

Agreement # 9106

Legistar # _____

AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: 09/25/2024

Need Date: 10/09/2024

PROCESSING DEPARTMENT:

Department: CAO - Procurement and Contracts
Dept. Contact: James Jakubowski
Phone: x 5834
Department: James
Head Signature: Jakubowski

Digitally signed by James
Jakubowski
Date: 2024.09.25 12:14:11 -07'00'

CONTRACTOR:

Name: NINJAONE LLC
Address: 26750 US HWY 19 N STE 510
CLEARWATER, FL 33761
Phone: _____
Org Code: 2200
Project # _____
(if applicable): 22IT - C40SERSUP

Funding Source: _____

CONTRACTING DEPARTMENT: CAO - P&C on behalf of District Attorney

Service Requested: Review of Terms of Use and End User License Agreement

Description: ninjaOne Terms of Use and EULA

Contract Term: perpetual Contract Value: \$ 13,000.00

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: ☒ Disapproved: ☐ Date: 10/03/2024 By: Roger A. Runkle
Approved: ☐ Disapproved: ☐ Date: _____ By: _____

Digitally signed by Roger A. Runkle
Date: 2024.10.03 11:03:05 -07'00'

Software contract terms
Terms of use modifiable w/o notice
Indemnification by County

HR APPROVAL: WILL BE REVIEWED THROUGH WORKFLOW

RISK MANAGEMENT: WILL BE REVIEWED THROUGH WORKFLOW

PLEASE EMAIL SIGNED DOCUMENT TO:

Thank you!



NinjaOne, LLC
3687 Tampa Rd., Suite 200
Oldsmar FL 34677
United States
EIN: 46-3725915

Invoice

Invoice : #INV88117685

Bill To

El Dorado County District
Attorney's Office
778 Pacific St
Pollock Pines CA 95726
United States

NinjaOne [Form W-9](#)

AMOUNT REMAINING

DO NOT PAY - AUTO PAID ON DUE DATE

Auto payment made by: Credit Card

\$4,155.00

Invoice Date	Terms	Due Date	PO # (if any)	VAT ID (if any)	Currency
09/01/2024	Due on receipt	09/02/2024	23001253		USD

Description	Service Start Date	Service End Date	Qty	Unit Price	Amount
Ninja Professional	09/01/2024	08/31/2025	1,500	\$2.77	\$4,155.00

Quantity = Monthly Quantity * Term

Subtotal \$4,155.00

Total \$4,155.00

Amount Due \$4,155.00

For billing inquiries, please email billing@ninjaone.com.

For account inquiries, please email success@ninjaone.com.

All payments collected by NinjaOne GmbH are collected on behalf of NinjaOne, LLC.

If the Unit Price above does not match the Unit Price on your Order Form, as modified by any Change Order or other applicable change to your original subscription, it is due to billing system proration and does not reflect the current Unit Price that you have agreed to pay.



NINJAONE END USER LICENSE AGREEMENT

Last updated: August 21, 2024

THIS NINJAONE END USER LICENSE AGREEMENT (THIS “**AGREEMENT**”) IS A LEGAL AND BINDING CONTRACT BETWEEN NINJAONE, LLC (“**NINJAONE**”), ON THE ONE HAND, AND YOU, EITHER INDIVIDUALLY OR ON BEHALF OF THE LEGAL ENTITY THAT ACCEPTS THIS AGREEMENT AND ITS AFFILIATES (“**YOU**” OR “**YOUR**”), ON THE OTHER HAND. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH LEGAL ENTITY (AND ITS AFFILIATES) TO THIS AGREEMENT. YOU INDICATE YOUR ACCEPTANCE AND UNDERSTANDING OF THIS AGREEMENT THROUGH YOUR EXECUTION OF AN ORDER FORM, OR YOUR ACCESS TO OR USE OF THE SOFTWARE, AND THIS AGREEMENT BECOMES EFFECTIVE UPON THE EARLIER OF THE DATE OF YOUR FIRST EXECUTION OF AN ORDER FORM, OR THE DATE OF YOUR FIRST ACCESS TO OR USE OF THE SOFTWARE (THE “**EFFECTIVE DATE**”).

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN YOU MAY NOT ACCESS, DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND, TO THE EXTENT APPLICABLE, YOU MUST UNINSTALL THE SOFTWARE FROM ALL OF YOUR DEVICES, CEASE ALL USE OF THE SOFTWARE, AND DESTROY ALL COPIES OF THE SOFTWARE AND DOCUMENTATION IN YOUR POSSESSION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT CONCERNING ANY SOFTWARE THAT YOU DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF NINJAONE’S SOFTWARE.

1. Definitions. In addition to terms defined elsewhere in this Agreement, the following terms have the meanings provided below wherever used in this Agreement:

1.1 “Affiliate” means an entity controlled by, under common control with, or controlling such entity, where control is denoted by having 50% or more of the voting power (or equivalent) of the applicable entity.

1.2 “**Client**” means, if You are an MSP, Your customer (which may not be an MSP) to whom You provide Managed Services that utilize the Software. If You are not an MSP, the term Client does not apply to You or Your use of the Software.

1.3 “**Documentation**” means the then-current official user documentation prepared and provided by NinjaOne to You regarding the use of the Software, as updated from time to time.

1.4 “**Force Majeure Event**” means an act, event, or circumstance beyond the control of NinjaOne, including, but not limited to, acts of God; systematic electrical, telecommunications, or other utility failures; third-party internet or data storage failures; technological attacks; fires, floods, storms, or other natural disasters; epidemics or pandemics; labor disputes; industrial disturbances; riots; acts or orders of government; and acts of terrorism or war.

1.5 “**Fees**” means the subscription and other fees set forth in any Order Form, as well as any interest and Taxes applicable to such fees pursuant to Section 7.

1.6 “**Managed Services**” means the remote management of the information technology infrastructure and end-user systems of another party.

1.7 “**Managed Services Provider**” or “**MSP**” means an individual or legal entity that provides Managed Services.

1.8 “**NinjaOne Marks**” means the trademarks and service marks belonging to NinjaOne, including, but not limited to, its registered and common law design marks, word marks, and combinations thereof, that NinjaOne approves for use by You.

1.9 “**Object Code**” means computer programming code in the form not readily perceivable by humans and suitable for machine execution without the intervening steps of interpretation or compilation.

1.10 “**Order Form**” means the applicable document or other method by which You procure Software licenses from NinjaOne (including any applicable changes made through a change order or other updates).

1.11 “**Personal Data**” means data that is defined as “personal information” or “personal data” under applicable law.

1.12 “**SaaS Service**” means the NinjaOne online platform service that utilizes the Software on a hosted basis.

1.13 “**Software**” means the Object Code versions of all the software provided by NinjaOne under this Agreement, including software accessible through the SaaS Service and software that You may need to download and install in order to utilize the SaaS Service, as well as each individual component thereof (which may include or consist of Third-Party Products); and any updates, upgrades, or enhancements thereto provided to You by NinjaOne, including, but not limited to, any support software made available via

the Internet, email, or any other means. For avoidance of doubt, all references in this Agreement to Software include the SaaS Service.

1.14 **“Term”** means the period of time beginning on the Effective Date and ending on the expiration or termination of the subscription set forth in the Order Form (as renewed in accordance with the terms of the Order Form or otherwise by written agreement of the parties).

1.15 **“Third-Party Products”** means the open source or third-party software licensed by NinjaOne and incorporated into and/or distributed as part of the Software.

1.16 **“User”** means an individual authorized by You or Your Affiliates to use the Software and Documentation or for whom You have procured a license. If You are a legal entity, Users may only include Your employees and contractors.

1.17 **“Your Data”** means data, files, or information, including Personal Data, submitted by You or Your Users through Your or Your Users’ use of the Software.

2. License Grants.

2.1 **Subscription License.** If the Software is provided to You on a subscription basis, then, subject to the terms and conditions of this Agreement (including any restrictions set forth in the Order Form and the timely payment of Fees), NinjaOne grants to You, during the Term, a limited, non-exclusive, revocable, non-transferable right and license to: (i) access and use the Software through the SaaS Service; and (ii) to the extent applicable, install and use certain Software specifically provided by NinjaOne for such use. If You are an MSP, You agree that the Software will be used solely in furtherance of Your provision of Managed Services to Clients and not for any other purpose or by any unauthorized third party. If required by NinjaOne in its sole discretion, Your Client(s) shall accept the terms of an end user license agreement for the Software. Subject to the terms and conditions of this Agreement, Your Affiliates may use the license granted hereunder on the condition that You are responsible for Your Affiliates’ and Your Affiliates’ Users’ compliance with this Agreement and their actions and/or omissions.

2.2 **Proprietary Rights.** The Software is licensed to You, not sold. All worldwide ownership of, and all rights, title, and interest in and to the Software, and all copies and portions thereof, including, but not limited to, all copyrights, patent rights, trademark rights, trade secret rights, inventions, and other proprietary rights therein and thereto, are and shall remain exclusively in NinjaOne or its licensors. The only rights You acquire under this Agreement are those which are expressly stated in this Agreement.

2.3 **NinjaOne Marks.** If You are an MSP, then, subject to the terms and conditions of this Agreement (including any restrictions set forth in the Order Form and the timely payment of Fees), NinjaOne grants You, during the Term, a limited, revocable, non-exclusive, non-transferable, and non-sublicensable license to use the NinjaOne Marks solely to market and advertise to current or prospective Clients that You utilize the Software in the Managed Services. Your use of the NinjaOne Marks is subject to NinjaOne’s prior and continued approval. NinjaOne is the sole and exclusive owner of the NinjaOne Marks, and Your use thereof shall inure to the benefit of NinjaOne and shall not

create any right, title, or interest in the NinjaOne Marks for Your benefit. You agree that You will not challenge the validity of or NinjaOne's ownership in the NinjaOne Marks, and that You will not adopt or attempt to register any trademark that is confusingly similar to any of the NinjaOne Marks.

2.4 **NinjaOne APIs.** To the extent that You use any NinjaOne API, such use is governed by the [NinjaOne API License Agreement](#) ("API EULA"), which is hereby incorporated by reference. Solely with respect to Your access to or use of the API, to the extent that any term of this Agreement conflicts with that of the API EULA, the API EULA shall control and govern the rights and obligations of the parties. Otherwise, to the extent that any term of this Agreement conflicts with that of the API EULA, this Agreement shall control and govern the rights and obligations of the parties.

3 License Restrictions.

3.1 **Restrictions.** Except as expressly permitted in Section 2, You and the Users or Clients shall not: (i) modify, translate, reverse engineer, decompile, disassemble, make derivative works of, or otherwise derive source code from the Software or Documentation, in whole or in part (or, in any instance where the law permits such action, You agree to provide NinjaOne at least 90 days' advance written notice of Your belief that such action is permitted and warranted and to provide NinjaOne with a reasonable opportunity to evaluate whether the law requires such action); (ii) create, develop, license, install, use, or deploy any software or services to circumvent, enable, modify, or provide access, permissions, or rights which violate the technical restrictions of the Software; (iii) use the Software for development or any other non-intended purpose; (iv) sell, resell, rent, lease, or otherwise distribute the Software or Documentation, in whole or in part; (v) assign, sublicense, rent, or otherwise transfer Your access and use rights to the Software under this Agreement without the prior written approval of NinjaOne; (vi) copy, reproduce, republish, upload, post, or transmit the Software or Documentation; (vii) use the Software on any endpoint or device (a) that is responsible for human safety and/or (b) whose failure or malfunction could result in personal injury or death; (viii) use the Software in a manner that results in excessive use, bandwidth, or storage; or (ix) use the Software if You are a competitor of NinjaOne or for purposes of monitoring the Software's performance, functionality, or availability or for any other benchmarking or competitive purposes.

In addition, You and the Users or Clients shall not use the Software to: (i) defame, abuse, harass, threaten, or otherwise violate the legal rights of others (such as rights of privacy and publicity); (ii) conduct or forward illegal contests, pyramid schemes, chain letters, unsolicited or unauthorized advertising, promotional materials, multi-level marketing campaigns, or emails; (iii) publish, post, distribute, disseminate, or link to any: (a) defamatory, infringing, or unlawful topic, name, material, or information; or (b) software or other material protected by intellectual property laws, copyright licenses, rights of privacy or publicity, or other proprietary rights, unless You own or control such rights or You have received all necessary consents for Your use of such software and other materials; (iv) harvest usernames or email addresses for any purpose; (v) restrict or inhibit any other individual from using and enjoying his/her rights with respect to the Software, services, or website; (vi) interfere with or disrupt the Software, services, website, or networks; or (vii) violate any applicable laws or regulations.

3.2 **Usage Limits.** The Software shall not be installed or used on a number of devices greater than that specified in the Order Form. NinjaOne may monitor Your usage of the Software (including that of the Users or Clients) to ensure that it complies with such usage limits. If the usage limits are exceeded, You shall pay additional fees for the excess usage at the rate(s) set forth, or as otherwise described, in the Order Form. This remains true even if the excess usage results from unauthorized use of the Software.

4. **Your Obligations.** You acknowledge, agree, and warrant that:

4.1 **Authority.** You have the full power and authority to enter into this Agreement and carry out the obligations hereunder.

4.2 **Compliance.** You are solely responsible for Your and the Users' or Clients' compliance with this Agreement and all laws and regulations applicable to the use of the Software. If You become aware of any noncompliance with the foregoing by Yourself, any Users or Clients, You shall immediately report the noncompliance to NinjaOne and cure and remedy the noncompliance to the extent feasible.

4.3 **Credentials.** You are solely responsible for the safekeeping and confidentiality of Your and the Users' or Clients' usernames and passwords. If You become aware of any breach of confidentiality thereof, You shall immediately cure and remedy the breach and report to NinjaOne any adverse effects or results of the breach.

4.4 **Activities.** You are solely responsible for Your and the Users' or Clients' activities in or as a result of using the Software, including, but not limited to: (i) any misuse of the Software; (ii) the information, data, and content entered into the Software or otherwise made available to NinjaOne; (iii) the information, data, and content accessed through the Software or otherwise made available to NinjaOne, its effects, any actions taken in response thereto, and any interpretations thereof; and (iv) the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of all information, data, and content that You, the Users or Clients allow the Software to access or otherwise make available to NinjaOne. You will provide any notices and obtain any consents that may be legally required for NinjaOne to engage in the activities contemplated by this Agreement.

4.5 **Equipment and Ancillary Services.** You are solely responsible for acquiring and maintaining any equipment or ancillary services needed to connect to, access, or otherwise use the Software, including, but not limited to, modems, hardware, software, and internet service, and for ensuring that such equipment and ancillary services are compatible with the Software.

4.6 **Export Control Laws.** The Software, Documentation, and any related technical data, and products utilizing the Software, Documentation, or such technical data (collectively, "Controlled Technology") are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. You shall not, and shall not permit any third parties to, export, re-export, or release, directly or indirectly, any Controlled Technology to a jurisdiction or country to which the export, re-export, or release of any Controlled Technology is prohibited by applicable federal law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or

other governmental approval) prior to exporting or re-exporting any Controlled Technology. You shall provide prior written notice of the need to comply with such laws and regulations to any person, firm, or entity which You have reason to believe is obtaining any such Controlled Technology from You with the intent to export. Any breach by You of this Subsection 4.6 shall be deemed a material, uncurable breach of this Agreement.

4.7 Anti-Corruption; OFAC. You acknowledge and agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of NinjaOne in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify NinjaOne. You represent and warrant to NinjaOne that none of (a) You, (b) each person or entity owning an interest in You (as applicable), nor (c) the Users are (x) currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, U.S. Department of the Treasury (“OFAC”), nor on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or, regulation, or (y) a person or entity with whom a citizen of the U.S. is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of U.S. law, regulation, or Executive Order of the President of the United States.

4.8 Liability Disclaimer. NINJAONE (INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, AFFILIATES, AND SUCCESSORS) SHALL NOT BE LIABLE IN ANY MANNER FOR ANY DAMAGES RESULTING FROM YOUR FAILURE TO FULFILL THE FOREGOING RESPONSIBILITIES UNDER THIS SECTION 4, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM ANY MISUSE OF THE SOFTWARE OR ANY DELETION, DESTRUCTION, LOSS, OR UNAUTHORIZED ACCESS TO THE DATA STORED THEREIN.

5. Data Use and Protection.

5.1 Your Data. NinjaOne acknowledges and agrees that, as between NinjaOne and You, You own all right, title, and interest in and to Your Data. You grant to NinjaOne a non-exclusive, royalty-free, worldwide license to (i) use, reproduce, store, process, and display Your Data and perform all acts with respect to Your Data, but only to the extent necessary for NinjaOne to (a) develop, improve, support, and provide the Software to You, (b) compile statistical and performance information for NinjaOne’s internal business purposes, and (c) comply with its obligations under this Agreement, the DPA, or applicable law, including, but not limited to GDPR, HIPAA, etc., and (ii) anonymize, summarize, de-identify, and/or aggregate Your Data, so that no individual is identified or identifiable (“**Aggregate Data**”) and use such Aggregate Data to track general industry trends; develop and publish white papers, reports, and summaries; improve the Software; and for any lawful purpose related to NinjaOne’s legitimate business interests. For clarity, Aggregate Data SHALL NOT include personally identifiable information or information that can identify any individual. NinjaOne retains all intellectual property rights to the Aggregate Data.

5.2 Protection of Your Data. NinjaOne shall comply with its obligations under applicable data protection laws and shall maintain appropriate administrative, physical,

technical, and organizational measures that ensure an appropriate level of security for Your Data. You acknowledge and agree that any Personal Data contained in Your Data is voluntarily provided by You solely based on how You choose to use the Software and/or manage devices on which the Software is deployed. To the extent that Your Data contains Personal Data, and You have executed the Data Processing Agreement (“DPA”) as instructed [here](#), NinjaOne will process such Personal Data in accordance with the DPA. Upon execution by both parties and NinjaOne’s receipt of the executed DPA, the DPA shall be incorporated by reference into this Agreement. You are responsible for ensuring that the security of the Software is appropriate for Your intended use.

5.3 Representations, Warranties, and Covenants Concerning Use. You acknowledge and agree that You will not input, store, or upload into the SaaS Service environment any data whatsoever that is subject to laws or regulations that require heightened or specific security measures, including, but not limited to, International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), or the Digital Millennium Copyright Act (DMCA).

6. Third-Party Products. You acknowledge and understand that Third-Party Products are embedded or incorporated in, or distributed with, the Software and may be governed by their own license terms (collectively, “Third-Party License”). Links to relevant Third-Party Licenses may be found [here](#). Nothing in this Agreement limits Your, the Users’ or Clients’ rights under, nor grants You, the Users or Clients any rights that supersede, the terms of any applicable Third-Party License (including, but not limited to, those concerning proprietary rights to the Third-Party Products). If You, any User or Client do(es) not agree to the Third-Party License terms, then You, such User or Client shall not use the Software, respectively.

To the extent the provisions of a Third-Party License applicable to an open source component of the Software prohibit any of the restrictions in this Agreement with respect to such open source component, such restrictions will not apply to the open source component affected by such prohibition. To the extent that the provisions of the Third-Party License applicable to open source components of the Software require NinjaOne to make an offer to provide source code or related information in connection with such open source components, such offer is hereby made.

7. Fees and Payment. Fees shall be due and payable as set forth on the Order Form and as otherwise required under this Agreement. Failure to pay Fees on time may result in the termination of this Agreement and/or the suspension of Your and the Users’ or Clients’ access to and use of the Software as described in Section 8. In addition, for any past due amount, NinjaOne may charge interest at 1.0% per month or the maximum rate allowed by applicable law, whichever is lower. Except as expressly set forth herein or in the Order Form, all Fees paid or payable are non-cancellable and non-refundable to the maximum extent permitted by law.

7.1 Disputed Fees. If You believe that any invoice for Fees is in error, You must notify NinjaOne in writing of such error within 25 days of Your receipt of such invoice. Failure to provide such notice shall constitute Your waiver of Your right to dispute the invoice. If appropriate, NinjaOne shall rectify the error by reducing the amount of the next invoice following the parties’ resolution of such error, or by any other means agreed between the parties.

7.2 **Taxes.** Prices are exclusive of any and all taxes and withholding requirements, including sales and use taxes, value-added taxes, export and import fees, customs, duties, tariffs, and similar charges arising out of this Agreement or applicable to the transactions contemplated by this Agreement that are imposed by any government or other authority ("Taxes"). Customer shall pay or reimburse NinjaOne for all Taxes, if and as applicable. If Customer is required to pay or withhold any Taxes in respect of any payments due to NinjaOne hereunder, Customer shall gross up payments actually made to NinjaOne such that NinjaOne shall receive the sums due hereunder in full and free of any deduction for any such Taxes or withholdings.

7.3 **Fee Changes.** NinjaOne may change Fees for the Software from time to time, in its sole discretion. Any Fee changes will be effective upon the commencement of Your next renewal term, provided that NinjaOne shall provide You with reasonable notice of any such Fee change prior to the expiration of the then-current term. Notice under this Subsection 7.3 may be given to any of Your personnel who regularly interact with NinjaOne in relation to the Software.

7.4 **Purchases by Your Purchase Order.** Once You have executed an Order Form that incorporates this Agreement, You may issue a purchase order (or other ordering document) to NinjaOne which lists the Software being licensed by You, in which case such purchase order shall be deemed to incorporate the terms and conditions of this Agreement by reference whether or not containing an express reference hereto; provided, however, that any terms and conditions contained in Your purchase order that are in addition to or different than the terms and conditions in this Agreement shall be null and void.

8. Term and Termination.

8.1 **Term.** The term of this Agreement (including the access and licenses granted herein) shall begin on the Effective Date and shall expire upon the expiration or termination of the subscription set forth in the Order Form (as renewed in accordance with the terms of the Order Form or otherwise by written agreement of the parties). This Agreement may be terminated prior to the expiration or termination of the subscription only in accordance with this Section 8. The termination of this Agreement shall operate to immediately terminate the subscription set forth in the Order Form (if not already expired).

8.2 **Termination for Convenience.** Unless a shorter or longer notice period is set forth on the Order Form, either party may terminate this Agreement with 60 days' prior written notice to the other party. The termination shall take effect upon the expiration of the term that is in effect on the last day of the notice period. You shall send such notices to success@ninjarmm.com. Any Fees due and payable under the Order Form during the notice period shall remain so due and payable.

8.3 **Termination or Suspension for Cause.** NinjaOne may suspend access to the SaaS Service or terminate this Agreement with 30 days' written notice to You if You, the Users or Clients breach this Agreement, unless the breach is cured within the 30-day notice period. Notwithstanding the foregoing, if You fail to pay any amount due under this Agreement on the due date and remain in default for more than 10 days after NinjaOne gives written notice to You to make payment, NinjaOne may immediately suspend

access to the SaaS Service or terminate this Agreement. In addition, NinjaOne may terminate this Agreement immediately if (i) You, the Users or Clients breach this Agreement, and the breach is egregious, uncurable, and/or would damage the Software or NinjaOne's reputation; or (ii) if You become insolvent or if bankruptcy or receivership proceedings are initiated by or against You. NinjaOne's decision to suspend access to the SaaS Service is without prejudice to its right to terminate this Agreement for the same cause(s) underlying the suspension.

8.4 Effects of Termination.

8.4.1 License and Access Ends. Upon the expiration of the Term or termination of this Agreement for any reason, all rights granted to You under this Agreement shall cease and You and the Users or Clients shall immediately (i) cease using the Software (if not already done); and (ii) destroy all copies of the Software and Documentation in Your and their possession; or (iii) if instructed by NinjaOne, return all copies of the Software and Documentation in Your and their possession to NinjaOne. If You and the Users or Clients do not immediately cease using the Software in accordance with this Subsection 8.4, NinjaOne may immediately terminate Your and the Users' or Clients' access to and use of the Software without notice.

8.4.2 Payments. Upon the expiration of the Term or termination of this Agreement, all amounts owing by You to NinjaOne shall become immediately due and payable, and You shall immediately pay all such amounts to NinjaOne. If this Agreement is terminated via NinjaOne's right to terminate under Subsection 8.3, NinjaOne shall, in addition to any other rights under this Agreement or otherwise, be entitled to collect from You all of the Fees that remain payable under this Agreement for the entire Term.

8.5 Survival. Any provision of this Agreement that by its nature is intended to survive the expiration or termination of this Agreement shall so survive. These include, but are not limited to, the provisions of Section 6 (Third-Party Products), Section 7 (Fees and Payment), Section 10 (Limitation of Liability), Section 11 (Indemnification), and Section 13 (General).

9. Warranties.

9.1 Limited Warranty. NinjaOne warrants that it can enter into this Agreement and that it has the right to grant the Software licenses as set forth herein. NinjaOne also warrants that the Software will operate substantially in accordance with the specifications set forth in the Documentation, under ordinary operating circumstances, for a period of 30 days following the Effective Date. If You notify NinjaOne in writing of a breach of this warranty during the period set forth above, then (i) NinjaOne will correct, repair, or replace the Software within a reasonable time; or (ii) if NinjaOne determines that such correction, repair, or replacement is not feasible, You may terminate this Agreement on written notice to NinjaOne, and You will be entitled to a refund any pre-paid Fees for such non-compliant Software. The foregoing options constitute NinjaOne's entire liability and Your sole remedy in the event of a breach of the foregoing warranties. The foregoing warranties do not apply to Third-Party Products or to SDKs/APIs. Further, the warranties set forth in this Subsection 9.1 do not apply if (i) the Software has not been used in accordance with the terms and conditions of this Agreement, the Documentation, or applicable laws; (ii) the Software has been used for a purpose or

application for which it was not intended; (iii) the breach is a result of any act or omission by You or any third party (including, but not limited to, alteration, abuse, or damage) or by the use of any materials supplied by You or any third party; (iv) the breach has been caused by Your failure to apply updates or upgrades, or to comply with any recommendation or instruction of NinjaOne; or (v) the breach results from any cause outside of NinjaOne's reasonable control.

9.2 Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE, DOCUMENTATION, SAAS SERVICE, AND NINJAONE MARKS ARE PROVIDED AND LICENSED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND NINJAONE HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE. YOU EXPRESSLY ACKNOWLEDGE THAT THE SOFTWARE, DOCUMENTATION, AND SAAS SERVICE MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS. NO EMPLOYEE, CONTRACTOR, AGENT, AFFILIATE, REPRESENTATIVE, RESELLER, DEALER, OR DISTRIBUTOR OF NINJAONE IS AUTHORIZED TO MODIFY THESE WARRANTY TERMS OR TO MAKE ANY ADDITIONAL WARRANTIES. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

10. Limitation of Liability.

10.1 No Special Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL NINJAONE (INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, AFFILIATES, AND SUCCESSORS) BE LIABLE TO YOU, THE USERS OR CLIENTS FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, STATUTORY, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE RELATED TO LOSS OR PRIVACY OF DATA OR PROGRAMS, BUSINESS INTERRUPTIONS, OR LOST PROFITS OR REVENUE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE, OR OTHERWISE, EVEN IF NINJAONE IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OF THE FOREGOING DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

10.2 Damages Cap. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL NINJAONE (INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, AFFILIATES, AND SUCCESSORS) BE LIABLE TO YOU, THE USERS OR CLIENTS IN RELATION TO THE SOFTWARE, DOCUMENTATION, SAAS SERVICE, OR THIS AGREEMENT IN AN AGGREGATE AMOUNT GREATER THAN (i) THE AMOUNT OF FEES PAID OR PAYABLE BY YOU UNDER THE ORDER FORM DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY, OR (ii) \$5,000, WHICHEVER IS GREATER. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

11. Indemnification.

11.1 Indemnification by You. You shall indemnify, defend (through use of counsel acceptable to NinjaOne), and hold harmless NinjaOne (including its directors, officers, employees, contractors, agents, Affiliates, and successors) from and against any and all claims, demands, losses, liabilities, and costs (including, but not limited to, reasonable attorney's fees and costs) arising from Your or the Users' or Clients' (i) breach of this Agreement or violation of applicable law; (ii) installation, use, or misuse of, or failure to prevent unauthorized access to, the Software or the data stored therein; (iii) infringement of third-party intellectual property rights (except to the extent directly resulting from the use of the Software by You, the Users or Clients) or violation of third-party privacy rights; and (iv) willful misconduct or fraud.

11.2 Indemnification by NinjaOne. NinjaOne shall indemnify, defend, and hold You harmless from and against any and all third-party claims, demands, losses, liabilities, and costs (including, but not limited to, reasonable attorney's fees and costs) arising from NinjaOne's infringement of third-party intellectual property rights directly resulting from the use of the Software by You, the Users or Clients. This Subsection 11.2 states NinjaOne's entire liability (and shall be Your sole and exclusive remedy) with respect to infringement claims.

The foregoing obligations do not apply (i) with respect to Software or components thereof which have been (a) supplied other than by NinjaOne (including Third-Party Products), (b) modified in whole or in part in accordance to Your specifications, (c) modified by You, the Users or Clients after delivery by NinjaOne, or (d) combined with other products, processes, or materials where the alleged infringement relates to such combination; (ii) where You continue the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (iii) where the use of the Software by You, the Users or Clients is not strictly in accordance with this Agreement or the Documentation.

11.3 Indemnification Procedure. The obligations in Sections 11.1 and 11.2 are subject to the indemnifying party being promptly notified of any and all threats, claims, and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise.

12. U.S. Government Use. If You are an agency or instrumentality of the United States Federal Government ("USG") or if You are or a prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the USG and acquiring a license to use the Software on behalf of the USG, You agree that the Software and Documentation are "commercial items," as defined in the Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. [Consistent with](#) FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and Defense Federal Acquisition Regulation Supplement ("DFAR") 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, You will acquire the Software and Documentation with only those rights set forth in this

Agreement. Any license provisions that are inconsistent with federal procurement regulations are not enforceable against the USG.

13. General

13.1 **Feedback.** Any suggestions, feedback, or proposed modifications to the Software (in any form) provided by You to NinjaOne may be freely used by NinjaOne without limitation, and any modifications to the Software resulting from such suggestions, feedback, or proposed modifications shall be exclusively owned by NinjaOne.

13.2 **Monitoring.** The Software is equipped with a feedback mechanism, technological copy protection, or other security features designed to prevent unauthorized use of the Software and to provide NinjaOne with data relating to Your and the Users' or Clients' use of the Software. NinjaOne may use this data only for internal business purposes, and NinjaOne shall not share or disclose this data with any third parties, unless required by law or legal process. You and the Users or Clients shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

13.3 **Set Off.** NinjaOne may set off any payment due to You, whether under this Agreement or otherwise, against any claim that NinjaOne has against You, whether under this Agreement or otherwise.

13.4 **Agreement Updates.** NinjaOne may update this Agreement from time to time. NinjaOne will post the updated version on its website or otherwise provide You notice thereof. If You do not agree to the updated terms, You shall notify NinjaOne in writing within 30 days following the update, and You shall have the opportunity to terminate the Agreement and receive a refund of any pre-paid Fees for the unused portion of the subscription set forth the Order Form at the time of the termination. Your failure to provide such notice, and/or Your continued use of the Software for more than 30 days following the update, shall constitute Your acceptance of any updated terms.

13.5 **Conflicts.** To the extent that any term of this Agreement conflicts with that of an Order Form, the Order Form shall control and govern the rights and obligations of the parties.

13.6 **Governing Law; Jurisdiction.** This Agreement shall be construed and governed in accordance with the laws of the State of Texas, without regard to the choice or conflicts of law provisions of any jurisdiction. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments shall not apply to this Agreement. Any dispute, action, claim, or cause of action arising out of or in connection with this Agreement or the Software shall be subject to the exclusive jurisdiction of the state and federal courts located in Travis County, Texas, and the parties irrevocably submit to the personal jurisdiction of such courts.

13.7 **Force Majeure.** The failure of NinjaOne to comply with any provision of this Agreement due to a Force Majeure Event shall not be considered a breach of this Agreement.

13.8 **Remedies.** Each party acknowledges that a breach of this Agreement by the other party (and, where applicable, Users or Clients) may cause irreparable harm to the non-breaching party for which monetary damages are an insufficient remedy, and that the non-breaching party shall have the right to seek and recover equitable relief, including, but not limited to, an injunction or decree for specific performance, without the requirement of posting bond or proving damages. The non-breaching party's exercise of this right shall not waive its right to assert any other legal right or obtain any other remedy permitted under this Agreement or by applicable law. Each party's remedies set forth in this Agreement are cumulative and are in addition to, and not in lieu of, all other remedies each party may have at law or in equity, whether under this Agreement or otherwise.

13.9 **Attorney's Fees.** In the event of litigation between the parties concerning this Agreement or the Software, the prevailing party in the litigation shall be entitled to recover its reasonable attorney's fees and costs from the other party.

13.10 **Notice.** Except as otherwise provided in this Agreement or the Order Form, any notice or report required to be given under this Agreement shall be given as follows:

If to You, by email to the "Buyer Email" or "Licensee Email" address listed on the Order Form.

If to NinjaOne, by email to EULA@ninjaone.com.

13.11 **Severability.** If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

13.12 **Waiver.** The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of that right. No waiver of any breach of this Agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

13.13 **Promotions.** By executing this Agreement, You give NinjaOne permission to contact, and use information about, You for the purposes of promoting goods and services to You. In addition, unless You give written notice of Your revocation of the following permission to NinjaOne, by executing this Agreement, You give permission for NinjaOne to publish Your name and logo in lists of customers, for publicity and promotional purposes.

13.14 **Entire Agreement.** This Agreement, together with the Order Form(s), embraces the full, complete understanding of the parties as to the subject matter hereof. All prior or contemporaneous representations, understandings, and agreements between the parties regarding the subject matter hereof, whether written or oral, expressed or implied, are superseded by this Agreement and shall be of no effect. For the avoidance of doubt, any terms and conditions on any purchase orders issued to NinjaOne by You shall be null and void.

13.15 **Assignment.** You may not assign any of Your rights under this Agreement without the prior written consent of NinjaOne. Any purported assignment or delegation in violation of this Subsection 13.15 shall be null and void. An assignment resulting from an amalgamation, merger, change in control, re-organization, or other similar transaction by You (including, but not limited to, an asset sale, stock sale, reverse merger, or reverse triangular merger) shall require NinjaOne's consent pursuant to this Subsection 13.15. Furthermore, for the purposes of this Agreement, (i) the acquisition of an equity interest in You of greater than 50 percent by any third party, or (ii) the acquisition of an equity interest by You of greater than 50 percent of any third party, shall be considered an "assignment." NinjaOne may assign this Agreement to any third party that succeeds to NinjaOne's interests in the Software and assumes the obligations of NinjaOne hereunder, and NinjaOne may assign its right to payment hereunder or grant a security interest in this Agreement or such payment right to any third party.

13.16 **No Third-Party Beneficiary.** Except as otherwise expressly provided herein, no third party is or shall be a beneficiary of this Agreement, and no third party (including, but not limited to, a Client or Affiliate) shall have the right to enforce this Agreement.

13.17 **Electronic Transaction; Electronic Communications.** The parties agree that this Agreement may be formed, executed, and/or delivered by electronic means, including the use of electronic signatures and/or electronic agents. NinjaOne shall be entitled to communicate with You via email or other electronic communications. You consent to these communications and others regarding the Software, new product releases, upgrades, and other information that NinjaOne believes may be relevant to use of the Software.

14. **Special Terms for Certain Products or Services.**

14.1 **Documentation Data Importation.** The following terms apply only to the extent that You import documentation data from a third-party provider to NinjaOne. In order to complete such importation, You must use the CSV form accessible on the NinjaOne platform for such purposes. You are solely responsible for the complete and accurate entry and saving of all documentation data in(to) the CSV form, including any errors or omissions. You represent and warrant as follows: (i) the documentation data is rightfully owned, in whole, by You, and You have unconditional authority to import the documentation data to NinjaOne; and/or the documentation data is rightfully owned, at least in part, by the individuals or entities who (or whose devices) are the subjects of the documentation data, and You have received all necessary consents from such individuals or entities to import the documentation data to NinjaOne; (ii) to the extent that You use a copy-and-paste function to enter the documentation data into the CSV form, or You enter the documentation data into the CSV form such that the manner in which the documentation data was compiled, organized, or presented by the third-party provider is maintained, You have the right to import the documentation data to NinjaOne in such manner; and (iii) importing the documentation data to NinjaOne will not cause You to be in breach of any contract or other agreement with any third party or of any third party's intellectual property or privacy rights. Notwithstanding anything to the contrary in this Agreement, and without limiting NinjaOne's other rights or Your other obligations under this Agreement, You shall indemnify, defend (through use of counsel acceptable to NinjaOne), and hold harmless NinjaOne (including its directors, officers, employees, contractors, agents, Affiliates, and successors) from and against any

and all claims, demands, losses, liabilities, and costs (including, but not limited to, reasonable attorney's fees and costs) arising from Your importation of documentation data to NinjaOne.

14.2 **Professional Services.** If the Order Form includes professional services to be performed by NinjaOne, the [NinjaOne Professional Services Addendum](#) (the "Addendum") applies to such services and is hereby incorporated by reference. Solely with respect to the professional services, to the extent that any term of this Agreement conflicts with that of the Addendum, the Addendum shall control and govern the rights and obligations of the parties. Otherwise, to the extent that any term of this Agreement conflicts with that of the Addendum, this Agreement shall control and govern the rights and obligations of the parties.



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Indemnity

You agree to defend, indemnify and hold harmless NinjaOne, its officers, directors, employees and agents from and against any and all claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with your access to or use of the Site.

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Note About Children

Minors are not eligible to use the Site, and we ask that they do not submit any personal information to us.

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