

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number
24-1022




SAP Number

Innovation and Technology Department

Department Contract Representative	<u>Christine Onyango</u>
Telephone Number	<u>909-388-5943</u>
Contractor	<u>NetBrain Technologies, Inc.</u>
Contractor Representative	<u>Joseph Krenson</u>
Telephone Number	<u>858-449-7538</u>
Contract Term	<u>Effective October 22, 2024, through October 21, 2029, automatically renewing for additional five-year periods</u>
Original Contract Amount	<u>Non-financial</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>Non-financial</u>
Cost Center	<u>1201404048</u>
Grant Number (if applicable)	<u>N/A</u>

Briefly describe the general nature of the contract: Non-financial Subscription End User License Agreement, including non-standard terms, with NetBrain Technologies, Inc., for a network monitoring and management system, effective October 22, 2024, through October 21, 2029, automatically renewing for additional five-year periods.

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
 Bonnie Uphold, Supv. Deput County Counsel		
Date <u>10/11/2024</u>	Date _____	Date _____

SUBSCRIPTION END USER LICENSE AGREEMENT

Licensor: NetBrain

This Subscription End User License Agreement (“**Agreement**”) is incorporated by reference into each, current and future: (a) order form; (b) quotation; (c) estimate; and (d) statement of work (as applicable); as well as: (y) NetBrain purchase order; or (z) other NetBrain ordering document (individually and collectively, “**Order(s)**”), by NetBrain (defined below) and the Customer or its Affiliate (defined below) identified in the Order for the Products (defined below). Each such Order, together with the terms and conditions of this Agreement, shall constitute a separate agreement. NetBrain Technologies, Inc. shall constitute “**NetBrain**” for purposes of such Order and this Agreement, and Customer or the Customer’s Affiliate entering into the Order or stated as the end user shall individually and collectively constitute “**Customer**” for purposes of such Order and this Agreement. For the avoidance of doubt, NetBrain shall be solely responsible for the performance of its obligations under this Agreement and no other NetBrain Affiliate shall have any responsibilities or liability with respect thereto. NetBrain shall provide Customer with the Programs, Documentation, Support Services, and (if applicable) Professional Services (each as defined below, and collectively the “**Product**”) specified in an Order, at the agreed-upon fees specified in the Order, and subject to the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over conflicting provisions of any Order unless the Order specifically identifies the applicable provisions of this Agreement and provides that the Order amends such provisions to the extent provided in the Order, and that Order is signed by an authorized officer of NetBrain and Customer.

1. **Definitions.** Whenever used in this Agreement, unless the context otherwise requires, the following terms have the following meanings below:
 - 1.1. “**Affiliate**” means any entity directly or indirectly controlling, controlled by, or under common control with another entity, where “control” means ownership of more than fifty percent (50%) of the voting stock, assets, or other equity interests of an entity, or the right to direct the management of such entity.
 - 1.2. “**Bypass**” means a procedure communicated by NetBrain to Customer, which permits Customer to avoid Error(s) by implementing such procedure when using the Programs.
 - 1.3. “**Concurrent Seat(s)**” is a license allowing Customer to authorize an employee or contractor (operating, for all intents and purposes, as an employee of Customer) to access the Programs, but the total number of concurrent users operating the Programs at any single moment may not exceed the total number of Concurrent Seats that have been authorized under this Agreement.
 - 1.4. “**Documentation**” means collectively all user, technical, support, and other manuals, and all other written, printed, electronic, or other format materials published or otherwise made available by NetBrain that describe the functional, operational, and/or performance capabilities of the Programs. Documentation shall not include source code.
 - 1.5. “**Enhancement(s)**” means a modification to the Programs that alters the functionalities described in the Documentation without materially degrading the functionalities or performance of the Programs.
 - 1.6. “**Error(s)**” means a reproducible failure of the Programs to conform to the Documentation.
 - 1.7. “**Error Report**” means the document generated by NetBrain, pursuant to Section 3 hereof, each time that Customer reports an Error.
 - 1.8. “**Fix(es)**” means the Program documents or materials to be created by NetBrain to correct any Error(s).
 - 1.9. “**Intellectual Property Rights**” means patents, inventions, utility models, petty patents, trademarks, service marks, trade and service names, copyrights, database rights and design rights (whether or not any of them

are registered, and including applications for registration of any of them), rights in know-how, moral rights, trade secrets, rights of confidence, and all rights or forms of protection of a similar nature or having similar or equivalent effect which may exist anywhere in the world at the date of this Agreement or Order, or in the future.

- 1.10. **“License(s)”** means the subscription license granted by NetBrain to Customer to use the Programs in accordance with the terms and conditions of this Agreement.
- 1.11. **“Managed Elements”** means any combination of Nodes, Ports, and/or Processors licensed for use of the Programs. **“Nodes”** means any number of the following: layer 3 switches, layer 2 switches, firewalls, routers, load balancers, wireless access points, wireless access controllers, and WAN optimizers, including, for the avoidance of doubt, any of these used as part of a redundant standby network. The node can be a physical entity or a virtual entity. **“Port”** means the total number of physical ports on leaf switches, as well as fabric extenders, all within a Cisco ACI deployment. **“Processor”** means a single, physical chip that houses a central processing unit (CPU) that can execute computer programs. **“VPC”** means a single virtual private cloud that serves an isolated virtual network within the AWS cloud. **“VNET”** means a virtual network within the Azure cloud.
- 1.12. **“Object Code”** means the binary machine-readable version of the Programs.
- 1.13. **“Professional Services”** means all services provided by NetBrain to Customer pursuant to an Order, including, but not limited to, training, deployment services, consulting services, implementation services, and custom development services, but does not include Support Services or Maintenance Services as they may be defined in this Agreement.
- 1.14. **“Programs”** means all the programs and modules licensed to Customer by NetBrain, in machinereadable, Object Code form only, as well as all other ancillary software provided by NetBrain in connection therewith, including any Updates, Fixes, Bypasses, Enhancements, and Upgrades. Programs include NetBrain drivers, NetBrain Qapps, NetBrain Data View Templates, NetBrain Runbooks, NetBrain Plugins, and may also include any Third-Party Software integration.
- 1.15. **“Subscription Fee”** means the fees, which include License(s) and Support Services, payable by Customer for the Subscription Period (as defined below).
- 1.16. **“Support Services”** means the services defined in Section 3 to be provided under this Agreement.
- 1.17. **“Third Party Software”** means any software other than that developed by NetBrain or a NetBrain Affiliate that NetBrain has sublicensed to Customer under this Agreement, including any open-source software. A list of Third-Party Software contained in, or relied upon by, the Programs will be distributed to Customer with the Product deployment.
- 1.18. **“Update”** means a compendium of Fixes which NetBrain releases to the users of the Programs from time-to-time and which NetBrain shall supply to Customer pursuant to the terms of this Agreement.
- 1.19. **“Upgrades”** means all releases, Updates, and corrections of the Programs licensed to Customer hereunder (when and if available), specifically only those features and modules specified on any Order issued pursuant to this Agreement as licensed to Customer hereunder, in Object Code form, which are published and generally made commercially available by NetBrain to its licensees of the Programs with a change in the integer or tenths digit of the version number (e.g., a change from version x.x to y.x or x.y).

2. **Programs Deliverables and License.**

- 2.1. **Programs Deliverables.** Following execution of an Order, NetBrain shall provide to Customer the number of Licenses as specified on such Order.

- 2.2. Grant. Subject to Customer's compliance with the provisions of this Agreement and the payment of all applicable Subscription Fees, NetBrain hereby grants Customer a limited, revocable, nonexclusive, nontransferable, non-sublicensable (except as otherwise provided herein) license, for the Subscription Period, to:
- 2.2.1. Install and use the Programs for its own internal processing requirements within the number of Concurrent Seat(s) and Managed Elements then authorized under this Agreement. The number of Concurrent Seat(s) and/or Managed Elements initially authorized hereunder is set forth on the relevant Order.
 - 2.2.2. Increase the number of Concurrent Seat(s) and/or Managed Elements from time-to-time via an Order in unit quantities and upon payment to NetBrain of the applicable fees. Any such Order, once executed or accepted (as applicable) by NetBrain, is thereby incorporated by reference and shall become part of this Agreement.
 - 2.2.3. Reproduce the Documentation for the Programs that are the subject of the License and/or incorporate all or any portion of the Documentation in training materials prepared by the Customer, in each case solely for the internal use of the Customer, and provided that the copyright notices and other proprietary rights legends appearing in or on the Programs or the Documentation are included on each copy of the Documentation and such materials. Customer shall keep accurate records of the number of reproductions and location of each copy.
 - 2.2.4. All rights not expressly granted in this Agreement are reserved by NetBrain.
- 2.3. Limited Use Licenses. When, and at the cost, set forth in an applicable Order, NetBrain shall provide a limited, non-exclusive license, during the applicable period set forth in an Order, to install and use the Programs and Documentation solely for:
- 2.3.1. Quality Assurance. Use on a separate lab network for the purpose of quality assurance testing relating to new patches, Upgrades, Updates, or new devices, and such other testing (subject to NetBrain's prior written approval). Such quality assurance license can only be used in Customer's non-production environment and may not be used for commercial activity or in a production environment for any purpose.
 - 2.3.2. Trial and Evaluation. The evaluation of NetBrain products on Customer's network environment, or education and demonstration purposes on Customer's network environment, or any third-party network environment (subject to NetBrain's prior written approval). Such a trial and evaluation license is solely for Customer's internal testing and evaluation on its production or non-production environment.
 - 2.3.3. Beta. Some NetBrain products may be available to Customer as a preview, or as an alpha, beta, or other pre-release version (each, a "**Beta Offering**"). Such Beta Offering is solely for Customer's internal testing and evaluation on its production or non-production environment. Customer's use of a Beta Offering will be for the term specified by NetBrain in an Order, or, if earlier, when that version of the Beta Offering becomes generally available. NetBrain may discontinue the Beta Offering at any time and may decide not to make any of the features and functionality generally available.
 - 2.3.4. Free. From time-to-time, NetBrain may make certain products available for full use (i.e., not subject to limited evaluation purposes) at no charge. These free products may have limited features, functions, and other technical limitations, and may be used on Customer's production or non-production environment.
 - 2.3.5. Limitations. Notwithstanding anything to the contrary in this Agreement, and except for quality assurance licenses set forth in Section 2.3.1, NetBrain does not provide Support Services, warranties, or indemnification for its limited use licenses.

- 2.4. Acceptance. The Product, including without limitation the applicable Products and Documentation, shall be deemed accepted by Customer upon delivery to Customer. Customer agrees that its decision to enter into this Agreement and any Order is based solely upon the availability of the features and functionality in the currently available version(s) of the Programs and is not contingent on the delivery of any future functionality or features, nor dependent on any oral or written, public or private, comments made by NetBrain regarding future functionality, features, or services, except as otherwise expressly set forth in this Agreement or in an Order.
- 2.5. Restrictions. Unless otherwise provided for by applicable law and/or required for the designated use of the Product, Customer shall access and use the Product only for the relevant purposes specified in Section 2.2 and Section 2.3, and in accordance with the following:
- 2.5.1. Customer shall not modify or prepare derivative works of the Product except as expressly permitted in Section 2.2 and Section 2.3;
- 2.5.2. Customer shall not reverse engineer, disassemble, or decompile the Programs, or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats, or programming interfaces of the Programs by any means whatsoever;
- 2.5.3. Customer shall not remove, obscure, or alter any notice of patent, copyright, trade secret, trademark, or other proprietary rights notices present on or in the Programs or Documentation;
- 2.5.4. Customer shall not sublicense, sell, lend, rent, lease, distribute, or otherwise transfer (or attempt to do any of the foregoing) all or any portion of the Product to any third party, except as may be permitted in Section 10.5 hereof; and
- 2.5.5. Customer shall not use the Product to provide services to third parties, or otherwise use the same on a "service business" basis.
- 2.6. Proprietary Rights. The Programs (including all Bypasses, Fixes, Updates, Enhancements and Upgrades), Support Services, and Documentation contain valuable Intellectual Property Rights and other proprietary rights of NetBrain, and constitute the sole and exclusive property of NetBrain. Except as expressly provided in this Agreement, nothing contained herein, including, but not limited to, Section 9, shall be construed to convey to Customer any other right, title, or interest in or to the Programs, Support Services, Documentation, NetBrain Qapps, NetBrain Data View Templates, NetBrain Runbooks, or any other NetBrain Intellectual Property Rights or proprietary rights. In addition, NetBrain shall be free to use, without restriction, any and all suggestions, ideas, enhancement requests, feedback, or recommendations made by Customer, and any and all enhancements and modifications made to the Programs, Support Services' deliverables, Documentation, or other offerings of NetBrain shall continue to be owned solely and exclusively by NetBrain.
- 2.7. License Use Verification. During the Subscription Period and for a period of one (1) year thereafter, NetBrain may request Customer's cooperation to verify Customer's use and reproduction of the Programs and/or Documentation, provided that: (a) it gives Customer at least thirty (30) days prior written notice; and (b) NetBrain may perform such verification no more than once per year unless a material variance is found during said verification, in which case NetBrain may perform a verification an additional time during that year. Any such verification shall be conducted remotely, during regular business hours, and shall not unreasonably interfere with Customer's business activities. For the majority of Customers, such verification will consist of either: (y) Customer furnishing to NetBrain a written certification, signed by Customer's authorized representative, along with a report pulled from the Programs, verifying that Customer's use of the Programs is in accordance with this Agreement and any and all applicable Order(s); or (z) Customer permitting reasonable access to NetBrain to the Programs to pull such verification report. All information disclosed by Customer during the course of the verification shall be deemed Confidential Information subject to the provisions of Section 9, provided that the designation as Confidential Information shall not be construed to

limit NetBrain's right to enforce this Agreement. In the event NetBrain determines there is a variance, whether material or not, Customer will be liable to NetBrain for the then-current list price value of the Programs and/or Documentation not in compliance with the terms of this Agreement and any applicable Order.

- 2.8. Usage Statistics. In accordance with the then-current version of NetBrain's Privacy Policy (located at: <https://www.netbraintech.com/privacy-policy/>), and to improve and ensure full utilization of the Programs, NetBrain reserves the right to monitor, collect, and use utilization-related information of Customer, such as, but not limited to: (a) percentage (%) of Managed Elements used; (b) applicable system and resource versions; (c) number of active users; and (d) success rate of certain key features, including Updates. In addition, NetBrain reserves the right to collect other usage-related information from time-to-time, which will be anonymized and aggregated with information collected from other customers, used for internal research and development purposes only, and to electronically verify Customer's compliance with the license limitations set forth in this Agreement. By Customer's acceptance of the terms of this Agreement and/or use of the Programs, Customer authorizes the collection, use, and disclosure of this information for the purposes provided for in this Agreement and/or the Privacy Policy. For the avoidance of doubt, Customer may disable and/or enable certain information collection at any time by submitting a support ticket to NetBrain.
- 2.9. Third Party and Open-Source Software Notice. The NetBrain Programs contain, or rely upon, Third Party Software, which may include various open-source software components, originating from the open-source software communities, which are subject to additional restrictions. Any Third-Party Software in the Programs are distributed by NetBrain in accordance with the applicable Third-Party Software component's license terms and conditions. In the event of a conflict between an applicable Third-Party Software component's license and the other portions of this Agreement, the Third-Party Software component's license will take precedence (but solely with respect to the Third-Party Software component(s) to which the license relates). By installing or using any of the Programs provided by NetBrain, Customer agrees to be bound by the additional terms and conditions of all applicable Third-Party Software components. If Customer does not agree to be bound to such Third-Party Software component terms and conditions, Customer must immediately discontinue use of the Programs and remove all copies from its system. Where the specific license terms of the Third-Party Software component entitle Customer to receive a copy of the source code, that source code shall be made available upon Customer's written request made to NetBrain.

3. Support Services.

Provided that Customer has paid NetBrain the applicable Subscription Fee, NetBrain will provide Customer with the services described in this Section (collectively, "**Support Services**").

- 3.1.1. Email Support. First line support shall be provided via e-mail and can be obtained by submitting a support ticket to support@netbraintech.com. Customer may also submit a support ticket through NetBrain's website at <https://www.netbraintech.com/submit-tickets>. NetBrain's support engineer will be able to look up Customer's License information based on Customer's company name and email address. Reported Errors will be investigated by NetBrain, and if a reported Error relates to the Programs, or is directly caused by the Programs, an Error Report shall be opened and the Error shall be resolved in accordance with NetBrain's standard procedures and processes for Error resolution, as may be updated from time-to-time. Depending on Customer's purchase, Standard Support is available between the hours of 9:00 AM and 5:00 PM EST, Monday through Friday, excluding NetBrain observed holidays; Premium Support is available 24/7/365, including NetBrain observed holidays ("**Support Hours**").
- 3.1.2. Telephone Support. In emergency situations, NetBrain telephone support representative(s) will be available to receive Customer's telephone calls, for Standard Support, at 1-800-605-7964 (US) or 1-781221-7199 (outside of US) during Support Hours and for Premium Support at 1-781-418-9887.
- 3.1.3. Patch Application Assistance. NetBrain shall provide Customer telephone assistance for the implementation or installation of Bypasses, Fixes, and Updates during Support Hours.

- 3.1.4. Updates and Enhancements. NetBrain shall, on a when and if available basis, provide Customer such Updates and/or Enhancements as it provides to other customers for the Programs without additional charge from time-to-time.
- 3.1.5. Upgrades. Customer is entitled to, on a when and if available basis, free self-service Upgrades to Programs that are the subject of a License, including major version Upgrades and Fixes. Upgrades are limited to only those features and modules which are licensed to Customer pursuant to an applicable Order under the terms of this Agreement.
- 3.1.6. Regular Activity Reports. Upon written request by Customer, NetBrain shall provide a status report of: (a) Error resolution activities; and (b) all outstanding Error Reports. Such status reports shall contain NetBrain's tracking number, Error description, Error resolution status, and release number for all Errors.
- 3.2. Warranty on Support Services. All Support Services performed by NetBrain under this Agreement shall be performed by NetBrain in a professional and workmanlike manner in accordance with industry standards. If NetBrain receives written notice of non-conforming Support Services, upon NetBrain's confirmation of such, NetBrain shall re-perform said Support Services, which shall constitute Customer's sole and exclusive remedy for non-conforming Support Services. NetBrain does not warrant that the Support Services or Programs (except where prohibited by applicable law) will be uninterrupted or error free.
- 3.3. Limitations on Support Services.
- 3.3.1. NetBrain shall not maintain or support any Third-Party Software that is not distributed within the NetBrain Programs.
- 3.3.2. NetBrain shall provide Support Services only with respect to the two (2) most recently released Upgrades of the Programs.
- 3.3.3. If, while diagnosing or fixing problems for Customer as part of Support Services, NetBrain determines, in its sole discretion, that such problem(s) is/are not caused by the Programs (hereinafter "**Out-of-Scope Support**"), NetBrain will immediately stop working on such problem(s) unless Customer has purchased Professional Services with NetBrain through an applicable Order. For the avoidance of doubt, NetBrain will be under no obligation to provide Support Services for such Out-of-Scope Support determined hereunder, and its failure to do so shall not be deemed a breach hereunder.
4. Compensation and Subscription Period.
- 4.1. Subscription Period and Fee. In consideration of the License grant and provision of Support Services, Customer will pay NetBrain the Subscription Fee for the period initially specified in an Order, accruing from the date of delivery or access to the Programs and Documentation (the "**Initial Subscription Period**"). If Customer purchases through a Third-Party Reseller, payment terms between Customer and the Third-Party Reseller are set by the Third-Party Reseller, and NetBrain is not involved in nor responsible for such payment terms. The subscription shall automatically renew for successive periods equal to that of the Initial Subscription Period (each a "**Renewal Subscription Period**") unless otherwise terminated by either party, upon written notice to the other party, at least thirty (30) days prior to the expiration date of the Initial Subscription Period or the then-current Renewal Subscription Period. No subsequent Order shall be required for any such renewal, and Customer may be automatically invoiced by NetBrain in accordance with its then current practices. After the end of the Initial Subscription Period, and after any Renewal Subscription Period thereafter, NetBrain may increase the Subscription Fee for subsequent Renewal Subscription Periods by providing Customer with no less than thirty (30) days' notice before the expiration date of the Initial Subscription Period or the then-current Renewal Subscription Period. All Subscription Fees are nonrefundable unless otherwise stated herein.

4.2. Payment.

- 4.2.1. Unless otherwise agreed by the parties, all fees, charges and other sums payable by Customer to NetBrain under this Agreement shall be due and payable within forty-five (45) days after the invoice date, in the currency set forth in an applicable Order, and to NetBrain at the address set forth on the Order or such other location as NetBrain designates in writing. If Customer purchases through a Third-Party Reseller, payment terms between Customer and the Third-Party Reseller are set by the Third-Party Reseller, and NetBrain is not involved in nor responsible for such payment terms.
- 4.2.2. In addition, in the event Customer fails to fulfill its payment obligations hereunder, NetBrain reserves the right to suspend the Licenses without notice.
- 4.2.3. All fees, charges, and other sums payable to NetBrain under this Agreement do not include any sales, use, excise, value added, or other applicable taxes, tariffs, or duties, payment of which shall be the sole responsibility of Customer, excluding any applicable federal, state, and/or local taxes based on NetBrain's net income, revenues, employees, and/or property. In case NetBrain should be liable, vis-à-vis the respective authority, for any sales, use, excise, value added, or other applicable taxes, tariffs, or duties, the fee, charge, or other sum payable from Customer to NetBrain shall be increased by the amount of such tax, tariff, or duty. Customer shall provide NetBrain with all information reasonably required by NetBrain in order to fulfill its obligations under applicable tax-, tariff- or duties-laws; this shall, specifically, include the provision of Customer's business address as well as the VAT-ID or other relevant tax number of Customer (if any).
- 4.2.4. This Agreement applies whether Customer purchases the Product, in whole or in part, directly from NetBrain or through any other third party (collectively, "**Third Party Seller**"). If Customer purchases through a Third-Party Seller, such Third-Party Sellers are not authorized to make any promises or commitments on NetBrain's behalf, and NetBrain is not bound by any obligations to Customer other than as specified in this Agreement. Customer acknowledges that NetBrain reserves the right to suspend and/or terminate the License hereunder, without notice or liability, due to non-payment by the Third-Party Seller.

5. Subscription Period and Termination.

- 5.1. The License grant shall remain in effect until the earlier of: (a) the expiration date of the Initial Subscription Period or the then-current Renewal Subscription Period; or (b) termination of this Agreement in accordance with the provisions herein (the "**Subscription Period**").
- 5.2. Termination by Either Party for Cause. Either party may, in addition to its other rights and remedies at law or in equity, terminate this Agreement immediately, upon written notice, without liability to the other, if (a) the other party becomes insolvent or liquidates or terminates its business or is adjudicated bankrupt or makes an assignment for the benefit of creditors or invokes the provisions of any law for the relief of debtors or files for or has filed against it any similar proceeding or generally becomes unable to pay its debts as they become due, (b) if either party defaults in the performance of, or compliance with any of its material obligations under, this Agreement, and such default has not been remedied or cured within thirty (30) days after the other party gives the breaching party written notice specifying the default, or (c) if the nature of the default is such that more than thirty (30) days are required for the cure thereof, and the breaching party fails to commence its effort to cure such breach or default within such thirty (30) days and to diligently prosecute the same to completion thereafter, then the non-breaching party may immediately terminate this Agreement upon providing written notice thereof.
- 5.3. Effect of Termination and Post Termination. Upon expiration or termination of this Agreement, or an Order, for any reason: (a) any amounts owed to NetBrain under this Agreement prior to such expiration or termination shall be immediately due and payable; (b) all License rights granted in this Agreement shall immediately terminate; (c) Customer, its Affiliates, and any third party agents will return, delete, or destroy

all copies of the Programs, Documentation, and any NetBrain Confidential Information in its or their possession or control, and certify in writing to NetBrain that each has fully complied with these requirements, except that the receiving party may retain one (1) copy of the Confidential Information, and not the Programs or Documentation ("Retained Copy"), solely for: (i) use by its legal advisors in connection with the review of its rights and obligations under this Agreement; or (ii) for the purpose of disaster recovery; and (d) if this Agreement is terminated due to Customer's uncured breach, or cancelled early by Customer for any reason, Customer shall pay NetBrain, as a cancellation fee and not as a penalty, an amount equal to the sum of any unpaid fees for the remainder of the Initial Subscription Period or the then-current Renewal Subscription Period (as applicable) for any and all so terminated Order(s). Notwithstanding the foregoing, such Retained Copy shall remain subject to the provisions of this Agreement for so long as it is in the possession of the receiving party.

6. **Warranties and Remedies.**

6.1. **Performance Warranty and Remedy.** NetBrain warrants to Customer that, when operated in accordance with the Documentation and other instructions provided by NetBrain, the Programs will perform in all material respects in accordance with the functional specifications set forth in the Documentation for a period of thirty (30) days (or, when the licensor is NetBrain Technologies GmbH, as required by statute) after the date of delivery of the Programs to the Customer and, if applicable, perform all Professional Services in a professional and workmanlike manner. For the avoidance of doubt, this warranty shall not apply to Support Services which are warranted separately under Section 3.2, or to any Bypasses, Fixes, Updates, Enhancements, and/or Upgrades. If the Programs fail to comply with the warranty set forth in this Section 6, NetBrain will use reasonable commercial efforts to correct the noncompliance, provided that Customer notifies NetBrain of the noncompliance of the Programs in writing within the warranty period, and NetBrain is able to reproduce the noncompliance as communicated by Customer to NetBrain (e.g., the performance issue is due to the Customer's environment and NetBrain cannot reproduce it internally, then NetBrain may not be able to correct such noncompliance). If, after the expenditure of reasonable commercial efforts, NetBrain is unable to correct any such noncompliance, NetBrain may, in its sole discretion, refund to Customer the Subscription Fee paid by Customer to NetBrain for such Programs and terminate this Agreement, upon Customer's return of said Programs. Customer shall have no further claims or remedies against NetBrain, and said refund constitutes Customer's sole and exclusive remedy hereunder.

6.2. NetBrain will use commercially reasonable efforts, consistent with standard industry practices, to screen all Programs, including any Bypasses, Fixes, Updates, Enhancements, and Upgrades, provided or made available to Customer hereunder, to avoid introducing any virus, malicious code, or any other computer software routine designed to: (a) permit unauthorized access or use of the Programs, including any Bypasses, Fixes, Updates, Enhancements, and/or Upgrades, installed on Customer's equipment by unauthorized third parties; (b) disable or damage Customer's equipment; or (c) damage, erase, or delay access to software or data installed on Customer's equipment.

7. **Indemnification.**

7.1. **Customer's Indemnification Obligations.** Customer agrees, at its own expense, to indemnify and defend NetBrain, its Affiliates, and their respective directors, officers, employees, and agents, and their respective licensors and/or resellers from and against any and all third party claims, demands, litigation, liabilities, judgment, actions, or otherwise (collectively "**Claims**"), and any and all expenses, costs (including reasonable attorney's fees), judgments, damages, and/or other liabilities resulting from such Claims, that arise or result from Customer's: (a) use or misuse of the Product(s) in violation of this Agreement; (b) violation of any material term herein; and/or (c) violation of any applicable law or regulation. Nothing herein shall be construed to waive or limit the County's sovereign immunity or any other immunity from suit provided by law.

7.2. **NetBrain's Indemnification Obligations.** NetBrain agrees, at its own expense, to defend and indemnify Customer, its Affiliates, and their respective directors, officers, employees, and agents for, and at NetBrain's

option to settle, in its sole discretion, any and all Claims brought against Customer alleging that the Programs, as used within the scope of this Agreement, infringe any valid and enforceable patent of the United States, the United Kingdom, or the European Union, or any copyrights or trademarks. NetBrain has the right, in its sole discretion, to: (a) procure for Customer the right to use the allegedly infringing Programs as provided herein; (b) replace the allegedly infringing Programs with non-infringing, functionally equivalent products; (c) suitably modify the allegedly infringing Programs to eliminate the Claims of infringement, with no material loss of functionality; or (d) in the event NetBrain determines, in its sole discretion, that (a), (b), and/or (c) are not possible or commercially reasonable, NetBrain may terminate the License and accept return of the infringing Programs and refund to Customer any remaining prepaid Subscription Fee. Notwithstanding the foregoing, NetBrain assumes no liability for infringement Claims arising from: (v) combination of the Programs with any other products not provided, or authorized, by NetBrain; (w) any modifications to the Programs by any person other than, or authorized by, NetBrain; (x) any continued use of the version of the Programs in Customer's possession following notice by NetBrain that such Programs are the subject of a third party Claim of infringement; (y) use of any version of the Programs other than the most recent two versions that NetBrain has made available to Customer, or without additional cost to Customer, if the infringement would have been avoided by using one of the two most recent versions; or (z) the Customer's specific business use of the Programs which is the basis of the Claim is different than the business use intended by NetBrain in creating the Programs. THE FOREGOING PROVISIONS OF THIS SECTION 7.2 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF NETBRAIN, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT RIGHT BY THE PROGRAMS.

- 7.3. In order to receive indemnification hereunder, the party requesting indemnification ("**Indemnified Party**") must provide the other party ("**Indemnifying Party**") with: (a) prompt written notice (no later than ninety (90) days) after the Indemnified Party first becomes aware of such a Claim; (b) sole control and authority over the defense or settlement thereof (the Indemnified Party shall, at its sole expense, have the right to employ separate counsel to monitor the defense and settlement of the Claim thereof); and (c) proper and full information as is reasonable, and reasonable assistance to settle and/or defend any such Claim. For the avoidance of doubt, the Indemnifying Party shall have sole control and authority over the defense or settlement of any Claim, but shall not settle a Claim absent the written consent of the Indemnified Party unless such settlement (a) includes a release of all claims pending against the Indemnified Party, (b) contains no admission of liability or wrongdoing by the Indemnified Party, and (c) imposes no obligations upon the Indemnified Party other than an obligation to stop using the Programs that are the subject of the claim absent the written consent of the Indemnified Party unless such settlement (a) includes a release of all claims pending against the Indemnified Party, (b) contains no admission of liability or wrongdoing by the Indemnified Party, and (c) imposes no obligations upon the Indemnified Party other than an obligation to stop using the Programs that are the subject of the claim.
- 7.4. Without in anyway affecting the indemnity herein provided and in addition thereto, NetBrain shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Attachment C, as attached hereto and incorporated herein.

8. **DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.**

- 8.1. **DISCLAIMER OF WARRANTIES.** EXCEPT AS SET FORTH IN THIS AGREEMENT AND ALL EXHIBITS AND/OR ATTACHMENTS REFERENCED HEREIN AND SO FAR AS IT IS PERMITTED TO DO SO UNDER APPLICABLE LAW, NETBRAIN MAKES NO WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, REGARDING, OR RELATING TO, THE PROGRAMS, DOCUMENTATION, SUPPORT SERVICES, OR ANY MATERIALS FURNISHED, OR PROVIDED, TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, TITLE, USE, OR NON-INFRINGEMENT. NETBRAIN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SATISFACTORY QUALITY WITH RESPECT TO THE PROGRAMS, DOCUMENTATION, SUPPORT SERVICES, AND ANY OTHER MATERIALS FURNISHED, OR PROVIDED, BY NETBRAIN HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH HEREIN, NETBRAIN DOES NOT GUARANTEE THE ADEQUACY, ACCURACY, TIMELINESS, OR COMPLETENESS OF THE PROGRAMS,

DOCUMENTATION, OR SUPPORT SERVICES, OR THAT THEY WILL OPERATE WITHOUT INTERRUPTION, OR ARE ERROR FREE.

8.2. LIMITATION OF LIABILITY. THE LIMITATIONS IN SECTION 8.2.2 SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, TO CUSTOMER'S INFRINGEMENT OF NETBRAIN'S INTELLECTUAL PROPERTY RIGHTS:

- 8.2.1. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY DIRECT OR INDIRECT LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, COST TO REPLACE, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH, OR ARISING OUT OF, THE FURNISHING, PERFORMANCE, OR USE OF THE PROGRAMS, DOCUMENTATION, SUPPORT SERVICES, OR ANY MATERIALS FURNISHED OR PROVIDED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.2.2. EITHER PARTY'S MONETARY LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED TWO (2) TIMES THE AGGREGATE AMOUNT PAID BY THE CUSTOMER TO NETBRAIN UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE TIME SUCH LIABILITY AROSE.

9. Confidential Information.

- 9.1. During the performance of this Agreement, the parties may have access to information that is confidential to one another. "**Confidential Information**" means all nonpublic information, whether disclosed by a party or its Affiliates or their respective employees or contractors, that is designated in writing as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005). Confidential Information will may include, but is not limited to: all technical and business information, including without limitation all Programs and Documentation provided by NetBrain, including any list of Third Party Software, planning, pricing and offerings for products and services; other product information including, but not limited to, configuration and packaging details; all information clearly identified or marked as confidential; all information identified elsewhere in this Agreement as Confidential Information; and all information a reasonable person would consider to be confidential, taking into account the circumstances surrounding its disclosure. In addition, any Third-Party Software shall be included as Confidential Information, whether or not designated as Confidential Information. A party's Confidential Information will not include information that: (a) is or becomes generally known to the public through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party, as can be evidenced by the written record; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as can be evidenced by the written record.
- 9.2. The parties agree to hold each other's Confidential Information as Confidential during the term of this Agreement, and for a period of three (3) years thereafter. Notwithstanding the foregoing, Customer will keep the Programs and Documentation confidential indefinitely after termination or expiration of this Agreement; and the parties will maintain each other's trade secrets confidential for so long as they are trade secrets under applicable law. The parties agree, unless required by law or with the written consent of the other party, not to make each other's Confidential Information available in any form to any third party for any purpose except to the extent necessary to exercise its rights under this Agreement, and to treat Confidential Information of the other party with the same degree of care with which it would treat its own Confidential Information of a like nature, but in no case with less than a reasonable degree of care.
- 9.3. It shall not be a breach of this section if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, or applicable law provided the party served with such request

promptly notifies the other party in writing and provides reasonable assistance so the other party may seek a protective order against public disclosure (except if providing such notification is legally prohibited), and in the event such disclosure is necessary, then only the minimum required information may be disclosed.

- 9.4. Each party agrees to limit the disclosure of Confidential Information to those of its employees and agents who have a need to know such Confidential Information, and each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, shall be liable for any such disclosure or distribution, and in the event such disclosure is necessary, then only the minimum required information may be disclosed.
- 9.5. Each party agrees not to use the other party's Confidential Information for any purpose other than the performance of this Agreement.

10. **Miscellaneous.**

- 10.1. **Export Regulations.** Customer and NetBrain acknowledge that the Programs, Documentation, and all related technical information, documents, and materials may be subject to export controls under applicable law, including the U.S. Export Administration Regulations, and therefore, to the extent applicable, Customer and NetBrain shall at all times: (a) comply with all requirements set forth in such laws and regulations; and (b) reasonably cooperate with each other in any official, or unofficial, audit or inspection that relates to such export requirements. Without limiting the generality of the foregoing, Customer agrees that the Programs are prohibited for export or re-export to any person or entity on the U.S. Department of Commerce Denied Persons List, or on the U.S. Department of Treasury's List of Specially Designated Nationals, Specially Designated Narcotics Traffickers, or Specially Designated Terrorists or equivalent (collectively, "Sanctions Lists"), as such is changed from time to time. Should Customer become an entity or person on the Sanctions Lists, such event shall constitute an incurable default under this Agreement, and NetBrain may terminate this Agreement with immediate effect and the provisions of Section 5.3 shall apply.
- 10.2. **Publicity.** No news releases, advertisements, public announcements or photographs arising out of the Agreement or NetBrain's relationship with Customer may be made or used without prior written approval of Customer.
- 10.3. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing, and shall be personally delivered (including, without limitation, via overnight mail, or other similar service), or mailed by registered or certified mail, postage prepaid with return receipt requested, to the address of each party or as set forth in an applicable Order, or via email attachments, but emails or text messages alone will not be valid as notice or amendments. Notices shall be deemed received by: (a) the next business day, if sent by personal delivery or email attachment; or (b) within five (5) business days if sent by certified or registered mail. Either party may change its address or facsimile number by giving written notice to the other party hereto in the same manner as specified in this Section.
- 10.4. **Assignment.** Neither party may assign or transfer (directly, by operation of law, Change of Control, or otherwise) this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the other party. **"Change of Control"** means: (a) a transfer to a single entity, or group of related entities (whether in a single transaction or a series of transactions), of more than fifty percent (50%) of the stock, assets, or other equity interests in an entity; or (b) a transfer of the right to direct the management of such entity. An initial public offering of an entity's stock shall not constitute a Change of Control within the meaning of this Agreement. NetBrain may assign this Agreement, in whole as part of a Change of Control, provided that NetBrain provides Customer with ten (10) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the Change of Control, and Customer has the right to terminate this Agreement, it required by applicable law.
- 10.5. **Non-Waiver.** A failure of either party to insist upon or enforce performance by the other party of any of the provisions of, or to exercise any rights or remedies under, this Agreement, will not be interpreted or

construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right, or remedy in that or any other instance.

10.6. Compliance with Laws. NetBrain and Customer shall each comply with all applicable laws, regulations, rules, orders, and other requirements, now or hereafter in effect, of any applicable governmental authority, applicable to it in their performance of this Agreement.

10.6.1. IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. In accordance with Public Contract Code section 2204(a), NetBrain certifies that at the time the Agreement is signed, NetBrain is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

10.6.2. Campaign Contribution Disclosure (SB 1439) Contractor has disclosed to the County using Attachment D - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract. In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

10.7. Governing Law, Jurisdiction, Mediation, and Attorneys' Fees.

10.7.1. The rights and obligations of the parties under this Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods, but instead shall be governed by and construed under the laws of the State of California. In the event of any controversy, claim, or dispute between ("**Claim**") the parties arising out of or relating to this Agreement, such Claim may be tried solely in the Superior Court of California, San Bernardino County, San Bernardino District. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use reasonable efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party, except as specified below. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements, or where such a court of competent jurisdiction has awarded those costs and attorney's fees.

10.7.2. In the event of any Claim arising out of this Agreement, the parties agree to escalate the Claim to members of their respective senior management team, and such personnel shall negotiate in good faith to attempt to resolve the dispute. If the parties' senior managers are unable to resolve the Claim, except as otherwise provided in this Agreement, the matter may be submitted for non-binding mediation to a nationally recognized mediator or mediation service ("**Mediator**"), which will be chosen by agreement of the parties. Either party may commence mediation by providing a written request for mediation to the other party and to the Mediator, setting forth the subject of the Claim and the relief requested. The parties will cooperate with the Mediator and each other in selecting an individual mediator from Mediator's panel of neutrals, and in scheduling the mediation proceedings. The parties agree to: (a)

participate in the mediation in good faith; (b) pay their respective attorneys' fees; and (c) share equally the costs of mediation. Unless otherwise requires by law, all conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the individual mediator and any employees of the Mediator, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration, litigation, or other proceeding between the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

- 10.7.3. Intentionally omitted.
- 10.7.4. Notwithstanding the foregoing, either party may seek equitable relief from a court of competent jurisdiction prior to the mediation to protect its intellectual property rights and Confidential Information.
- 10.8. Force Majeure. Except for the parties' confidentiality obligations, and any infringement of NetBrain's Intellectual Property Rights attributable to Customer, its Affiliates, or its or their employees, contractors or agents, Customer's indemnification obligations, and Customer and/or its Affiliate's payment obligations hereunder, neither party will be liable for default, or be considered to be in breach of, this Agreement as a result of any cause or condition beyond such party's reasonable control, including, but not limited to, acts of civil or military authority, national emergencies, third party labor difficulties, fire, flood or other catastrophe, acts of God, pandemic or epidemic, terrorism, any government authority's law, regulation, or act, insurrection, war, riots, failure of transportation or power supply, communications outage, internet outage, cyber-attack, or performance (or lack thereof) of third parties.
- 10.9. Severability. If any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid, or otherwise unenforceable, such provision (or part thereof) will be enforced, to the extent possible, consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force, and remain in effect according to its stated terms and conditions.
- 10.10. Relationship of the Parties. This Agreement shall not be construed as creating any agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties. The parties shall at all times be and remain independent entities. Except as expressly agreed to by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party, or to bind the other party in any respect whatsoever.
- 10.11. Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.
- 10.12. Titles and Headings; Clerical Errors. The title and section headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement. Clerical errors are subject to correction by mutual agreement of the parties.
- 10.13. No Rule of Strict Construction. The language used in this Agreement will be deemed to be the language jointly chosen by NetBrain and Customer to express their mutual intent, and no rule of strict construction will be applied against either party. No provision of this Agreement will be interpreted in favor of, or against, either of the parties hereto by reason of such party having drafted such provision or this Agreement.
- 10.14. Counterparts. Where the parties prefer to sign this Agreement, this Agreement may be signed in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is

contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

- 10.15. Entire Agreement. This Agreement, and any of its attachments or other documents referenced herein, constitutes the entire agreement, and supersedes any and all prior agreements, including any discussions, whether written or oral, between NetBrain and Customer relating to the Programs and Documentation, Support Services, and/or other items subject to this Agreement. Any and all terms and conditions contained in any purchase order, request for proposal, request for information, or other documents submitted by Customer in connection with this Agreement shall be of no force and effect, and NetBrain's subsequent provision of the Programs and Documentation shall not constitute acceptance of such terms. By entering into this Agreement, Customer acknowledges and agrees that it shall receive only the Programs, Documentation, Support Services, and any other services (as applicable) contracted for under this Agreement, or any Order in connection herewith, and available in the most current released versions of the Programs, and not any other product, feature, or functionality that the parties have discussed or that may appear in NetBrain public documents. For the avoidance of doubt, by entering into this Agreement, Customer acknowledges and agrees that all prior agreements between NetBrain and Customer (i.e., perpetual license grant agreements) are null and void.
- 10.16. Amendments. All amendments, modifications, or supplements to this Agreement must be in writing and signed by the authorized representatives of both parties. All such changes shall reference this Agreement and identify the specific section(s) or attachment(s) of this Agreement to be amended, modified, or supplemented.
- 10.17. Survival. All provisions which by their nature and context impose continuing obligations on a party or both parties shall survive any termination of this Agreement, including, but not limited to, Customer's payment obligations.

IN WITNESS WHEREOF, San Bernardino County and NetBrain Technologies, Inc. have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

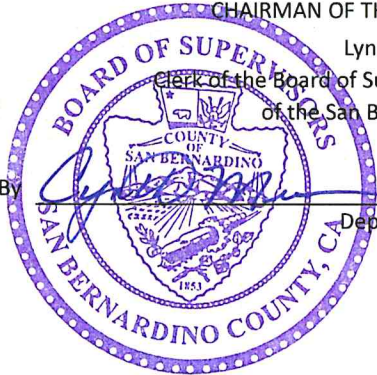
SAN BERNARDINO COUNTY

▶ *Dawn Rowe*
Dawn Rowe, Chair, Board of Supervisors

Dated: OCT 22 2024

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Lynna Monell*
Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino
County
Deputy



NetBrain Technologies, Inc.

(Print or type name of corporation, company, contractor,
DocuSigned by: etc.)
By ▶ *Weilie Ma*
181FC05F87BE4BA...
(Authorized signature - sign in blue ink)

Name Weilie Ma
(Print or type name of person signing contract)

Title SVP
(Print or Type)

Dated: 6/4/2024

Address 15 Blue Sky Drive
Burlington, MA 01803

**ATTACHMENT A
INTENTIONALLY OMMITTED.**

ATTACHMENT B PRODUCT SPECIFIC TERMS AND CONDITIONS**1. Qapps, Data View Templates, and Runbooks.**

1.1. The Programs and Documentation may permit Customer to query and parse information, including, but not limited to, device configurations, performance parameters, figures, statistics, and properties (“**Network Data**”) on Customer’s network by executing a “Qapp” or a “Data View Template.” A “**Qapp**”, designated by the file extension “.qapp”, is a series of commands, statements, if-then conditionals, or any other language, and embodied in any form, including, but not limited to, programming language, simple text, instructions, functions, scripts, code, data, or other material (collectively, “**Filters**”), which is recognized by the Programs to initiate a query, parse, and/or analyze Network Data. A “**Data View Template**” designated by the file extension “.xdvt”, is a container including a set of Network Data, display settings, conditionals, statements, drilldown actions, or commands, and embodied in any form of Filters which is recognized by the Programs to initiate a query, parse, and/or analyze Network Data, and display the data in a map or other user interface. In addition, the Programs and Documentation may permit Customer to compile, serialize, or otherwise configure routine networking procedures and operations, which a customer can execute systematically through the Programs, to address certain network problems (“**Runbooks**”).

1.2. Customer Qapps, Data View Templates, and Runbooks.

1.2.1. A “**Customer Qapp**” or a “**Customer Data View Template**” is a Qapp or Data View Template that is created by Customer using an original Filter, or set of Filters, developed by Customer, and which provides substantial functionality not contained in, or provided by, the Programs and Documentation, or any deliverable of the Programs and Documentation, including, without limitation, any data, Enhancements, Updates, Upgrades, modifications, Bypasses, or Fixes (each, a “**Program Deliverable**”).

1.2.2. A “**Customer Runbook**” is a Runbook that is compiled and/or configured by Customer, using a set of networking procedures and operations, which can be executed systematically through the Programs, and which provides substantial functionality not contained in, or provided by, the Programs and Documentation, or any Program Deliverable.

1.2.3. Customer acknowledges that the Programs and Documentation may be configured to permit Customer to develop Qapps, Data View Templates, and Runbooks with different levels of access control, which may permit access by individuals outside Customer’s organization. Customer has sole responsibility for determining the type of access controls that will apply to the Qapps, Data View Templates, and Runbooks that Customer may develop. Subject to the provisions of the Agreement, Customer retains all right, title, and interest in Customer Qapps, Customer Data View Templates, and Customer Runbooks.

1.3. NetBrain makes no representations or warranties of any kind that the Qapps, DataView Templates, and/or Runbooks developed by Customer will operate in accordance with the anticipated parameters of any of the access controls chosen by Customer. It shall be the sole responsibility of Customer to ensure that all Customer Qapps, Customer Data View Templates, and/or Customer Runbooks operate as intended, and Customer hereby forever releases NetBrain, its Affiliates, and their respective officers, directors, employees, agents, and representatives from any and all Claims, liabilities, or losses of every kind or nature arising out of, or related to, the failure of a Customer Qapp, Customer Data View Templates, and/or Customer Runbook to operate as intended.

1.4. Further, NetBrain accepts no responsibility or liability of any kind for any loss or damage caused by Customer Qapps, Customer Data View Templates, and/or Customer Runbooks, including, but not

limited to, direct, indirect, special, incidental, punitive, or consequential damages, loss of profits, loss of use, business interruption, loss of data, loss of goodwill, cost to recover, or infringement of a third party's Intellectual Property Rights.

- 1.5. NetBrain Qapps, Data View Templates, and Runbooks. NetBrain may also generate and distribute Qapps ("**NetBrain Qapps**"), Data View Templates ("**NetBrain Data View Templates**"), and/or Runbooks ("**NetBrain Runbooks**"). NetBrain Qapps, NetBrain Data View Templates, and NetBrain Runbooks include, but are not limited to, any Qapp, Data View Template, and/or Runbook which: (a) has been made generally available by NetBrain through the Programs and Documentation, an Evaluation License, any Program Deliverable, or any other distribution method; or (b) has been customized for Customer by NetBrain, in part or in whole. NetBrain retains all right, title, and interest in all NetBrain Qapps, NetBrain Data View Templates, and NetBrain Runbooks.

2. Change Management.

- 2.1. "**Change Management**" means the add-on module to the Programs that enables engineers to define network changes through one or more configuration templates. Those network changes can be applied to multiple devices and executed/rolled back automatically. The Change Management module enables engineers to verify the impact of the changes across the network to help ensure a safer change process.
- 2.2. Disclaimer of Network Changes. The nature of Change Management is such that the Programs may make substantial changes that have the potential to negatively impact Customer's network. Any network changes derived from Change Management require the prior authorization of Customer, and therefore, Customer understands and acknowledges that any changes made to Customer's network via Change Management are the sole responsibility of Customer, regardless of any direction, or otherwise, provided by NetBrain, the Programs, and/or Documentation. NetBrain makes no warranties, either express or implied, with respect to the use of Change Management, including the efficacy of Customer's changes defined through Change Management. Customer will hold harmless and indemnify NetBrain, its Affiliates, and their respective officers, directors, employees, agents, and representatives from and against any and all liability, loss, costs, expenses, or damages caused by, or resulting from, Customer's use of Change Management on a network sustained by Customer, its Affiliates, or any third party on its behalf. In the event of any failure of Customer's network resulting from Change Management, NetBrain will reasonably endeavor to assist Customer in rectifying the problem in accordance with its Support Services obligations in Section 3 of this Agreement.

3. Knowledge Cloud.

- 3.1. "**Knowledge Cloud**" means the centralized resource base housing various types of common and customized resources. The Programs can download these NetBrain resources, such as drivers, Qapps, Runbooks, and Data View Templates from the customer portal provided by NetBrain, as they may be made available from time-to-time.

4. Application Assurance Module.

- 4.1. "**Application Assurance Module**" or "**AAM**" means the add-on module to the Programs that enables the Customer to manage application paths and verify that these application paths work properly in Customer's environment.
- 4.2. "**Golden Baseline**" means NetBrain's reference standard for the nominal status for various types of network data, to be used as a basis for network management analysis and comparison.

4.3. Customer can use AAM to define the Golden Baseline and to periodically verify that its in-use application path follows this Golden Baseline. Customer can also use AAM to analyze the impact of a network anomaly or obstruction on the application paths.

5. **Preventive Automation Module.**

5.1. **“Preventive Automation”** or **“PA”** means the add-on module to the Programs that enables the Customer to document the network design and automate network diagnosis. **“Network Intent”** or **“NI”** means an executable automation element to document and verify a network design. The Customer can use PA to create, manage, and execute NI. The Customer can also use PA to monitor the network status and trigger the execution of the corresponding NI.

ATTACHMENT C INSURANCE REQUIREMENTS

NetBrain agrees to provide insurance set forth in accordance with the requirements herein.

Insurance Coverage Limits:

Commercial General Liability:

- Each Occurrence: \$1,000,000
- General Aggregate: \$2,000,000

Automobile Liability (Hired/Non-Owned Autos Only):

- Combined Single Limit: \$1,000,000

Umbrella Liability:

- Each Occurrence: \$10,000,000
- Aggregate: \$10,000,000

Worker s Compensation and Employer s Liability:

- E.L. Each Accident: \$500,000

E&O/Cyber Limit:

- Base Limit: \$5,000,000
- Excess Limit: \$10,000,000

ATTACHMENT D



Campaign Contribution Disclosure (Senate Bill 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: NetBrain Technologies, Inc.

2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?

Yes If yes, skip Question Nos. 3 - 4 and go to Question No. 5.

No

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: Lingping Gao

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s): This is proprietary information.

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
N/A	

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained months
None.		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

Company Name	Subcontractor(s):	Principal and/
None		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
None.	

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No If **no**, please skip Question No. 10. Yes If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer:

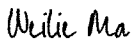
_____ Name of Contributor:

_____ Date(s) of Contribution(s):

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing below, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

DocuSigned by:

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6/4/2024

Signature

Date

Willie Ma

NetBrain Technologies, Inc.

Print Name

Print Entity Name, if applicable