

# NEW AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: 05/31/19

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

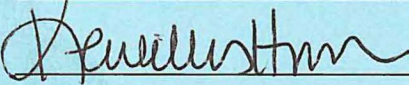
**PROCESSING DEPARTMENT:**

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: \_\_\_\_\_

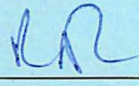
Org Code: 2200000

**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: \_\_\_\_\_

Careny Law - Illinois - Not unusual in Software (K)

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

**HR APPROVAL:** WILL BE REVIEWED THROUGH WORKFLOW

**RISK MANAGEMENT:** WILL BE REVIEWED THROUGH WORKFLOW

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



## 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](mailto: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 licences 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 is 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.