



## End User License Agreement - EULA - for five(9)s' Software

### IMPORTANT NOTICE!

PLEASE CAREFULLY READ AND BE SURE YOU UNDERSTAND THIS EULA BEFORE ACCEPTING ITS PROVISIONS. five(9)s IS WILLING TO LICENSE THE SOFTWARE (AS DEFINED BELOW) TO YOU AS A CUSTOMER (I. E. AN ENTREPRENEUR, A LEGAL ENTITY, AN INDUSTRIAL USER, A COMMERCIAL ORGANIZATION, A GOVERNMENTAL OR OTHERWISE PUBLIC AUTHORITY, OR A NON-PROFIT ORGANIZATION AS DEFINED BELOW) ONLY IF YOU ACCEPT ALL OF THE PROVISIONS OF THIS EULA AND ITS RELATED TERMS AND CONDITIONS. IN NO EVENT, FIVE(9)S SHALL GRANT ANY LICENSE WITH RESPECT TO ANY OF THEIR SOFTWARE PRODUCTS TO CONSUMERS AS DEFINED BELOW.

THIS END USER LICENSE AGREEMENT ("EULA") IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU (BEING EITHER AN INDIVIDUAL PERSON OR A LEGAL ENTITY) AND five(9)s GmbH (HEREINAFTER REFERRED TO AS five(9)s). THIS EULA APPLIES FOR THE SOFTWARE PRODUCTS SPECIFIED IN THE LICENSE DOCUMENT ("SOFTWARE PRODUCTS") AND TO ALL UPDATES AND UPGRADES, INSOFAR AS five(9)s PROVIDES YOU WITH UPDATES AND/OR UPGRADES AFTER INSTALLATION OF THE SOFTWARE PRODUCTS.

THE SOFTWARE PRODUCTS ARE PROTECTED BY INTERNATIONAL COPYRIGHT LAWS, TREATIES AND OTHER LAWS. five(9)s OWNS AND RETAINS ALL RIGHT, TITLE AND INTEREST IN AND TO THE SOFTWARE PRODUCTS, INCLUDING BUT NOT LIMITED TO ALL COPYRIGHTS, PATENTS, TRADE SECRET RIGHTS, TRADEMARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS. THIS EULA DOES NOT TRANSFER TO YOU ANY TITLE TO OR IN THE SOFTWARE PRODUCTS. YOU DO NOT ACQUIRE ANY RIGHTS TO THE SOFTWARE PRODUCTS EXCEPT AS SPECIFIED IN SECTION 1 BELOW.

YOUR LICENSE TO EACH OF THE SOFTWARE PRODUCTS IS SUBJECT TO YOUR PRIOR ACCEPTANCE OF THIS END USER LICENSE AGREEMENT. BY LOADING AND/OR USING THE SOFTWARE PRODUCTS OR BY OTHERWISE INDICATING ASSENT, YOU ACCEPT ALL OF THE PROVISIONS OF THIS EULA AND ITS RELATED TERMS AND CONDITIONS. five(9)s GmbH EXPRESSIVELY WAIVES A NOTICE OF ACCEPTANCE (SEC. 151 OF THE GERMAN CIVIL CODE – BGB)

## **Definitions**

- five(9)s** means five(9)s GmbH, Industriegebiet Süd E4, 63755 Alzenau, Germany.
- Computer** means any device that is able to process data with the assistance of a programmable calculation specification.
- Consumer** means any natural person executing a legal transaction not being predominantly classed with commercial or self-employed professional activities (Sec. 13 of the German Civil Code – BGB).
- Customer** means an entrepreneur, a legal entity, an industrial user, a commercial organization, a governmental or otherwise public authority, a non-profit organization being provided with any of five(9)s software products for commercial or other professional use.
- Documentation** means written materials, either printed or in electronic form, describing the features of the Software Products and/or Updates and Upgrades and that are designed to assist you in effectively utilizing the Software Products, Updates and/or Upgrades. Such Documentation does not vary the terms of this EULA or its related Terms and Conditions.
- Entrepreneur** means any natural person, legal entity or partnership, having legal capacity that is not engaged in personal or familial usage in ordering or receiving five(9)s Software Products while performing its commercial or independent professional or other work.
- Fee** means the price or the License fee to be paid for five(9)s Software Products.
- License** means your right to use the Software Products subject to this EULA and the Terms and Conditions applicable as of date of conclusion of the relevant agreement. The License shall stipulate the nature and scope of your right to use the Software Products. For Software Products for which an Update service is being provided, the License shall also constitute your right to receive ongoing Updates/Upgrades during the License Term for the provided Software Products.
- License Term** means the period for which a License to Software Products has been granted. The License Term commences as soon as you have received a Software Key consisting of the license ID and password.
- Terms and Conditions** mean the Standard Terms and Conditions of Business of five(9)s. These Terms and Conditions apply in addition to, and supplement the provisions of, this EULA.

**Updates and Upgrades** mean the updating of the Software Products. Classification of the updating as an Update or Upgrade is at five(9)s sole discretion.

## **1. License**

- 1.1. five(9)s hereby grants to you a non-exclusive, non-transferable license to use and install the SOFTWARE PRODUCTS on computer workstations and/or servers to the extent stated in the license document, subject to any restrictions contained herein or in the Terms and Conditions.
- 1.2. For SOFTWARE PRODUCTS for which updates and upgrades are provided by five(9)s, your license includes the right to receive and use Upgrades and Updates for the License Term.
- 1.3. The use of the SOFTWARE PRODUCTS is restricted to use on one computer per License. For this purpose, you may use any available computer meeting the system requirements and for which the License was granted. In the event the computer is being changed, the SOFTWARE PRODUCTS must be deleted from the computer on which it was previously installed before the reinstallation of the SOFTWARE PRODUCTS on a different computer.
- 1.4. The right to use the SOFTWARE PRODUCTS is non-transferable. It is neither permitted to sublicense, rent, loan, or lease any portion of the SOFTWARE PRODUCTS, nor to make the SOFTWARE PRODUCTS available to other users not in possession of an individual license, to use the SOFTWARE PRODUCTS in a commercial computer service, in networks, or to make available the SOFTWARE PRODUCTS by means of time sharing.
- 1.5. Copying and filing of the SOFTWARE PRODUCTS is not permitted except once for backup purposes. Ownership and all right, title and interest in and to the SOFTWARE PRODUCTS, it's documentations, manuals, instructions of use, and other documents pertaining to the SOFTWARE PRODUCTS provided by five(9)s, including but not limited to all copyrights, patents, trade secret rights, trademarks and other intellectual property rights, shall remain with five(9)s.
- 1.6. Consent to Use of Data: You agree that – for the duration of the license term - five(9)s may collect and use technical data and related information - including but not limited to information about your license ID, Solo Customer number, DNS hostname of Ivanti Core, date of transmission, date of last active login with the five(9)s console, number of active users during the previous thirty days, number of licensable device exclusive of mobile devices - that is gathered in the course of the first login of each day to facilitate the provision of software updates, product support, and other services to you (if any) related to the licensed software products. five(9)s may use this information, as long as it is in a form that does not personally



identify the users, to improve its products or to provide services or technologies to you.

## **2. Limitations and Prohibited Alterations**

- 2.1 It is not permitted to sublicense, rent, loan, translate, alter, modify, create derivative works from or disclose the SOFTWARE PRODUCTS or portions thereof, or to remove any proprietary notices, serial numbers, labels, or copy protection features from the SOFTWARE PRODUCTS, in whole or in part.
- 2.2 The SOFTWARE PRODUCTS, in whole or in part, must not be reproduced, transferred, reverse engineered, decompiled (i.e. recompilation into the source code), or disassembled unless expressly permitted by this EULA or permitted according to law.

**NOTE: TO DO SO VOIDS ANY AND ALL WARRANTIES THAT MAY APPLY!**

- 2.3 It is not permitted to use the SOFTWARE PRODUCTS in areas of special risk requiring error-free, permanent operation of relevant systems and in which the failure of the SOFTWARE PRODUCTS may result in a direct risk for life, body or health or in substantial damages to property or the environment (high risk activities and high availability activities, including but not limited to the operation of nuclear facilities, weapon systems, aviation navigation or communication systems, life support systems and equipment, machine and production processes of pharmaceuticals and food production). five(9)s does not warrant or guarantee the SOFTWARE PRODUCTS' fitness for use in special risk areas.
- 2.4 five(9)s reserves all rights to bring an action to prohibit or stop any unauthorized use of the SOFTWARE PRODUCTS by you, including but not limited to, claims for injunctive relief and damages. Unauthorized use by you may lead to criminal prosecution under the relevant laws. The provisions of this section 2.1 concerning reproduction and disclosure shall apply similarly for the user manuals and other documents pertaining to the SOFTWARE PRODUCTS provided by five(9)s.

## **3. Your Obligations**

**The setup of a functional hardware and software environment for the Software shall be the solely in your responsibility. The same shall apply to regular data backup within your EDP system.**

## **4. Term of License**

- 4.1 The license shall remain in effect until it expires or is being terminated. Termination or expiration of the license granted hereunder means that your right to use the

SOFTWARE PRODUCTS and updates and upgrades ends immediately. You will then receive no further updates and you must delete the SOFTWARE PRODUCTS, as well as all back-up copies from your computer. five(9)s may require you to provide written confirmation of the destruction or deletion of the SOFTWARE PRODUCTS, it's documentations, manuals, instructions of use, and other documents pertaining to it.

- 4.2 The license shall expire immediately without the necessity of termination by five(9)s or its distributors or agents in the event of breach of any of the provisions of this EULA. In such event, however, five(9)s GmbH remains entitled to terminate this agreement. The initial customer shall indemnify five(9)s GmbH from any claims and/or damages resulting from the breach or inobservance of the provisions of this EULA.

## 5. Limited Warranty and Disclaimer

- 5.1 **The SOFTWARE PRODUCTS are provided as is, and five(9)s GmbH makes no warranties as to its use or performance. five(9)s makes no warranties that the SOFTWARE PRODUCTS will be error-free or free from interruptions or other failures, or that the SOFTWARE PRODUCTS will meet your specific requirements.**
- 5.2. **five(9)s also expressly disclaims any and all warranties relating to non-infringement of third party rights, merchantability, satisfactory quality, or ability to integrate the SOFTWARE PRODUCTS with other PRODUCTS. Your assume responsibility for selecting the SOFTWARE PRODUCTS to achieve your intended results, and for the installation of, use of, and results obtained from the SOFTWARE PRODUCTS.**
- 5.3 **five(9)s GmbH makes no warranty for the integrity and accuracy of the contents.**
- 5.4 Entrepreneurs have to report obvious defects to five(9)s in writing one week following delivery of the SOFTWARE PRODUCTS, failing this any warranty claims shall be excluded.
- 5.5 If you are an Entrepreneur and the SOFTWARE PRODUCTS has been provided in perpetuity, your warranty claims for defects of the SOFTWARE PRODUCTS lapse after one year from the statutory commencement of the limitation period, except in cases of intentional behavior of five(9)s. The statutory limitation pursuant to section 479 of the German Civil Code (BGB) remains unaffected hereby.
- 5.6 five(9)s shall be liable for any damages resulting from gross negligent or intentional behaviour of five(9)s, which are due to culpable injury to life, body and health, which arise due to the assumption of a guarantee or according to the German

Product Liability Act (Produkthaftungsgesetz).

- 5.7 In all other cases, five(9)s' liability for damages is limited to the infringement of material obligations of the agreement. Material obligations are only such obligations which fulfillments allow the proper execution of the agreement in the first place and where you may rely on the compliance with these obligations.
- 5.8 five(9)s' liability in case of negligent infringement of material obligations of the agreement by five(9)s shall be limited to foreseeable damages which are typical for this type of contract.
- 5.9 A strict liability of five(9)s for defects existing at the time of entering into this EULA pursuant to section 536 a para. 1, alternative 1 German Civil Code (BGB) is hereby expressly excluded.
- 5.10 **If not resulting from gross negligent or intentional behavior of five(9)s shall in no event be liable for any losses resulting from the use of the SOFTWARE PRODUCTS, including, but not limited to lost profits, loss of goodwill or any indirect special, incidental or consequential damages, or damages for negligence of any character, including without limitation damages for work stoppage, loss of data, computer failure, or for any other material or immaterial damage or loss, even in the event five(9)s have been advised on the possibility of such damages and/or losses.**
- 5.11 **In no event five(9)s shall be liable for any damages in excess of the license fee paid by you.**
- 5.12 The foregoing provisions of section 5 shall apply with equal force to any authorized reseller and shall be enforceable to the maximum extent permitted by applicable law.
- 5.13 Any claims will expire after 24 months following delivery of the SOFTWARE PRODUCTS.
- 5.14 The foregoing limitations of liability also apply with regard to all of five(9)s' representatives, including but not limited to its directors, legal representatives, employees and other vicarious agents.

## **6. Additional Provisions for Time-Limited licenses**

Pursuant to the provisions of this EULA the use of the SOFTWARE PRODUCTS under a time limited license shall commence upon installation of the SOFTWARE PRODUCTS and shall be effective for the term as defined by five(9)s in the respective invoice. The use of the SOFTWARE PRODUCTS before commencement or after expiration of the limited license and/or any attempt to tamper with, or manipulate the deactivation function of the SOFTWARE

PRODUCTS'S time control is an unauthorized use and constitutes a severe breach of this EULA and applicable laws.

## 7. Final Provisions

- 7.1 This EULA and the Terms and Conditions, as defined above and incorporated herein, set forth all of your rights to use the Software and make up the entire agreement between the parties. This EULA and the Terms and Conditions supersede any other communications, representations or advertising relating to the Software that is the subject of this EULA.
- 7.2 No provision hereof shall be deemed waived unless there is a written waiver signed by an authorized five(9)s representative.
- 7.3 If any provision of this EULA or the related Terms and Conditions is held invalid, the remainder of this EULA and Terms and Conditions shall continue in full force and effect. To the extent that an otherwise invalid provision can be construed so as to be valid, that provision shall be so construed.
- 7.4 All rights not expressly set forth hereunder are reserved by five(9)s.
- 7.5 The descriptive headings in this EULA have been inserted for convenience and shall not limit or otherwise affect the construction or interpretation of this EULA.
- 7.6 You may not assign your rights under this EULA without the express written permission of five(9)s.
- 7.7 Your license is governed by the laws of Germany. Should you be an Entrepreneur, the exclusive jurisdiction is the registered seat of five(9)s. five(9)s reserves the right to sue the Customer at its domicile.