

NEW AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: 05/31/19

Need Date: 06/07/19 for 06/25/19 Board Date

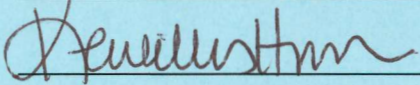
PROCESSING DEPARTMENT:

Department: CAO - Central Fiscal

Dept. Contact: Audra Anderson

Phone: X5144

Department

Head Signature: 

CONTRACTOR:

Name: CALICO - CACC

Address: 524 Estudillo Avenue

San Leandro, CA 94577

Phone: _____

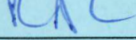
Org Code: 2200000

CONTRACTING DEPARTMENT: District Attorney

Service Requested: Collaborate Case Tracking Software for CalOES KC Grant

Contract Term: Perpetual Contract Value: \$0

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

Approved: Disapproved: _____ Date: 6-5-19 By: 

Approved: _____ Disapproved: _____ Date: _____ By: _____

HR APPROVAL: WILL BE REVIEWED THROUGH WORKFLOW

RISK MANAGEMENT: WILL BE REVIEWED THROUGH WORKFLOW

PLEASE CALL x5144 FOR PICK-UP...THANKS!

EL PASO COUNTY COUNSEL
2019 JUN -4 AM 8:08

Casey Law - Billing - Not in UPval in Software (K)



CHILDREN'S ADVOCACY CENTERS OF CALIFORNIA

May 10, 2019

To Whom It May Concern,

Children's Advocacy Centers of California (CACC), a program of CALICO, is pleased confirm that it will provide funding on behalf of the El Dorado County District Attorney's Office for the installation and use of the Collaborate case management system, a cloud software developed by Network Ninja. CACC will carry on funding the usage fees for Collaborate in future years provided that CACC receives continued grant funding to do so.

Network Ninja will issue invoices for installation, migration of any existing data and license use directly to CACC, upon which CACC will remit payment to Network Ninja. This arrangement is designed to reduce the administrative and financial burden to individual centers in California. CACC is pleased to be able to offer this service as a benefit to its member centers and multi-disciplinary teams.

We wish you great success with your use of Collaborate, and hope it helps contribute to your program's success. If you have any questions or concerns regarding this, please do not hesitate to contact me at the number below or at executive.director@calicocenter.org.

Sincerely,

A handwritten signature in black ink that reads "Erin Harper".

Erin Harper
CALICO/CACC Executive Director



Software Subscription and License Terms and Conditions

These Software Subscription and License Terms and Conditions (“License Terms”) apply to use of a software platform called Collaborate (hereinafter, the “Platform”), which is a web-based case management system for non-profit agencies dealing with violence against children and women, developed and owned by NETWORK NINJA, INC., an Illinois corporation with its principal place of business at 1286 N Milwaukee Ave, Chicago, IL 60622 (hereinafter referred to as “NNI”).

1. Subscription. Subject to the terms and conditions in these License Terms including that the customer executing an Order Form for the Platform (the “Customer”) has paid the initial subscription fee and continues to pay the applicable monthly subscription and maintenance fee, NNI grants to Customer a non-exclusive, non-transferable, non-sublicensable license to access and use (a) the Platform as made available by NNI via the internet, together with any modifications, enhancements, or corrections thereto that NNI may make generally available to its customers from time to time, and together with any customizations that may be ordered and paid for by Customer; and (b) any user manuals and on-line help information for the Platform that NNI may create and make generally available to its customers from time to time, whether in print, or in digital form over the internet (“Documentation”), which license shall continue for the Term (as defined below). Notwithstanding anything to the contrary herein, Customer may download, copy, view and print content created using the Platform for Customer’s internal use only; provided, that all trademark, service mark, logos or other intellectual property notices are not removed or altered.

2. License Exclusions. Except as expressly authorized by these License Terms, Customer will not itself, nor through any parent, subsidiary, affiliate, or third party: (a) copy, modify or create derivative works based upon the Platform or Documentation; (b) decompile, disassemble, or reverse engineer the Platform in whole or in part; (c) defeat, disable or circumvent any protection mechanism related to the Platform or the Documentation; (d) sell, license, sublicense, lease, rent, or distribute to any third party, or disclose, permit access to, or transfer to any third party, any portion of the Platform or the Documentation; (e) Use the Platform or the Documentation to operate a service bureau or to perform service department

management services for any third party; or (f) export, access or use the Platform in violation of any U.S. Department of Commerce export administration regulations or other applicable laws or regulations.

3. Accessing the Platform.

(a) To access and use its instance of Collaborate, Customer will login to a pre-designated server that will host the Platform, via a Supported Web-Browser (as defined below). Each Authorized User will be able to access the Platform and the Documentation solely through a user identification and a password (together, a “Password”) that will be issued to the Customer by the NNI. CUSTOMER IS RESPONSIBLE FOR KEEPING ALL AUTHORIZED USER PASSWORDS STRICTLY CONFIDENTIAL AND TAKING OTHER REASONABLE PRECAUTIONS TO PREVENT THEIR UNAUTHORIZED USE. NNI will be entitled to presume that all use of the Platform using a Password is authorized by Customer, and Customer will remain liable for any damages or losses that are caused by access to the Software using any such Password.

(b) Customer will take reasonable steps to protect against use of the Platform and Documentation other than as authorized by these License Terms. CUSTOMER IS RESPONSIBLE FOR INSURING THAT EACH AUTHORIZED USER COMPLIES WITH THE TERMS OF THESE LICENSE TERMS. Customer will notify NNI promptly of any unauthorized use of a Password, the Platform or the Documentation of which it becomes aware.

4. Platform Server Location, Operation and Availability.

(a) The server hosting the Platform will be located at a data center that is configured in a manner consistent with commercially reasonable standards for fireproofing, power and backup generation, structural integrity, seismic resistance and resistance to other natural and man-made disruptions. In addition, the facility shall be secured in a commercially reasonable manner against physical and electronic intrusion in a manner consistent with reasonable standards. NNI, in its sole discretion, may outsource its Internet data center operations and facilities to subcontractors.

(b) The Platform will be operated in a manner such that (i) the Customer Data (as defined in Section 7(a) below) will be stored separately from those of other NNI customers, or (ii) Customer Data is partitioned sufficiently to protect the security and privacy of the Customer Data.

(c) The Platform will be accessible via the following commercially available web-browsers: Microsoft Internet Explorer version 8, Fire Fox version 3.6.9, Google Chrome 6.0, Opera 10.62 and Safari 5 (the "Supported Web-Browsers"). Upon notice to Customer, NNI, in its sole discretion, may suspend support for existing Supported Web-Browsers or may add additional Supported Web-Browsers.

(d) The Platform shall be available for use by Customer 99.9% of the time during each calendar month ("Uptime Availability") and if NNI fails to meet this Uptime Availability, NNI shall provide to Customer service credits, as Customer's sole and exclusive remedy for any such failure. Such service credits shall be determined by (i) dividing the monthly subscription and maintenance fee described in Section 5 below by the number of hours in such month, and (ii) multiplying such per hour fee by the number of hours that there is a failure to maintain the Uptime Availability in such month. Notwithstanding the foregoing, NNI reserves and shall have the right to perform maintenance from time to time in relation to the Platform, and shall not be required to pay any credits in relation to related downtime. NNI will provide written notice to Customer prior to such maintenance if any downtime is expected to result, and will reasonably coordinate with Customer to minimize the impact on Customer.

5. Fees.

(a) In consideration of the performance by NNI of its obligations under these License Terms and commencement of access to the Platform, Customer agrees to pay an initial subscription and license fee. In order to continue Customer's access to the Platform, Customer shall be required to pay the monthly subscription and maintenance fee outlined in the Order Form, and any other fees which are mutually agreed to by the parties and incurred by Customer pursuant hereto (collectively, "Fees"), in accordance with the terms of these License Terms and the Order Form. The Fees listed on the Order Form entitle Customer to the number of authorized users listed on the Order Form. Additional users may become authorized, at NNI's then applicable rates, as the same may be increased by NNI from time to time as contemplated in these License Terms.

(b) NNI reserves the right to modify its fees for any subsequent "Renewal Term" (as defined in Section 10.1(a)) by giving Customer no less than 45 days prior notice of such change, provided, however, such Fees shall not increase more than five percent (5%) in any one (1) calendar year.

(c) Except as otherwise provided in the Order Form, undisputed Fees will be paid by Customer within 30 days after receipt of the relevant invoice by Customer. If Customer disputes any invoice (such dispute to be in good faith), Customer shall pay the undisputed portion and will notify NNI in writing, specifying the amount in dispute and its reason for disputing such amount and both parties shall use reasonable efforts to resolve such dispute.

(d) All Fees are exclusive of sales tax and other applicable taxes, which Customer will be responsible to pay (except that NNI will pay income tax on its own income under these License Terms).

6. NNI's Ownership of Platform.

(a) Except for the rights expressly granted to Customer in these License Terms, these License Terms do not transfer to Customer any right, title, or interest (including any copyright, patent, trademark, trade secret or other intellectual property or proprietary right) in or to the Platform or the Documentation.

(b) Customer acknowledges that NNI retains sole and exclusive title to all portions of the Software, the Documentation and any copies thereof, and hereby assigns to NNI all right, title, and interest in

and to any modifications made to the Software or the Documentation on behalf of Customer.

7. Customer's Ownership of Customer Data; Backup and Archiving of Customer Data.

(a) Customer will retain all right, title and ownership interest in and to all data, content and materials entered and updated using the Software and that is stored in the Software ("Customer Data").

(b) NNI will perform local backup of Customer Data daily on the Server and will perform remote archiving of Customer Data on a weekly basis ("Data Backup Services").

(c) NNI will maintain archived Customer Data for a period of one (1) month at NNI's location. After one (1) month, NNI will over-write archived data with backups of more recent Customer Data.

(d) Upon any known occurrence of data corruption or data loss resulting from a system failure, NNI will exercise reasonable efforts to restore data files from archived copies as quickly as reasonably practicable. Customer acknowledges that the amount of time required to restore archived data files is dependent upon numerous factors, including, but not limited to, severity or the relevant data corruption or loss.

8. Maintenance and Support.

(a) NNI will perform maintenance services to ensure that the Platform operates at appropriate service levels to perform its primary functions. Such maintenance services shall include: (a) maintaining the hosting server's operating system; (b) monitoring, testing and maintaining the Platform's security mechanisms, including commercially reasonable security procedures; (c) fixing known bugs, applying software patches or removing or remedying any defective procedures in the Platform, and (d) monitoring and updating other software installed on the hosting server.

(b) NNI will provide Customer with limited assistance in relation to the use of the Platform. Customer is limited to one pre-designated Customer liaison who can contact NNI for phone support between the hours of 9 a.m. and 6 p.m. CST ("Support Services").

(c) NNI will provide Customer with standard generally available updates to the Platform as a part of the maintenance services and the monthly subscription and maintenance fee. NNI may also offer optional modules or enhanced functionality from time to time, which Customer may elect to obtain from NNI in return for the payment of additional fees.

9. Customization. NNI may agree to customize or modify the Platform for the Customer on the terms and conditions mutually agreed to by the parties and set forth on the Order Form.

10. General Terms and Conditions.

10.1 Term and Termination.

(a) The initial term of the licenses granted under these License Terms will be for one (1) year (the "Initial Term"). After the Initial Term, the licenses granted under these License Terms will automatically renew for successive one month terms (each, a "Renewal Term" and together with the Initial Term, the "Term") subject to Customer's continued payment of the monthly subscription and maintenance fee.

(b) Customer may terminate the licenses under these License Terms at any time by giving NNI at least 30 days prior written notice of its intent to terminate on the date set forth in such notice.

(c) Notwithstanding anything contained in this Section 10 to the contrary, NNI may terminate the licenses granted under these License Terms immediately upon written notice if (i) Customer breaches any obligation under these License Terms (other than as provided in subsections (iii) and (iv) below), and fails to remedy such breach within 30 days of receiving written notice of such breach from NNI (ii) Customer ceases operation as a going concern, is the subject of any voluntary or involuntary filing in any bankruptcy or insolvency proceeding, makes an assignment for the benefit of creditors, is subject to the appointment of a receiver.

(d) In the event of any failure to make prompt payment of amounts due to NNI under these License Terms, the Customer will be notified electronically and given 10 days from the date of receipt of such written notice to rectify the problem and make full payment. If Customer fails to make payment of all

outstanding amounts within such 10 day period the Customer's license and all access to the Platform may be suspended. If full payment of all undisputed amounts is not received within 30 days from the date Customer receives such written notice, NNI may terminate the licenses under these License Terms.

(e) Within 30 days following the termination of the licenses under these License Terms for any reason, Customer will return all copies of the Documentation or certify in writing that they have been destroyed.

(g) All amounts accrued before the effective date of termination will become due immediately. Neither termination of the licenses under these License Terms, nor NNI's termination of performance with respect to the Platform or the services hereunder, shall affect Customer's payment obligations through the effective date of termination.

(h) Upon the payment of all amounts owed to NNI, NNI will provide Customer with any Customer Data in NNI's possession and control at the time of termination of the licenses under these License Terms, on a bulk transfer basis. In connection with such delivery, NNI will certify in writing that all Customer Data has been removed and deleted from the Platform. In the event that Customer requires and requests any other assistance or additional processing to transfer or integrate such Customer Data into a new system, Customer shall pay NNI \$150 per hour.

11. Warranty and Disclaimer of Warranty.

(a) During the term of these License Terms, NNI warrants that the Platform will function substantially in accordance with the Documentation and shall be reasonably free from material defects, provided that: (1) Customer's use of the application and services is in accordance with all NNI guidelines and instructions; (2) any performance issue, error or defect does not relate to third party technology provided by Customer; and (3) Customer provides NNI with prompt written notice of any error or defect. Upon receipt of any such proper notice, at NNI's discretion, NNI will either: (1) repair the defective portion(s) of the Platform; (2) replace the defective portion(s) of the Platform; or (3) remove any defective portion of the Platform and the return to Customer any monies specifically paid to NNI in connection with the defective portion(s) of the Platform. The foregoing shall constitute Customer's

sole and exclusive remedy for the breach of warranty under these License Terms.

(b) OTHER THAN THE FOREGOING, NNI DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OF ANY KIND, REGARDING THE PLATFORM, AND/OR UPDATES, ENHANCEMENTS, MODIFICATIONS OR DEVELOPMENTS THERETO, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE, MERCHANTABILITY, RESULTS, ACCURACY, COMPLETENESS AND COMPATIBILITY.

(c) NNI warrants that (i) it has the right to enter into these License Terms and grant Customer the license to use the Platform as set forth in these License Terms, (ii) it will perform the services under Section 8 of these License Terms in a workmanlike and professional manner; and (iii) it will comply with all applicable laws and regulations in providing such services.

(d) EXCEPT AS OTHERWISE PROVIDED IN THESE LICENSE TERMS, THE SOFTWARE, DOCUMENTATION AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". NNI DOES NOT WARRANT THAT THE USE OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.

(e) LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY. IN NO EVENT SHALL NNI'S LIABILITY FOR ANY AND ALL CLAIMS RELATED TO THESE LICENSE TERMS (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) EXCEED THE FEES PAID UNDER THESE LICENSE TERMS IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. THE PROVISIONS OF THESE LICENSE TERMS CONTAIN THE ENTIRE LIABILITY OF EACH PARTY, AND THE SOLE AND EXCLUSIVE REMEDY FOR THE OTHER PARTY, FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE SOFTWARE OR THESE LICENSE TERMS.

(f) DISCLAIMER OF CONSEQUENTIAL DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR

INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE LICENSE TERMS, INCLUDING WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSS OF OR DAMAGE TO ANY PROPERTY OR DATA (INCLUDING DATA HANDLED OR PROCESSED THROUGH THE USE OF THE PLATFORM) OR ANY PUNITIVE DAMAGES, PROVIDED THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT A PARTY'S RIGHT TO INDEMNIFY FOR THIRD PARTY CLAIMS THAT MAY ARISE FROM A BREACH OF THE TERMS OF THESE LICENSE TERMS OR FROM THE NEGLIGENCE, MISCONDUCT, OR BREACH OF APPLICABLE LAW BY A PARTY.

(g) NNI shall indemnify, defend and hold harmless Customer, its officers, directors, employees, customers and agents from any and all claims, damages, expenses and costs (including attorney's fees and court costs) arising from any claim that the Software and/or Documentation infringes any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party ("Claim"); provided, that Customer promptly notifies NNI of the Claim, allows NNI to control the defense of such Claim, does not agree to any settlement of such Claim without NNI's prior written consent and provides, at NNI's expense, such information and assistance as NNI reasonably requests in connection with the defense of such Claim. This indemnity shall not apply to any Claim of infringement resulting from use or combination of the Platform with software, hardware or other materials not approved by NNI; provided that such Claim would not have arisen but for the combination of the Software with such un-approved software, hardware or materials. If the Platform or Documentation becomes, or in NNI's opinion are likely to become, the subject of a claim of infringement of a patent, trade secret or copyright, NNI may, in its sole discretion and at its sole cost and expense, (i) secure the right for Customer to continue to use the Platform and the Documentation, (ii) replace or modify the Platform or Documentation to make it non-infringing such that it continues to perform substantially in accordance with the Documentation or (iii) terminate the licenses granted under these License Terms by giving Customer written notice to such effect and refunding to Customer a pro rata portion of all prepaid fees paid by Customer based on the amount of such time period that the Platform is not available. Customer

shall have the right to participate in the defense of any such Claim at its own expense. NNI shall not, without first obtaining Customer's prior written consent, settle any claim in any manner where Customer would be required to admit any liability. In the event the options listed in subsections (i) or (ii) are not implemented and Customer's use of the Platform and/or Documentation is materially affected by the Claim or Customer's continued use of the Software would reasonably result in continued liability for Customer, Customer shall have the right to immediately terminate the licenses granted under these License Terms by providing written notice to NNI.

(h) THE REMEDIES SET FORTH IN SECTION 5.2 (g) STATE THE ENTIRE LIABILITY OF NNI WITH RESPECT TO INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY BY THE SOFTWARE, THE DOCUMENTATION OR ANY PART THEREOF AND NNI WILL NOT HAVE ANY ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

12. Confidential Information.

(a) Each party agrees that the "Confidential Information" (as defined below) of the other party will be held in confidence to the same extent and the same manner as each party protects its own Confidential Information but each party agrees that in no event will less than reasonable care be used. Each party further agrees not to use any of the Confidential Information for its own benefit (except as specifically provided herein) or the benefit of any third party. Each party will use all reasonable steps to ensure that the other party's Confidential Information received pursuant to these License Terms is not disclosed in violation of this paragraph. "Confidential Information" means: the terms of these License Terms, except as otherwise specifically provided in these License Terms; each party's trade secrets, including but not limited to, financial information, processes, formulas, specifications, programs, instructions, source code, technical know-how, methods and procedures for operations, benchmark test results, information about employees, customers, marketing strategies, services, business or technical plans and proposals, in any form; and any other information relating to either party that is not generally known to the public at large. With respect

to NNI, the Platform and Documentation, all information, drawings, specifications, documentation, software listings or code which NNI may have imparted and may from time to time impart to the Customer relating to the Platform or Documentation, constitute Confidential Information. With respect to the Customer, the Customer Data constitutes Confidential Information of Customer and Customer shall be responsible for insuring that all Authorized Users comply with the obligations of this Section 12 as if they were a party hereto.

(b) Confidential Information shall not include information that: (i) is or becomes generally known or available to the public at large through no act or omission of the recipient; (ii) can be demonstrated to have been available lawfully to either party prior to the disclosure or had thereafter been furnished to either party without restrictions to disclosure or use; (iii) can be demonstrated to be independently developed by the recipient of Confidential Information without use of such Confidential Information and such independent development is proven on the basis of either party's records related to such development; or (iv) is required to be disclosed by a court order or other governmental action.

(c) Each party agrees that disclosure of any Confidential Information of the other party will give rise to irreparable injury to the other party, or to the owner of such information, and that such injury is not adequately compensable in damages. Accordingly, such other party may seek and obtain injunctive relief against the breach or threatened breach of this section, in addition to any other legal remedies which may be available.

13. Miscellaneous Terms.

(a) **Other agreements.** These License Terms, the Order Form and the Exhibits hereto contain the complete agreement between the parties and supersedes all other agreements between the parties relating to the subject matter of these License Terms.

(b) **Modification.** Except as provided in Section 1.1, no modification, waiver or amendment of these License Terms will be valid unless in writing and signed by both parties.

(c) **Waiver.** The waiver by either party of any default or breach of these License Terms in one instance will not constitute a waiver of any other

default or breach or of the same default or breach in another instance.

(d) **Injunctive Relief.** Each party acknowledges and agrees that a violation of the rights of the other party under these License Terms may cause immediate and irreparable harm for which money damages cannot compensate. Accordingly, notwithstanding any other provision of these License Terms, each party agrees that in the event of any such occurrence, or threat of same, the other party will be entitled to seek immediate injunctive relief from any court or tribunal of competent jurisdiction, without the requirement of posting bond.

(e) **Governing law.** These License Terms will be governed and construed pursuant to the laws of the State of Illinois, without regard to its conflict of laws provisions.

(f) **Jurisdiction.** Except as otherwise provided herein, any and all controversies or claims arising out of or relating to these License Terms and/or the relationship between the Parties shall be resolved by the federal and/or state courts of Cook County, Illinois. For the purposes hereof, Customer and NNI hereby submit to the jurisdiction of the federal and state courts of Cook County, Illinois and notice of demand, process and/or summons in connection with judicial proceedings, may be served upon Customer or NNI by registered or certified mail with the same effect as if personally served. Customer and NNI shall be entitled to recover from the other in any such court or other legal proceedings, in addition to such other relief as may be granted, reasonable attorneys' fees and costs incurred in such proceedings and in enforcing the rights and obligations arising from or relating to these License Terms.

(g) **No partnership.** Nothing in these License Terms is intended to, or will be deemed to, create an employment relationship, a partnership or a joint venture between the parties, or to derogate from any relationship between the parties that may exist by virtue of any other agreement between them.

(h) **Identification of Customer.** NNI shall be entitled to identify Customer as a customer of NNI in its marketing materials, and in related marketing communications.

(i) **Assignment.** Neither party may assign the rights or obligations under these License Terms in whole or in part through the operation of law or

otherwise without the written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may assign these License Terms in whole or in part to any third party who acquires all or substantially all of such party's business without having to first acquire the prior written consent of the other party.

(j) Force Majeure. Neither party will be liable for any delay in performance or failure to perform, other than paying any Fees, resulting from circumstances beyond its control. NNI shall not be provided the benefit under this section, if the impact or delay due to such force majeure event could have reasonably been circumvented through the use of commercially reasonable alternate sources, workaround plans, disaster recovery and redundancy plans or other means. In the event any force majeure event continues for a more than 10 days, Customer shall have the right to terminate these License Terms. Fees shall be suspended for any period that Customer is unable to utilize the Software, and Customer shall be entitled to offset such fees to the extent previously paid, against future payments due hereunder; provided that in the event of termination of these License Terms, NNI shall refund to

Customer a pro rata portion of all prepaid fees paid by Customer based on the amount of such time period that the Software is not available.

(k) Severability. If any provision of these License Terms is held to be invalid or unenforceable, such provision will be construed to apply to the extent permitted under applicable law, and the remaining provisions will remain in full force.

(l) Notices. All notices required or contemplated pursuant to the terms of these License Terms will be sent to NNI and Customer at their respective e-mail addresses as shown on the Order Form (or to such other e-mail address as is hereafter furnished to the other party in an e-mail delivered in accordance with this Section). For their convenience and in the interests of facilitating more rapid communication between them, such parties hereby agree that such e-mailed notice shall be as effective as if such notice had been delivered by certified mail. Any such e-mailed notice will be effective on the next business day following the day of transmission.

AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: 2/13/2020

Need Date: 2/24/2020

PROCESSING DEPARTMENT:

CONTRACTOR:

Department: CAO-Fiscal for DA
Dept. Contact: Audra Anderson
Phone: X5144
Department
Head Signature: *Audra Anderson*

Name: CALICO-CACC (Network Ninja)
Address: 524 Estudillo Avenue
San Leandro, CA 94577
Phone: _____

Org Code: 2200000 – 22MDIC
Project String
(if applicable): _____

Funding Source: _____

CONTRACTING DEPARTMENT: District Attorney

Service Requested: Business Associate Agreement for Collaborate Case Tracking Software

Description: Network Ninja has asked the DA to approve the Business Associate Agreement for the Child Advocacy Center's use of Collaborate Case Tracking system

Contract Term: Perpetual Contract Value: \$0

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

Approved: Disapproved: _____ Date: 2/13/20 By: *AW*
Approved: _____ Disapproved: _____ Date: _____ By: _____

HR APPROVAL: WILL BE REVIEWED THROUGH WORKFLOW

RISK MANAGEMENT: WILL BE REVIEWED THROUGH WORKFLOW

EDC COUNTY COUNSEL
2020 FEB 18 AM 7:41

PLEASE EMAIL audra.anderson@edcgov.us x5144 FOR PICK-UP

Thank you!

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) by and between El Dorado County District Attorney's Office, (“Client”), and Network Ninja, Inc. (“Network Ninja”) is made and entered into effective Feb, 2020.

RECITALS

Add ↑
Date

WHEREAS, Client is a “covered entity” “health care provider” as those terms are defined in 45 C.F.R. § 160.103; and

WHEREAS, Network Ninja provides and maintains software data management platforms that are used Client and may contain Client’s Protected Health Information; and

WHEREAS, as a result, Client has identified Network Ninja as a “business associate,” as defined in 45 C.F.R. § 160.103, of Client for purposes of the privacy and security requirements under HIPAA.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

- 1.1 “Breach” shall have the meaning set forth in 45 C.F.R. §164.402.
- 1.2 “Electronic Protected Health Information” or “Electronic PHI” means information that Network Ninja or its Subcontractor, creates, receives, maintains or transmits from or on behalf of Client that comes within paragraphs 1(i) or 1(ii) of the definition of “protected health information” at 45 C.F.R. § 160.103.
- 1.3 “HIPAA” shall mean the health information privacy provisions under the Health Insurance Portability and Accountability Act of 1996, and regulations issued thereunder at 45 C.F.R. Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act or any future legislation.
- 1.4 “Individual” shall mean a current or former patient of Client.
- 1.5 “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Network Ninja from or on behalf of Client. Genetic Information, as defined in 45 C.F.R. § 160.103, shall be considered PHI.
- 1.6 “Required by Law” shall mean a mandate contained in an applicable state, federal, or local law that compels Client (or business associates acting on behalf of Client) to make a use or disclosure of PHI that is enforceable in a court of law.

1.7 “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined at 45 C.F.R. § 164.304. However, certain low risk attempts to breach network security, such as the incidents listed below, shall not constitute a Security Incident under this Agreement, provided they do not penetrate the perimeter, do not result in an actual breach of security and remain within the normal incident level:

- pings on the firewall;
- port scans;
- vulnerability scans;
- attempts to log on to a system or enter a database with an invalid password or username;
- denial-of-service attacks that do not result in a server being taken off-line; and
- malware such as worms or viruses.

1.8 “Subcontractor” shall have the meaning as the term in 45 C.F.R. § 160.103.

2. OBLIGATIONS OF THE PARTIES

2.1 Network Ninja shall safeguard all Client’s PHI housed on Network Ninja’s platforms in accordance with HIPAA. Network Ninja shall implement administrative, physical and technical safeguards that prevent use or disclosure of the Electronic PHI other than as permitted by HIPAA. Specifically, Network Ninja agrees to implement policies and procedures in accordance with 45 C.F.R. § 164.316 that:

- i. Prevent, detect, contain and correct security violations in accordance with the administrative safeguards set forth in 45 C.F.R. § 164.308;
- ii. Limit physical access to electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed in accordance with the physical safeguards set forth in 45 C.F.R. § 164.310; and
- iii. Allow access to electronic information systems that maintain Electronic PHI to only those persons or software programs that have been granted access rights in accordance with the technical safeguards set forth in 45 C.F.R. § 164.312.

2.2 Network Ninja shall not use or disclose PHI except as permitted or required by Article 3 of this Agreement or as Required by Law. Network Ninja shall notify Client of all requests for the disclosure of PHI from a law enforcement or government official, or pursuant to a subpoena, court or administrative order, or other legal request as soon as possible prior to making the requested disclosure. To the extent not directly accessible b

- Client, Network Ninja shall provide to Client all PHI necessary to respond to these requests as soon as possible, but no later than ten (10) business days following its receipt of a written request from Client.
- 2.3 Network Ninja will not communicate with Individuals on behalf of Client and the provisions of HIPAA regarding requests for confidential communication of, restrictions on, request for access to, and requests for amendment of, PHI and Electronic PHI, are not applicable.
- 2.4 Network Ninja shall report to Client any use or disclosure of PHI not permitted by this Agreement, including any Security Incidents, of which Network Ninja becomes aware within fifteen (15) business days of its becoming aware, and will take such corrective action necessary in order to prevent and mitigate any harmful effect to any Individual resulting from a breach of this Agreement or HIPAA that is directly caused by Network Ninja, and to prevent any further such occurrences.
- 2.5 Following the discovery of a Breach of Unsecured PHI, as in 45 C.F.R. § 164.402, Network Ninja shall notify the Client without unreasonable delay and in no case ~~no~~ later than fifteen (15) business days after discovery of the Breach. Network Ninja will describe the category of data that has been or is reasonably believed by Network Ninja to have been accessed, acquired, used or disclosed during the Breach. Network Ninja shall provide the Client with any other available information that the Client requires to notify affected Individuals under HHS regulations.
- 2.6 Network Ninja shall take reasonable steps to ensure that any Subcontractor performing services for Client agrees in writing to the same restrictions and conditions that apply to Network Ninja with regard to its creation, use, and disclosure of PHI and Electronic PHI in accordance with 45 C.F.R. §§ 164.308(b)(2), 164.502(e)(1)(ii) and 164.504(e)(5). Network Ninja shall advise Client if any Subcontractor breaches its agreement with Network Ninja with respect to the disclosure or use of PHI. If Network Ninja knows of a pattern of activity or practice of its Subcontractor that constitutes a material breach or violation of the Subcontractor's duties and obligations under its agreement with the Subcontractor ("Subcontractor Material Breach"), Network Ninja shall cure the breach or provide a reasonable period for Subcontractor to cure the Subcontractor Material Breach; provided, however, that if Network Ninja cannot, or Subcontractor does not, cure the Subcontractor Material Breach within such period, Network Ninja shall terminate the agreement with Subcontractor, if feasible, at the end of such period.
- 2.7 Network Ninja shall, upon written request from Client, provide to Client a copy of any PHI in a Designated Record Set, as defined in 45 C.F.R. § 164.501, created or maintained on a Network Ninja platform, and not directly accessible by Client, within thirty (30) days of receipt of the request.
- 2.8 Network Ninja shall make its internal practices, written policies and procedures, books, records, and other documents relating to the use and disclosure of Client's PHI available

to the Secretary of the Department of Health and Human Services, or his or her designee, for purposes of the Secretary determining Client's compliance with HIPAA.

- 2.9 Network Ninja shall make available the information required to provide an accounting of disclosures made on and after the Effective Date, as necessary for Client to comply with 45 C.F.R. § 164.528, within twenty (20) business days of receipt of the request. Network Ninja shall provide one such accounting within a twelve month period without charge, but may make a reasonable charge for any additional such accountings within the same twelve month period.
- 2.10 Network Ninja shall maintain all records, other than those records that are also maintained by Client, for six (6) years from the date created or last in effect, whichever is later, as necessary for Client to comply with 45 C.F.R. § 164.530(j)(2).

3. PERMITTED USES OF PHI

- 3.1 Network Ninja may use and disclose PHI as necessary to provide services to Client, consistent with the requirements of HIPAA.
- 3.2 Network Ninja may use and disclose PHI as necessary for the proper management and administration of Network Ninja or to carry out Network Ninja's legal responsibilities, subject to Section 2.4 of this Agreement and consistent with the requirements of HIPAA; provided, however, that Network Ninja may disclose the PHI for such purposes only if:
- i. the disclosure is Required by Law, or
 - ii. Network Ninja obtains reasonable assurances that the party to whom the PHI is disclosed (a) will protect the confidentiality of the PHI, (b) will not further disclose the PHI except as Required by Law or for the purposes for which it was disclosed to the other party, and (c) will report any improper use or disclosure of the PHI to Network Ninja.

4. TERMINATION OF AGREEMENT

- 4.1 Except as described in Section 4.3, this Agreement shall continue in effect so long as Network Ninja provides service to Client involving maintaining PHI, or otherwise retains a copy of Client's PHI.
- 4.2 If Client or Network Ninja becomes aware of a pattern of activity or practice of the other party that constitutes a material breach or violation of the party's duties and obligations under the Agreement, the non-breaching party shall notify the breaching party and provide a period of thirty (30) calendar days for the breaching party to cure the material breach or violation. If the breaching party does not cure the material breach or violation within such 30-day period, the non-breaching party shall terminate the Agreement, if feasible, at the end of such 30-day period.

4.3 Upon the expiration of Client's relationship with Network Ninja, and contingent upon the payment of all outstanding fees, Network Ninja shall return PHI to Client upon Client's request. If return of all PHI is not feasible, the provisions of this Agreement shall continue to apply until such time as all PHI is either returned to Client or destroyed pursuant to Network Ninja's document retention policy, provided that Network Ninja shall limit further use of PHI only to those purposes that make the destruction or return of the PHI infeasible. Following the expiration of the relationship, Network Ninja agrees not to disclose PHI except to Client or as Required by Law.

5. NOTICES

Whenever, under this Agreement, Network Ninja is required to give notice to Client, such notice shall be sent via E-Mail to:

Robert.Schroeder@edcgov.us
Jeff.Dreher@edcgov.us
James.Clinchard@edcgov.us
Attention: Privacy Officer

Validate 

Whenever, under this Agreement, Client is required to give notice to Network Ninja, such notice shall be sent via E-Mail to:

Privacy Officer
Network Ninja, Inc.
privacy@networkninja.com
(773) 782-1021

6. INDEMNIFICATION

Network Ninja agrees to indemnify Client, and any employees, directors, officers of Client (collectively "Client Indemnitees"), against all actual and direct losses resulting from or in connection with any breach of this Agreement by Network Ninja, or its partners, employees or other members of its workforce. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Client Indemnitees by reason of any suit, claim, action, investigation, or demand by any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement.

Client agrees to indemnify Network Ninja and any employees, directors, officers of Network Ninja (collectively "Network Ninja Indemnitees") against all actual and direct losses resulting from or in connection with any breach of this Agreement by Client, or any violation of HIPAA resulting from any improper use or disclosure of PHI pursuant to Client's direction. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Network Ninja Indemnitees by reason of any suit, claim, action, investigation, or demand by

any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement.

7. AMENDMENT

The parties may amend this Agreement at any time by a mutually executed written action. The parties agree to negotiate in good faith any amendments necessary to conform this Agreement to changes in applicable law. Network Ninja further agrees to promptly attempt to amend its agreements with its subcontractors and agents to conform to the terms of this Agreement. In the event Network Ninja is unable to amend this Agreement or its agreements with its subcontractors in a way that is sufficient to satisfy the requirements under HIPAA, Client may terminate this Agreement in accordance with Section 4 upon thirty (30) days written notice.

8. TERMS OF AGREEMENT GOVERN

Any ambiguity in this Agreement shall be resolved in a way that permits compliance with HIPAA. In the event of a conflict between the terms of this Agreement and any other contract or agreement between Client and Network Ninja, this Agreement shall govern.

* * *

IN WITNESS HEREOF, the parties have executed this Agreement by their respective duly authorized officers or representatives.

CLIENT

NETWORK NINJA, INC.

By: _____

By: _____

Title: Purchasing Agent

Title: _____

Date: _____

Date: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) by and between El Dorado County District Attorney's Office _____, (“Client”), and Network Ninja, Inc. (“Network Ninja”) is made and entered into effective Feb 20, 2020.

RECITALS

WHEREAS, Client is a “covered entity” “health care provider” as those terms are defined in 45 C.F.R. § 160.103; and

WHEREAS, Network Ninja provides and maintains software data management platforms that are used Client and may contain Client’s Protected Health Information; and

WHEREAS, as a result, Client has identified Network Ninja as a “business associate,” as defined in 45 C.F.R. § 160.103, of Client for purposes of the privacy and security requirements under HIPAA.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

- 1.1 “Breach” shall have the meaning set forth in 45 C.F.R. §164.402.
- 1.2 “Electronic Protected Health Information” or “Electronic PHI” means information that Network Ninja or its Subcontractor, creates, receives, maintains or transmits from or on behalf of Client that comes within paragraphs 1(i) or 1(ii) of the definition of “protected health information” at 45 C.F.R. § 160.103.
- 1.3 “HIPAA” shall mean the health information privacy provisions under the Health Insurance Portability and Accountability Act of 1996, and regulations issued thereunder at 45 C.F.R. Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act or any future legislation.
- 1.4 “Individual” shall mean a current or former patient of Client.
- 1.5 “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Network Ninja from or on behalf of Client. Genetic Information, as defined in 45 C.F.R. § 160.103, shall be considered PHI.
- 1.6 “Required by Law” shall mean a mandate contained in an applicable state, federal, or local law that compels Client (or business associates acting on behalf of Client) to make a use or disclosure of PHI that is enforceable in a court of law.

1.7 “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined at 45 C.F.R. § 164.304. However, certain low risk attempts to breach network security, such as the incidents listed below, shall not constitute a Security Incident under this Agreement, provided they do not penetrate the perimeter, do not result in an actual breach of security and remain within the normal incident level:

- pings on the firewall;
- port scans;
- vulnerability scans;
- attempts to log on to a system or enter a database with an invalid password or username;
- denial-of-service attacks that do not result in a server being taken off-line; and
- malware such as worms or viruses.

1.8 “Subcontractor” shall have the meaning as the term in 45 C.F.R. § 160.103.

2. OBLIGATIONS OF THE PARTIES

2.1 Network Ninja shall safeguard all Client’s PHI housed on Network Ninja’s platforms in accordance with HIPAA. Network Ninja shall implement administrative, physical and technical safeguards that prevent use or disclosure of the Electronic PHI other than as permitted by HIPAA. Specifically, Network Ninja agrees to implement policies and procedures in accordance with 45 C.F.R. § 164.316 that:

- i. Prevent, detect, contain and correct security violations in accordance with the administrative safeguards set forth in 45 C.F.R. § 164.308;
- ii. Limit physical access to electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed in accordance with the physical safeguards set forth in 45 C.F.R. § 164.310; and
- iii. Allow access to electronic information systems that maintain Electronic PHI to only those persons or software programs that have been granted access rights in accordance with the technical safeguards set forth in 45 C.F.R. § 164.312.

2.2 Network Ninja shall not use or disclose PHI except as permitted or required by Article 3 of this Agreement or as Required by Law. Network Ninja shall notify Client of all requests for the disclosure of PHI from a law enforcement or government official, or pursuant to a subpoena, court or administrative order, or other legal request as soon as possible prior to making the requested disclosure. To the extent not directly accessible b

Client, Network Ninja shall provide to Client all PHI necessary to respond to these requests as soon as possible, but no later than ten (10) business days following its receipt of a written request from Client.

- 2.3 Network Ninja will not communicate with Individuals on behalf of Client and the provisions of HIPAA regarding requests for confidential communication of, restrictions on, request for access to, and requests for amendment of, PHI and Electronic PHI, are not applicable.
- 2.4 Network Ninja shall report to Client any use or disclosure of PHI not permitted by this Agreement, including any Security Incidents, of which Network Ninja becomes aware within fifteen (15) business days of its becoming aware, and will take such corrective action necessary in order to prevent and mitigate any harmful effect to any Individual resulting from a breach of this Agreement or HIPAA that is directly caused by Network Ninja, and to prevent any further such occurrences.
- 2.5 Following the discovery of a Breach of Unsecured PHI, as in 45 C.F.R. § 164.402, Network Ninja shall notify the Client without unreasonable delay and in no case no-later than fifteen (15) business days after discovery of the Breach. Network Ninja will describe the category of data that has been or is reasonably believed by Network Ninja to have been accessed, acquired, used or disclosed during the Breach. Network Ninja shall provide the Client with any other available information that the Client requires to notify affected Individuals under HHS regulations.
- 2.6 Network Ninja shall take reasonable steps to ensure that any Subcontractor performing services for Client agrees in writing to the same restrictions and conditions that apply to Network Ninja with regard to its creation, use, and disclosure of PHI and Electronic PHI in accordance with 45 C.F.R. §§ 164.308(b)(2), 164.502(e)(1)(ii) and 164.504(e)(5). Network Ninja shall advise Client if any Subcontractor breaches its agreement with Network Ninja with respect to the disclosure or use of PHI. If Network Ninja knows of a pattern of activity or practice of its Subcontractor that constitutes a material breach or violation of the Subcontractor's duties and obligations under its agreement with the Subcontractor ("Subcontractor Material Breach"), Network Ninja shall cure the breach or provide a reasonable period for Subcontractor to cure the Subcontractor Material Breach; provided, however, that if Network Ninja cannot, or Subcontractor does not, cure the Subcontractor Material Breach within such period, Network Ninja shall terminate the agreement with Subcontractor, if feasible, at the end of such period.
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- 2.8 Network Ninja shall make its internal practices, written policies and procedures, books, records, and other documents relating to the use and disclosure of Client's PHI available

to the Secretary of the Department of Health and Human Services, or his or her designee, for purposes of the Secretary determining Client's compliance with HIPAA.

- 2.9 Network Ninja shall make available the information required to provide an accounting of disclosures made on and after the Effective Date, as necessary for Client to comply with 45 C.F.R. § 164.528, within twenty (20) business days of receipt of the request. Network Ninja shall provide one such accounting within a twelve month period without charge, but may make a reasonable charge for any additional such accountings within the same twelve month period.
- 2.10 Network Ninja shall maintain all records, other than those records that are also maintained by Client, for six (6) years from the date created or last in effect, whichever is later, as necessary for Client to comply with 45 C.F.R. § 164.530(j)(2).

3. PERMITTED USES OF PHI

- 3.1 Network Ninja may use and disclose PHI as necessary to provide services to Client, consistent with the requirements of HIPAA.
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- i. the disclosure is Required by Law, or
 - ii. Network Ninja obtains reasonable assurances that the party to whom the PHI is disclosed (a) will protect the confidentiality of the PHI, (b) will not further disclose the PHI except as Required by Law or for the purposes for which it was disclosed to the other party, and (c) will report any improper use or disclosure of the PHI to Network Ninja.

4. TERMINATION OF AGREEMENT

- 4.1 Except as described in Section 4.3, this Agreement shall continue in effect so long as Network Ninja provides service to Client involving maintaining PHI, or otherwise retains a copy of Client's PHI.
- 4.2 If Client or Network Ninja becomes aware of a pattern of activity or practice of the other party that constitutes a material breach or violation of the party's duties and obligations under the Agreement, the non-breaching party shall notify the breaching party and provide a period of thirty (30) calendar days for the breaching party to cure the material breach or violation. If the breaching party does not cure the material breach or violation within such 30-day period, the non-breaching party shall terminate the Agreement, if feasible, at the end of such 30-day period.

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Robert.Schroeder@edcgov.us
Jeff.Dreher@edcgov.us
James.Clinchard@edcgov.us
Attention: Privacy Officer

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Privacy Officer
Network Ninja, Inc.
privacy@networkninja.com
(773) 782-1021

6. INDEMNIFICATION

Network Ninja agrees to indemnify Client, and any employees, directors, officers of Client (collectively "Client Indemnitees"), against all actual and direct losses resulting from or in connection with any breach of this Agreement by Network Ninja, or its partners, employees or other members of its workforce. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Client Indemnitees by reason of any suit, claim, action, investigation, or demand by any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement.

Client agrees to indemnify Network Ninja and any employees, directors, officers of Network Ninja (collectively "Network Ninja Indemnitees") against all actual and direct losses resulting from or in connection with any breach of this Agreement by Client, or any violation of HIPAA resulting from any improper use or disclosure of PHI pursuant to Client's direction. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Network Ninja Indemnitees by reason of any suit, claim, action, investigation, or demand by

any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement.

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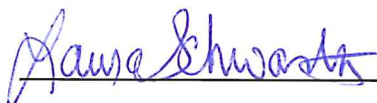
8. TERMS OF AGREEMENT GOVERN

Any ambiguity in this Agreement shall be resolved in a way that permits compliance with HIPAA. In the event of a conflict between the terms of this Agreement and any other contract or agreement between Client and Network Ninja, this Agreement shall govern.


* * *

IN WITNESS HEREOF, the parties have executed this Agreement by their respective duly authorized officers or representatives.

CLIENT

By: 
Title: Purchasing Agent
Date: 2-20-2020

NETWORK NINJA, INC.

By: 
Title: ceo
Date: 02/20/2020