the meaning set forth in our Privacy Policy.

1. DESCRIPTION AND USE OF SERVICES

1. 5NINES offers a Captive Portal solution along with its wireless Internet access for your grocery store, theater, café, restaurant and other locations where you shop or socialize (collectively, the “Venues”). You sign in to the Captive Portal with your valid email address or Facebook account, or additional web-based subscriptions as they’re available, (collectively, “Online Accounts”). For each subsequent sign-in within an undetermined amount of time, there is no need to re-enter your information. Your device should connect automatically with the Services wherever they are available with our participating Venues.
2. As described in our Privacy Policy, we will use Geolocational Information from your Device to offer you wireless Internet access as soon as it is



within range of and connected to one of our or our Venues' networks, and to help advertisers and retailers bring you relevant offers and promotions that you can use at that Venue.

2. RESTRICTIONS

The Services are available for individuals aged 13 years or older. If you are 13 or older, but under the age of majority in your jurisdiction, you should review this Agreement with your parent or guardian and make sure your parent or guardian agrees with and understands it.

3. COMMUNITY GUIDELINES

By accessing and/or using the Website or the Services, you hereby agree to comply with these community guidelines the ("Guidelines") and that:

1. Whenever using the Website or the Services, you will comply at all times with our Acceptable Use Policy, which is attached here as Schedule A;
2. You will not use the Website or the Services for any unlawful purpose, including, without limitation, advertising, transmitting, or otherwise making available Ponzi schemes, pyramid schemes, fraudulently charging credit cards, or pirating content;
3. You will not access or use the Website or the Services to collect any market research for a competing business;
4. You will not cover, obscure, block, or in any way interfere with any advertisements and/or safety features on the Website or the Services;
5. You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure;
6. You will not use automated means, including spiders, robots, crawlers, data mining tools, or the like to download or scrape data from the Website, except for Internet search engines (e.g., Google) and non-commercial public archives (e.g., archive.org) that comply with our robots.txt file.
7. You will not interfere with or attempt to interrupt the proper operation of the Website or the Services through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any data, files, or passwords related to the Website or the Services through hacking, password or data mining, or any other means.
8. You will not use the Website or the Services for any malicious activity, as determined by 5NINES in its sole and absolute discretion.

Please let us know about inappropriate behavior. If you find something that violates our community Guidelines, let us know, and we'll review it. We reserve the right, in our sole and absolute discretion, to deny you access to the Website or the Services, or any portion of them, without notice.



4. INTELLECTUAL PROPERTY

The Website and Services contain material, such as software, text, graphics, images, and other material provided by or on behalf of 5NINES (collectively, the “Content”). The Content presented to you as part of the Website and/or the Services, including, but not limited to, advertisements, may be owned by us or by third parties and is protected by intellectual property rights under both United States and foreign laws. You have no rights in or to the Content, and you will not use the Content except as permitted under this Agreement. The trademarks, service marks, and logos of 5NINES (the “5NINES Trademarks”) used and displayed on the Services are registered and unregistered trademarks or service marks of 5NINES. Other company, product, and service names located on the Services may be trademarks or service marks owned by others (the “Third-Party Trademarks,” and, collectively with 5NINES Trademarks, the “Trademarks”). Nothing on the Website or the Services should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. All goodwill generated from the use of the 5NINES Trademarks inures to our benefit.

Elements of the Website and the Services are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated, in whole or in part, by any means, including but not limited to the use of framing or mirrors.

5. COMMUNICATIONS WITH US

We always love to hear from you, but we do not want you to, and you should not, e-mail us any content that contains confidential information (including your pin). With respect to all e-mails you send to us, including, but not limited to, feedback, questions, comments, suggestions, and the like, you hereby grant us a perpetual, worldwide, irrevocable, assignable, transferable, royalty-free, fully paid-up right and license, with the right to sublicense through multiple tiers, to reproduce, use, create derivative works of, make, have made, and otherwise exploit any ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production and marketing of products and services that incorporate such information, without compensation to you.

6. NO WARRANTIES/LIMITATION OF LIABILITY

THE WEBSITE AND THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND. Neither we nor any participating venue SHALL BE SUBJECT TO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS OF THE WEBSITE OR THE SERVICES FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE WEBSITE AND THE SERVICES AT YOUR OWN RISK. WE DO NOT WARRANT, nor does any participating venue warrant, THAT THE WEBSITE OR



THE SERVICES WILL OPERATE ERROR-FREE OR THAT THEY ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF YOUR USE OF THE WEBSITE OR THE SERVICES RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, neither WE nor any participating venues SHALL BE RESPONSIBLE FOR THOSE COSTS.

IN NO EVENT SHALL WE OR THE VENUES BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM THE USE OR INABILITY TO USE THE WEBSITE OR THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF WE or the venues HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH STATES, OUR AND THE VENUES' LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

7. EXTERNAL SITES

The Website and the Services may contain links to third-party websites or may otherwise allow you to gain access to third-party websites ("External Sites"). These links and/or access to such External Sites are provided solely as a convenience to you and not as an endorsement by us of the content on such External Sites. The content of such External Sites is developed and provided by others. You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or any content located on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of materials on such External Sites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Sites, you do so at your own risk.

8. INDEMNIFICATION

You agree to defend, indemnify, and hold us, the Venues, and our and their respective officers, directors, employees, successors, agents, and assigns harmless from and against any claims, actions, or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of this Agreement and/or your access to, use, or misuse of the Website or the Services. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. We reserve the right to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.



9. COMPLIANCE WITH APPLICABLE LAWS

The Website and the Services are based in the United States. We make no claims concerning whether the Website or the Services may be used or are appropriate for use outside of the United States. If you access the Website or the Services from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

10. TERMINATION OF THE AGREEMENT

We reserve the right, in our sole discretion, to restrict, suspend, or terminate this Agreement and your access to all or any part of the Website or the Services, at any time and for any reason without prior notice or liability. We reserve the right to change, suspend, or discontinue all or any part of the Website or the Services at any time without prior notice or liability. You may terminate this Agreement by contacting 5NINES at support@5nines.com.

11. DIGITAL MILLENNIUM COPYRIGHT ACT

5NINES respects the intellectual property rights of others and attempts to comply with all relevant laws. We will review all claims of copyright infringement received, and we will remove any content deemed to have been posted or distributed in violation of any such laws.

For any Notification of Claimed Infringement which may be given under the Digital Millennium Copyright Act (the "Act"), please contact:

5NINES, llc
Attention: CP-DMCA
316 W Washington Ave., Ste. 600
Madison, WI 53703

If you have reason to believe that your work has been copied on the Website or via the Services in a way that constitutes copyright infringement, please provide us with notice in accordance with the requirements of the Act, including: (i) a description of the copyrighted work that has been infringed and the specific location where such work is located; (ii) a description of the location of the original or an authorized copy of the copyrighted work; (iii) your address, telephone number and e-mail address; (iv) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; (v) a statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf; and (vi) an electronic or physical signature of the owner of the copyright or the person authorized to act on behalf of the owner of the copyright interest.



12. MISCELLANEOUS

This Agreement is governed by the internal substantive laws of the State of Wisconsin without respect to its conflict of law provisions. You expressly agree: (i) to submit to the exclusive personal jurisdiction of the state and federal courts sitting in the State of Wisconsin; and (ii) that the Website and the Services shall be deemed passive that do not give rise to personal jurisdiction over 5NINES, either specific or general, in jurisdictions other than Wisconsin. YOU AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE WEBSITE OR THE SERVICES MUST BE COMMENCED BY YOU WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE SUCH CAUSE OF ACTION IS PERMANENTLY BARRED. If any provision of this Agreement is found to be invalid by any court having competent jurisdiction or terminated in accordance with the Termination provision above, the invalidity or termination of such provision shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: "Intellectual Property," "Communications with Us," "No Warranties/Limitation of Liability," "Indemnification," "Termination of the Agreement," and "Miscellaneous."

Our failure to act on or enforce any provision of the Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement, including Schedule A, constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

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SCHEDULE A – 5NINES ACCEPTABLE USE POLICY (“AUP”)

5NINES respects that the Internet provides a forum for free and open discussion and dissemination of information, however, when there are competing interests at issue, 5NINES reserves the right to take certain preventative or corrective actions. In order to protect these competing interests. This AUP supplements and explains certain terms in the Agreement and is intended as a guide to your rights and obligations when utilizing the Services and the Website. This AUP will be revised from time to time, without any obligation to notify you of the same. Your use of the Services after changes to this AUP are posted on the Website shall constitute your acceptance of any new or additional terms.



When you obtain information through the Internet via the Services, you must keep in mind that we cannot, and do not make any attempt to, monitor, verify, warrant, or vouch for the accuracy and quality of the information that you may acquire. For this reason, you must exercise your best judgment in relying on information obtained from the Internet, and also should be aware that some material posted to the Internet is sexually explicit or otherwise offensive. Because we cannot monitor or censor the Internet, and will not attempt to do so, neither 5NINES nor any applicable Venue shall be responsible for injury to you that results from inaccurate, unsuitable, offensive, or illegal Internet communications.

When you disseminate information through the Internet via the Services, you must keep in mind that 5NINES does not review, edit, censor, or take responsibility for any information you may create. When you place information on the Internet, you have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Also, because the information you create is carried over our and the Venues' networks and may reach a large number of people, your postings may affect other subscribers and may harm our goodwill, business reputation, and operations. For these reasons, you violate this AUP and the Agreement when you engage in or facilitate the following prohibited activities:

1. INTELLECTUAL PROPERTY VIOLATIONS

Using the Services to engage in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, patents, or privacy or publicity rights held by individuals, corporations, or other entities. We are required by law to remove or block access to user content upon receipt of a proper notice of copyright infringement. It is also our policy to terminate the privileges of users who violate copyright laws.

2. OBSCENE SPEECH OR MATERIALS

Using the Services to view, advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material. We are required by law to notify law enforcement agencies when we become aware of the presence of child pornography on or being transmitted through the Services.

3. DEFAMATORY OR ABUSIVE LANGUAGE

Using the Services as a means to transmit or post defamatory, harassing, abusive, or threatening language.

4. SPAMMING

As a participant in the Services, 5NINES reserves the right to send surveys (of which you can unsubscribe) from time to time to help us improve the Services. 5NINES will not tolerate the use of the Services to send unsolicited bulk and/or commercial messages over the Internet (known as "spamming"). Spamming is not only harmful



because of its negative impact on consumer attitudes toward 5NINES, but also because it can overload our and the Venues' networks and disrupt service to our other users. When a complaint is received, we have the discretion to determine from all of the evidence whether the email recipients were from an "opt-in" email list.

5. FORGING OF HEADERS

Using the Services to forge or misrepresent message headers, whether in whole or in part, to mask the originator of the message.

6. ILLEGAL OR UNAUTHORIZED ACCESS TO OTHER COMPUTERS OR NETWORKS

Using the Services to access illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity).

7. DISTRIBUTION OF INTERNET VIRUSES, WORMS, TROJAN HORSES, OR OTHER DESTRUCTIVE ACTIVITIES.

Using the Services to distribute information regarding the creation of and sending Internet viruses, worms, Trojan horses, pinging, flooding, mail-bombing, or denial of service attacks.

8. EXPORT CONTROL VIOLATIONS.

Using the Services to export encryption software over the Internet or otherwise, to points outside the United States.

9. OTHER ACTIVITIES.

Using the Services to engage in activities, whether lawful or unlawful, that 5NINES determines to be harmful to our or the Venues' subscribers, operations, reputation, goodwill, or customer relations.

As we have stated, the responsibility for avoiding the harmful activities described rests with you. We will not monitor the communications of our users to ensure that they comply with the Agreement, this AUP, or applicable law. However, if we become aware of harmful activities, we may take any action to stop that harmful activity, including, but not limited to, removing information, shutting down a website, implementing screening software designed to block offending transmissions, denying access to the Internet or a particular website, or taking any other action that we deem appropriate.



We are also concerned with the privacy of on-line communications and websites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, we urge you to assume that all of your on-line communications are insecure. We cannot take any responsibility for the security of information transmitted over our or the Venues' networks, equipment, or facilities.

We hope this AUP is helpful in clarifying your obligations as responsible members of the Internet. Any complaints about a user's violation of this AUP should be sent to support@5nines.com.