

Schedule A – NetBrain END USER LICENSE AGREEMENT

NetBrain shall provide Ordering Activity with the Programs and modules selected by Ordering Activity, at the agreed-upon fees, and subject to the general terms and conditions set forth on Exhibit A (“Terms and Conditions”) and the service level commitments set forth on Exhibit B. In addition, NetBrain may from time to time provide Ordering Activity or Ordering Activity’s Affiliates with additional Programs and modules, as set forth on schedules, statements of work, purchase orders or other ordering documents (“Orders”) issued by Ordering Activity or its Affiliates pursuant to this Agreement. Each such Order, together with the terms and conditions of this Agreement shall constitute a separate agreement. The NetBrain entity entering into the Orders shall constitute “NetBrain” for purposes of such Orders, and Ordering Activity or the Ordering Activity Affiliate issuing the Order shall constitute “Ordering Activity” hereunder for purposes of the relevant Orders. For the avoidance of doubt, the contracting NetBrain entity shall be solely responsible for the performance of its obligations hereunder and no other NetBrain Affiliate shall have any responsibilities or liability with respect thereto.

EXHIBIT A

TERMS AND CONDITIONS

SECTION 1. DEFINITIONS.

Whenever used in this Agreement, unless the context otherwise requires, the following terms will have the following specified meanings:

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 or other equity interests of an entity, or the right to direct the management of such entity.

1.2 “Bypass” shall mean a procedure communicated by NetBrain to Ordering Activity, which permits Ordering Activity to avoid Error(s) by implementing such procedure when using the Programs.

1.3 “Change of Control” means, with respect to any entity: (i) 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 (ii) 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.

1.4 “Change Management” shall mean the add-on module to the Programs that enables engineers to define network changes through one or more configuration templates. Those templates can be applied to multiple devices/interfaces and deployed/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.

1.5 “Concurrent Seat(s)” is a license allowing users to install the Programs on any number of machines, but the total number of concurrent users operating the Programs at any single moment may not exceed the total number that have been authorized under this Agreement.

1.6 “Documentation” means collectively: (a) 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; and (b) any other deliverable that is not Programs. Documentation shall not include source code.

1.7 “Enhancement(s)” shall mean a modification to the Programs that alters the functionalities described in the Documentation without materially degrading the functionalities or performance of the Programs prescribed by the Documentation.

1.8 “Error(s)” shall mean a reproducible failure of the Programs to conform to the Documentation for such Programs.

1.9 “Error Report” shall mean the document generated by NetBrain, pursuant to Section 3 hereof, each time that Ordering Activity reports an Error.

- 1.10 “Fix(es)” shall mean the document or materials to be created by NetBrain to correct any Error(s).
- 1.11 “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 and rights of confidence; all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may exist anywhere in the world at the date of this Agreement or any Order or in the future.
- 1.12 “License Fee” shall mean the fees payable by Ordering Activity for the License(s) in accordance with the GSA Pricelist.
- 1.13 “License(s)” shall mean the license granted by NetBrain to Ordering Activity to use the Programs, under this Agreement.
- 1.14 “Maintenance Fees” shall mean the annual fees payable by Ordering Activity for continued receipt of Maintenance Services.
- 1.15 “Maintenance Services” shall mean the support services defined in Section 3, to be provided under this Agreement.
- 1.16 “Managed Elements” shall mean any combination of Nodes, Ports and/or Processors.
- 1.17 “Nodes” means any number of the following: layer 3 switches, layer 2 switches, firewalls, routers, load balancers, wireless access points, and WAN optimizers, including, for the avoidance of doubt, any Nodes used as part of redundant standby network.
- 1.18 “Object Code” shall mean the binary machine readable version of the Programs.
- 1.19 “Port” shall mean the total number of physical ports on leaf-and spine switches, as well as fabric extenders, all within a Cisco ACI deployment.
- 1.20 “Processor” shall mean a single, physical chip that houses a central processing unit that can execute computer programs.
- 1.21 “Programs” means all of the programs and modules licensed to Ordering Activity by NetBrain, in machine-readable, Object Code form only as well as all other ancillary software provided by NetBrain in connection herewith. Programs include NetBrain Qapps and NetBrain Runbooks (as defined in Section 9) and may also include any Third-Party Software and related documentation.
- 1.22 “Severity Level” shall mean the level of severity assigned to a reported Error, in accordance with the definitions set forth in Exhibit B to this Agreement.
- 1.23 “Site” shall mean a Ordering Activity computer facility located in one specific geographic location.
- 1.24 “Third Party Software” means software of companies other than NetBrain or a NetBrain Affiliate that NetBrain has licensed to you under this Agreement.
- 1.25 “Third Party Software Provider” means a company, other than NetBrain, that has licensed Third Party Software to NetBrain, which NetBrain sublicenses to Ordering Activity under this Agreement.
- 1.26 “Update” shall mean a compendium of Fixes which NetBrain releases to the users of the Programs from time to time and which NetBrain shall supply to Ordering Activity pursuant to the terms of this Agreement.
- 1.27 “Upgrades” means all releases, Updates and corrections of the Programs licensed to Ordering Activity hereunder (when and if available), specifically only those features and modules specified on any Order issued pursuant to this Agreement as licensed to Ordering Activity 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, tenths or hundredths digit of the version number (e.g., a change from version x.xx to y.xx or x.yx or x.xy).

SECTION 2. PROGRAMS DELIVERY AND LICENSE.

2.1 PROGRAMS DELIVERABLES. Following execution of this Agreement, NetBrain shall deliver to Ordering Activity the number of Licenses as specified on any Order issued pursuant to this Agreement.

2.2 GRANT. Subject to Ordering Activity 's compliance with the provisions of this Agreement and the payment of all applicable License Fees (as defined below), for the term of such License, NetBrain hereby grants Ordering Activity a nonexclusive, perpetual non-transferable (except as otherwise provided herein) license to:

(a) Install and use the Programs for internal processing requirements of Ordering Activity within the number of Concurrent Seat(s) and Managed Elements then authorized under this Agreement. The number of Concurrent Seats and/or Managed Elements initially authorized hereunder is set forth on the relevant Order that has been accepted by NetBrain in writing or via fulfillment of the Order, or is set forth on any Quote issued by NetBrain.

(b) Ordering Activity may increase the number of Concurrent Seats and/or Managed Elements from time to time via an Order in unit quantities and upon payment to NetBrain of the applicable fees, provided that no Order shall be binding unless accepted by NetBrain in writing or via fulfillment of the Order. Maintenance Services on additional Nodes and Concurrent Seats added to Ordering Activity 's authorized quantity shall be co-termed with the then-current Maintenance Services on existing Managed Elements and Concurrent Seats such that all Maintenance Services expire at the same time. Any such Order, once accepted by NetBrain, is thereby incorporated by reference and shall become part of this Agreement.

(c) 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 Ordering Activity , in each case solely for the internal use of the Ordering Activity 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. Ordering Activity shall keep accurate records of the number of reproductions and location of each copy.

(d) Backup Licenses. Upon request, and subject to NetBrain's written approval in its sole discretion, Ordering Activity s may receive additional copies of the Programs to be used on a backup basis to mirror the Programs in the same quantity of Concurrent Seats and Managed Elements in a duplicate, non-production environment strictly for backup purposes ("Backup Copy"); provided that NetBrain approval shall not be required with respect to any version of the Software that has built-in backup capabilities. The Backup Copy may not be used (i) concurrently with Ordering Activity 's License that is utilized in active production, (ii) to discover additional Managed Elements currently in active production or on a redundant network that is in standby mode, or (iii) to augment the number of Concurrent Seats at any given time.

(e) Quality Assurance. Upon request, and subject to NetBrain's written approval in its sole discretion, Ordering Activity s may receive additional copies of the Programs solely to be used 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 as may be allowed by NetBrain, in its sole discretion, in writing ("Quality Assurance Copy"). The Quality Assurance Copy shall be limited to a certain number of Concurrent Seats and Managed Elements as determined by NetBrain. If such Quality Assurance Copy is approved by NetBrain, Ordering Activity will be required to purchase Maintenance Services for such copy.

All rights not expressly granted are reserved by NetBrain.

2.2A. GRANT – ADDITIONAL REQUIREMENTS (GERMANY). If the NetBrain Affiliate with which the Ordering Activity concludes this Agreement is NetBrain Technologies GmbH, nothing in this Section 2 shall exclude Ordering Activity 's statutory right to transfer the licensed Programs or the Documentation to a third party. However, Ordering Activity shall only be entitled to such transfer provided that Ordering Activity:

(a) discontinues in total any use of the transferred Programs and Documentation;

(b) promptly deletes all copies of the transferred Programs and Documentation, installed at Ordering Activity 's systems;

(c) provides prior written notice to NetBrain regarding the third party's identity and location;

(d) reproduces all notices of patent, copyright, trade secret, trademark, or other proprietary rights notices present on any transferred Programs and Documentation; and

(e) hands out a copy of this Agreement to the third party.

Upon NetBrain's request, Ordering Activity will certify discontinuance in use and deletion of the Programs and Documentation, in writing. For the avoidance of doubt, Ordering Activity is prohibited from transferring or attempting to transfer any portions of this Agreement relating to maintenance and/or support services or any other services. Ordering Activity hereby agrees to indemnify and hold NetBrain harmless from any losses, costs, damages or expenses (including reasonable attorney's fees) incurred by NetBrain because of any failure by the Ordering Activity to comply with the requirements of this Section 2.2A.

2.3 Limited-use Evaluation, Education/Demonstration License. For an additional cost (as applicable), NetBrain shall provide a limited, non-exclusive license to install and use the Programs and Documentation in a non-production environment solely for the (i) evaluation of NetBrain products on Ordering Activity's network environment, or (ii) education and demonstration purposes on Ordering Activity's network environment, or any third party network environment, subject to NetBrain's prior written approval (collectively "Demonstration License"). The Demonstration License may be provided with limited operability and/or functionality. The Demonstration License is subject to the terms provided in this Agreement, provided, however, notwithstanding any other provision of this Agreement, NetBrain offers no representations or warranties of any kind with respect to any Demonstration License.

2.4 ACCEPTANCE. The Programs and Documentation shall be deemed accepted by Ordering Activity on delivery of the Programs and Documentation to Ordering Activity. Ordering Activity agrees that its decision to enter into this Agreement and to enter into Orders hereunder is based solely upon the availability of the features and functionality in the current released versions 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 or features or services, except as otherwise expressly set forth in this Agreement or in an Order executed by both parties.

2.5 DEVOPS and Personal Edition. NetBrain may offer Ordering Activity, at no charge, one or more versions of the Software for limited use, including DevOps ("DE") and Personal Edition ("PE"). Ordering Activity's use of DE and PE is subject to the terms provided in this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, NetBrain offers no representations or warranties of any kind with respect to DE or PE, and the provisions of Section 7 of this Agreement shall not apply to DE or PE. In addition, DE and PE are not eligible for Maintenance Services (provided that NetBrain may, in its sole discretion, provide limited Maintenance Services on an ad hoc basis), and NetBrain reserves the right to discontinue Ordering Activity's right to use DE and PE at any time, without notice.

Ordering Activity's use of DE is subject to the following additional provisions:

- (a) DE is limited to ten (10) Nodes;
- (b) DE may be used only (i) on a home network; (ii) in a lab network; or (iii) in a production network for a period not exceeding thirty (30) days; and

Ordering Activity's use of PE is subject to the following provisions:

- (a) PE is limited to twelve (12) Nodes; and
- (b) PE displays only one map at a time;
- (c) PE may be used only (i) on a home network; (ii) in a lab network; or (iii) in a production network for a period not exceeding thirty (30) days.

2.6 RESTRICTIONS. Ordering Activity shall use the Programs and Documentation only for the relevant purposes specified in Section 2 and in accordance with the following:

- (a) Ordering Activity shall not modify or prepare derivative works of the Programs or Documentation except as expressly permitted in Section 2.2;

(b) Ordering Activity 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;

(c) Ordering Activity shall not remove, obscure, or alter any notice of patent, copyright, trade secret, trademark, or other proprietary rights notices present on any Programs or Documentation;

(d) Ordering Activity shall not sublicense, sell, lend, rent, lease, distribute or otherwise transfer all or any portion of the Programs or the Documentation to any third party except as may be permitted in Section 11.7 hereof; and

(e) Ordering Activity shall not use the Programs or the Documentation to provide services to third parties, or otherwise use the same on a "service business" basis.

When the licensor is NetBrain Technologies GmbH: §§ 69d, 69e UrhG remain unaffected by this Section 2.6.

2.7 COMPLIANCE WITH LAWS. NetBrain and Ordering Activity shall each comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any applicable governmental authority, in their performance of this Agreement.

2.8 PROPRIETARY RIGHTS. The Programs (including all Bypasses, Fixes, Updates, Enhancements and Upgrades), Documentation contain valuable intellectual property rights, trade secret, 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 Ordering Activity any other right, title or interest in or to the Programs, Documentation NetBrain Qapps, NetBrain Runbooks or any NetBrain intellectual property or other proprietary right. In addition, NetBrain shall be free to use without restriction, any and all suggestions, ideas, enhancement requests, feedback, or recommendations made by Ordering Activity, and all enhancements and modifications made to the Programs, Documentation or other offerings of NetBrain shall continue to be owned solely and exclusively by NetBrain.

2.9 AUDIT. During the term of this Agreement and for a period of one (1) year thereafter, NetBrain may audit Ordering Activity's use and reproduction of the Programs, provided that it gives Ordering Activity at least thirty (30) days prior written notice. Any such audit shall be conducted during regular business hours, is subject to Government security requirements, and shall not unreasonably interfere with Ordering Activity's business activities. All information disclosed by Ordering Activity during the course of the audit shall be Confidential Information subject to the provisions of Section 11.1, provided that the designation as Confidential Information shall not be construed to limit NetBrain's right to enforce this Agreement. All audits shall be conducted at NetBrain's sole cost and expense. Ordering Activity shall be liable for any unauthorized use or distribution of the Programs, Programs Modifications and Documentation discovered during such audit.

2.10 USAGE STATISTICS. In an effort to improve and ensure full utilization of the Programs, NetBrain reserves the right to monitor and collect and use utilization-related information of Ordering Activity, such as, but not limited to, percentage (%) of Managed Elements used, no. active users and network access rate. In addition, NetBrain reserves the right to collect other usage-related metrics from time to time, which may be anonymized and aggregated with information collected from other Ordering Activity's and used for internal research and development purposes, and to electronically verify Ordering Activity's compliance with the license limitations set forth in this Agreement.

SECTION 3. MAINTENANCE SERVICES.

3.1 Provided that Ordering Activity and NetBrain have agreed upon Maintenance Services and Ordering Activity has paid NetBrain the applicable Maintenance Fee, NetBrain will provide Ordering Activity with the Maintenance Services described in this Section, in accordance with the Escalation Procedures and Processes for Programs Error Resolution ("Error Resolution Plan") set forth on Exhibit B.

(a) Email Support. First line support shall be provided via e-mail and can be obtained by submitting a support ticket to support@netbraintech.com. Ordering Activity may also submit a support ticket through NetBrain's website at <http://www.netbraintech.com/netbrain-support/submit-a-ticket.php>. NetBrain's support engineer will

be able to look up Ordering Activity 's License information based on Ordering Activity '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: (a) an Error Report shall be opened; (b) the Error shall be assigned a Severity Level as per the provisions of the ("Error Resolution Plan"); and (c) the Error shall be resolved in accordance with the procedures and processes set forth in the ("Error Resolution Plan"). E-mail support is available between the hours of 9:00 AM and 5:00 PM EST, Monday through Friday, excluding NetBrain observed holidays.

(b) Telephone Support. In emergency situations, NetBrain telephone support representative(s) will be available to receive Ordering Activity 's telephone calls during normal support hours, excluding NetBrain observed holidays. The telephone support hours are set forth on www.netbraintech.com.

(c) Installation Assistance. NetBrain shall provide Ordering Activity telephone assistance for the implementation or installation of Bypasses, Fixes, and Updates during normal support hours, excluding NetBrain observed holidays. The telephone support hours are set forth on www.netbraintech.com.

(d) Updates. NetBrain shall, on a when and if available basis, provide Ordering Activity such Updates as it provides to other Ordering Activity s for the Programs without additional charge from time to time.

(e) Enhancements. NetBrain shall provide Ordering Activity such Enhancements as it provides to other Ordering Activity s for the Programs without additional charge on a when and if available basis.

(f) Upgrades. Ordering Activity is entitled to free Upgrades to Programs, that are the subject of a License, including major version Upgrades and device configuration Updates on a when and if available basis. Upgrades are subject to availability and are limited to only those features and modules which are licensed to Ordering Activity under this Agreement.

(i) Regular Activity Reports. Upon written request by Ordering Activity , NetBrain shall provide: (i) a status report of Error resolution activities; and (ii) a status report of 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 MAINTENANCE**. All Maintenance Services performed by NetBrain under this Agreement shall be performed by NetBrain in a professional manner in accordance with industry standards. If NetBrain receives written notice of non-conforming Maintenance Services, NetBrain shall re-perform said Maintenance Services, which shall constitute Ordering Activity 's sole and exclusive remedy. NetBrain does not warrant that the Maintenance Services or Programs (except where prohibited by applicable law) will be uninterrupted or error free. For the avoidance of doubt: this Section 3.3 shall not be construed as a limitation of NetBrain's general liability under Section 8.2(d).

3.3 LIMITATIONS ON MAINTENANCE SERVICES.

(a) NetBrain shall not maintain or support any third party programs.

(b) NetBrain shall provide Maintenance Services only with respect to the two (2) most recent released Upgrades of the Programs.

(c) Any time incurred by NetBrain in diagnosing or fixing problems that are not caused by the Programs, or are not covered by this Agreement (hereinafter "Out-of-Scope Maintenance"), are billable to Ordering Activity at NetBrain's then-existing rates with a one-hour minimum per call.

(d) Ordering Activity agrees to pay any travel expenses incurred in conjunction with Out-of-Scope Maintenance and support in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

3.4 **TRAINING**. Training resources are available at the "Support" section of NetBrain's website. Instructor-led training classes are available at NetBrain's then-current rates in accordance with the GSA Schedule Pricelist, which may be adjusted by NetBrain from time to time without notice. Any Training Services purchased in advance must be completed or commenced within one hundred eighty (180) days of purchase as designated by

the date of any applicable purchase order or, if none is provided, the date of delivery of the Programs and Documentation. If Training Services are not completed or commenced within such one hundred eighty (180) day period, Ordering Activity will receive a refund or credit.

3.5 OTHER CONSULTING SERVICES. Ordering Activity may contact NetBrain and purchase additional consulting services to aid in the setup and customization of Programs, upon mutually agreeable terms. NetBrain has no obligation to provide such consulting services to Ordering Activity unless agreed by both parties.

SECTION 4. COMPENSATION.

4.1 LICENSE FEE. In consideration of the grant of the License, Ordering Activity will pay NetBrain the License Fee in accordance with the GSA Schedule Pricelist .

4.2 Reserved.

4.3 PAYMENT.

(c) . NetBrain shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

(d) Reserved.

SECTION 5. TERM AND TERMINATION.

5.1 The License grant shall remain in effect unless terminated in accordance with the provisions of this Agreement. The Maintenance Services term under this Agreement shall continue until terminated in accordance with Section 5.2(a).

5.2 TERMINATION BY ORDERING ACTIVITY FOR CONVENIENCE. The License herein granted is for an indefinite period and may not be terminated by NetBrain for convenience. However, Ordering Activity may terminate this Agreement and the License for any reason in accordance with the notice requirements of the Federal Acquisition Regulations.

5.3 TERMINATION BY EITHER PARTY FOR CAUSE. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetBrain shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. In the case of termination due to breach by NetBrain, Ordering Activity shall receive a pro-rata refund of Maintenance Fees for the remaining Maintenance period paid for beyond the termination date.

5.4 POST TERMINATION.

(a) Upon termination of this Agreement, Ordering Activity shall promptly cease the use of the Programs and Documentation, return any hardware in its possession or control to NetBrain (where applicable), and destroy (and in writing certify such destruction) or return to NetBrain all copies of the Programs and Documentation then in Ordering Activity 's possession or control.

(b) All charges due and payable under this Agreement incurred prior to the date of the termination shall be fully paid by Ordering Activity .

SECTION 6. WARRANTIES AND REMEDIES.

6.1 PERFORMANCE WARRANTY AND REMEDY. NetBrain warrants to Ordering Activity 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 (without the need for customization or modification, or delivery of additional services) for a period of sixty (60)

days (when the licensor is NetBrain Technologies GmbH: as required by statute) after the date of delivery of the Programs at the Ordering Activity site. For the avoidance of doubt, this warranty shall not apply to Maintenance Services, including any Bypasses, Fixes, Updates, Enhancements, and Upgrades, which are warranted separately under Section 3.2. NetBrain also warrants that it shall promptly provide Ordering Activity with documentation and other user materials that are current and complete in all material respects, and that all such documentation and user materials shall contain information sufficient to explain the operation of the Programs to a trained software professional. If the Programs fail to comply with the warranty set forth in this Section 6.1, NetBrain will use reasonable commercial efforts to correct the noncompliance, provided that Ordering Activity notifies NetBrain of the noncompliance of the Programs within the warranty period, and NetBrain is able to reproduce the noncompliance as communicated by Ordering Activity to NetBrain. If after the expenditure of reasonable commercial efforts, NetBrain is unable to correct any such noncompliance, NetBrain may, in its sole discretion, if Ordering Activity so requests, refund to Ordering Activity the License Fee paid by Ordering Activity to NetBrain for such Programs in full satisfaction of Ordering Activity's claims relating to such noncompliance upon Ordering Activity's return of said Programs and, for the avoidance of doubt, Ordering Activity shall have no further claim or remedy against NetBrain, said refund constituting Ordering Activity's sole and exclusive remedy. The warranties described herein shall apply only to the Programs. This Section 6 shall not limit NetBrain's general liability as described in Section 8.2 (d).

6.2 PERFORMANCE WARRANTY LIMITATIONS. The warranties set forth in Section 6.1 do not apply to any noncompliance of the Programs or any Third Party Software resulting from misuse, casualty loss, use or combination of the Programs with any products, goods, software, services or other items furnished by anyone other than NetBrain (unless otherwise approved by NetBrain in writing), any modification not made by or for NetBrain (unless otherwise approved by NetBrain in writing), or any use of the Programs by Ordering Activity in contradiction of the terms of this Agreement (unless otherwise approved by NetBrain in writing).

6.3 ADDITIONAL PROGRAM WARRANTIES. NetBrain further warrants that NetBrain has checked for viruses in the Programs using commercially available virus checking programs consistent with standard industry practice. If the Programs fail to comply with the warranty set forth in this Section 6.3, NetBrain will use reasonable commercial efforts to correct the noncompliance. If after the expenditure of reasonable efforts, NetBrain is unable to correct any such noncompliance, NetBrain shall refund to Ordering Activity the License Fee paid by Ordering Activity to NetBrain for such Programs, reduced by an amount equal to the depreciated portion of the License Fee calculated on a five (5) year straight line basis, which shall constitute Ordering Activity's sole and exclusive remedy for such noncompliance.

SECTION 7. INDEMNIFICATION.

Subject to the limitations set forth in Section 8.2, NetBrain agrees, at its own expense, to have the right to intervene to defend and indemnify Ordering Activity for, and at NetBrain's option to settle, any and all claims, demands, litigation, liabilities or actions brought against Ordering Activity alleging that the Programs as used within the scope of this Agreement infringe any United States patent, any third party's patent that is valid and enforceable in the European Union, or any copyright, trademark, trade secret or any other intellectual property right of any third party, and to pay all damages, expenses and costs, including reasonable attorney's fees, which may be assessed against Ordering Activity under any such claim, demand, litigation, liability or action. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. NetBrain shall be released from the foregoing obligation unless Ordering Activity provides NetBrain with (i) prompt written notice after Ordering Activity first becomes aware of such a claim, demand, litigation, liability or action, provided that failure to promptly notify NetBrain will not relieve NetBrain of its indemnification obligations hereunder except to the extent NetBrain is materially prejudiced thereby; (ii) control and authority over the defense or settlement thereof (Ordering Activity shall, at its sole expense, have the right to employ separate counsel to monitor the defense and settlement of the claim thereof); and (iii) proper and full information as is reasonable, and reasonable assistance to settle and/or defend any such claim or action. Without limiting the foregoing, if a final injunction is, or NetBrain believes in its sole discretion is likely to be, entered prohibiting the use of the Programs by Ordering Activity as contemplated herein, NetBrain will, at its sole option and expense, (a) procure for Ordering Activity the right to use the infringing Programs as provided herein; or (b) replace the infringing Programs with non-infringing, functionally equivalent products; or (c) suitably modify the infringing Program so that it is not infringing, with no loss of functionality; or (d) in the event (a), (b) and (c) are not commercially reasonable, terminate the License, accept return of the infringing Programs and refund to Ordering Activity the License Fee paid therefor, reduced by an amount equal to the depreciated portion of the License Fee calculated on a five (5) year straight line basis. Notwithstanding the foregoing, NetBrain assumes no liability for

infringement claims arising solely from (i) combination of the Programs with the other products not provided by NetBrain, (ii) any modifications to the Programs by any person other than NetBrain; (iii) any continued use of the version of the Programs in Ordering Activity 's possession following notice by NetBrain that such Programs may be infringing; or (iv) use of any version of the Programs other than the most recent version that NetBrain has made available to Ordering Activity under the agreed Maintenance Services or without additional costs to Ordering Activity if the infringement would have been avoided by use of the most recent version.

THE FOREGOING PROVISIONS OF THIS SECTION 7 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF NETBRAIN AND THE EXCLUSIVE REMEDY OF ORDERING ACTIVITY , WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE PROGRAMS.

SECTION 8. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY.

8.1 DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN THIS AGREEMENT AND ALL 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 THE PROGRAMS, DOCUMENTATION OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO ORDERING ACTIVITY 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 AND ANY OTHER MATERIALS AND SERVICES 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 PROGRAM(S), DOCUMENTATION, OR MAINTENANCE SERVICES OR THAT THEY WILL OPERATE UNINTERRUPTED OR ERROR FREE.

8.2 LIMITATION OF LIABILITY.

THE FOLLOWING SECTIONS (A)-(C) SHALL NOT APPLY IF THE NETBRAIN AFFILIATE WITH WHICH THE ORDERING ACTIVITY CONCLUDES THIS AGREEMENT IS NETBRAIN TECHNOLOGIES GMBH.

(a) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY 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 OR ANY MATERIALS OR SERVICES PROVIDED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, , EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNLESS A SHORTER TERM IS PROVIDED FOR UNDER APPLICABLE LAW, ANY ACTION AGAINST NETBRAIN MUST BE BROUGHT NO LATER THAN SIX (6) YEARS AFTER THE CAUSE OF ACTION ACCRUES.

(b) NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, NETBRAIN'S LIABILITY UNDER THIS AGREEMENT FOR DAMAGES WILL NOT EXCEED THE AGGREGATE AMOUNT PAID BY THE ORDERING ACTIVITY TO NETBRAIN UNDER THE RELEVANT PURCHASE ORDER(S) GIVING RISE TO THE CLAIM.

(c) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL NOT APPLY WITH RESPECT TO CLAIMS FOR DAMAGES ARISING FROM: (i) PERSONAL INJURY OR DEATH CAUSED BY NEGLIGENCE; (ii) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (iii) ANY MATTER FOR WHICH NETBRAIN MUST INDEMNIFY ORDERING ACTIVITY PURSUANT TO SECTION 7.

(d) IF THE NETBRAIN AFFILIATE WITH WHICH THE ORDERING ACTIVITY CONCLUDES THIS AGREEMENT IS NETBRAIN TECHNOLOGIES GMBH, THE FOLLOWING SUPERSEDES ANY OTHER PROVISION, ESPECIALLY SECTION 8.2(a)-(c):

NETBRAIN SHALL BE LIABLE FOR THE FULL EXTENT OF DAMAGE IN THE EVENT OF INTENTIONAL BEHAVIOUR OR GROSS NEGLIGENCE BY NETBRAIN ITSELF OR ITS VICARIOUS AGENTS. IN ADDITION, NETBRAIN SHALL BE FULLY LIABLE IN THE CASE OF NON-OBSERVANCE OF GUARANTEES AND IN CASE OF OTHER DEFINITE PROMISES, IN THE CASE OF CULPABLE INJURY TO LIFE, BODY AND HEALTH.

IN THE CASE OF CULPABLE VIOLATION OF ESSENTIAL CONTRACTUAL OBLIGATIONS, MEANING PRINCIPAL OBLIGATIONS ENABLING THE PROPER EXECUTION OF THE CONTRACT AND UPON WHICH THE ORDERING ACTIVITY THEREFORE RELIES AND MAY RELY, NETBRAIN UNDERTAKES FULL LIABILITY ON THE MERITS. THE LIABILITY SHALL IN THIS CASE BE LIMITED TO DAMAGE THAT IS TYPICAL FOR THE CONTRACT AND THAT CAN BE REASONABLY FORESEEN. MOREOVER, THE LIABILITY FOR EACH INDIVIDUAL CASE OF DAMAGE SHALL BE LIMITED TO THE AMOUNT OF THE APPLICABLE FEE.

AS FOR THE REST, ANY CLAIMS FOR DIRECT OR INDIRECT DAMAGES (ON ANY LEGAL BASIS WHATSOEVER, INCLUDING ANY COMPENSATION CLAIMS BASED ON BREACH OF ANY PRE-CONTRACTUAL DUTY, OR TORTIOUS CLAIMS) SHALL BE EXCLUDED.

THE PARTIES UNDERTAKE IN THE EVENT OF DAMAGE OCCURRING OR HAVING ALREADY OCCURRED TO MAKE ALL NECESSARY EFFORTS OR TO ARRANGE FOR SUCH EFFORTS TO BE MADE WITHOUT DELAY IN ORDER TO LIMIT THE DAMAGE AND ITS EFFECTS TO A MINIMUM.

THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR PERSONAL INJURY OR DEATH RESULTING FROM THE VENDOR'S NEGLIGENCE, FRAUD, OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.

SECTION 9. QAPPS & RUNBOOKS.

9.1 The Programs and Documentation, including DE, may permit Ordering Activity to query and parse information, including, but not limited to, device configurations, performance parameters, figures, statistics, and properties ("Network Data") on Ordering Activity's network by executing a "Qapp". 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 analyze Network Data. In addition, the Programs and Documentation, including DE, may permit Ordering Activity to compile, serialize, or otherwise configure routine networking procedures and operations which a Ordering Activity can execute systematically through the Programs to address certain network problems ("Runbooks").

(a) ORDERING ACTIVITY QAPPS AND RUNBOOKS.

(i) A "Ordering Activity Qapp" is a Qapp that is created by Ordering Activity using an original Filter, or set of Filters, developed by Ordering Activity 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").

(ii) A "Ordering Activity Runbook" is a Runbook that is compiled and/or configured by Ordering Activity 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.

(b) Ordering Activity acknowledges that the Programs and Documentation may be configured to permit Ordering Activity to develop Qapps and Runbooks with different levels of access control (which may permit access by individuals outside Ordering Activity's organization. Ordering Activity has sole responsibility for determining the type of access controls that will apply to the Qapps and Runbooks that Ordering Activity may develop. Subject to the provisions of this Agreement, Ordering Activity retains all right, title, and interest in Ordering Activity Qapps and Ordering Activity Runbooks.

9.2 In the event Ordering Activity uploads Ordering Activity Qapps and/or Ordering Activity Runbooks to NetBrain's website (currently known as the "NetBrain Exchange"), unless the NetBrain Exchange includes a facility for Ordering Activity to impose Ordering Activity's own end user license terms on recipients/users of the Ordering Activity Qapps and Ordering Activity Runbooks, Ordering Activity's distribution of Qapps and Runbooks through the NetBrain Exchange shall be governed by the NetBrain Exchange Terms of Use.

9.3 NetBrain makes no representations or warranties of any kind that the Qapps or Runbooks developed by Ordering Activity will operate in accordance with the anticipated parameters of any of the access controls chosen by Ordering Activity. It shall be the sole responsibility of Ordering Activity to ensure that all Ordering Activity Qapps and Ordering Activity Runbooks operate as intended, and Ordering Activity 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 Ordering Activity Qapp or Ordering Activity Runbook to operate as intended.

9.4 NetBrain accepts no responsibility or liability of any kind for any loss or damage caused by Ordering Activity Qapps or Ordering Activity 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.

9.5 NETBRAIN QAPPS & RUNBOOKS. NetBrain may also generate and distribute Qapps ("NetBrain Qapps") and Runbooks ("NetBrain Runbooks"). NetBrain Qapps and NetBrain Runbooks include, but are not limited to, any Qapp or Runbook which (i) has been made generally available by NetBrain through the Programs and Documentation, an Evaluation License, DE, any Program Deliverable or any other distribution method, or (ii) has been customized for Ordering Activity by NetBrain, in part or in whole. NetBrain retains all right, title, and interest in all NetBrain Qapps and NetBrain Runbooks.

SECTION 10. NETBRAIN CHANGE MANAGEMENT.

10.1 The Programs and Documentation enable a Ordering Activity to push automatic changes to a Ordering Activity network by using Change Management.

10.2 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 a Ordering Activity network. Any network changes derived from Change Management require the authorization of Ordering Activity, and therefore Ordering Activity understands that any changes made to a Ordering Activity network via Change Management are the sole responsibility of Ordering Activity, regardless of any contrary direction provided by NetBrain, or the Programs and Documentation. NetBrain makes no warranties, either express or implied, with respect to the use of Change Management, including efficacy of changes defined through Change Management. Ordering Activity acknowledges and agrees that NetBrain, its Affiliates and their respective officers, directors, employees, agents and representatives are not liable for any loss, costs, expenses, or damages caused by or resulting from Ordering Activity's misuse of Change Management on a network sustained by Ordering Activity, its Affiliates, or any third party. In the event of any failure of Ordering Activity's network resulting from Change Management, NetBrain will endeavor to assist Ordering Activity in rectifying the problem pursuant to Section 3 of the Agreement, provided that Ordering Activity is currently subscribed to Maintenance Services with NetBrain.

SECTION 11. MISCELLANEOUS.

11.1 CONFIDENTIAL INFORMATION.

(a) By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information will include: all technical and business information, including without limitation all Programs and Documentation provided by NetBrain, planning, pricing and offerings for products and services (excluding the GSA Schedule Pricelist); 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: (i) is or becomes generally known to the public through no act or omission of the receiving

party; (ii) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the other receiving party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

(b) The parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and for a period of three (3) years after termination of this Agreement. Notwithstanding the foregoing, Ordering Activity will keep the Programs and Documentation confidential indefinitely after termination of this Agreement. The parties agree, unless required by law, 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, and in no case with less than a reasonable degree of care.

(c) It shall not be a breach of this section if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided the party served with such process promptly notifies the other party and provides reasonable assistance so that the other party may seek a protective order against public disclosure (except to the extent providing such notification is legally prohibited). NetBrain recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

(d) 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 and shall be liable for any such disclosure or distribution.

(e) Each party agrees not to use the other party's Confidential Information for any purpose other than the performance of this Agreement. Each party shall not disclose the terms of this Agreement or the ongoing business relationship initiated by this Agreement except as required by law or governmental regulation without the other party's prior written consent, except that each party may disclose the terms of this Agreement on a confidential basis to its accountants, attorneys, parent organizations, Affiliates and financial advisors and lenders.

11.2 EXPORT REGULATIONS. Ordering Activity and NetBrain acknowledge that the Programs, Document(s) 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, to the extent applicable, Ordering Activity and NetBrain shall: (a) comply with all requirements set forth in such laws and regulations; and (b) cooperate fully with each other in any official or unofficial audit or inspection that relates to such export requirements. Without limiting the generality of the foregoing, Ordering Activity agrees that the Program is 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, as such is changed from time to time.

11.3 PUBLICITY. Notwithstanding the provisions of Section 11.1(e), subject to Ordering Activity's prior written consent, Ordering Activity permits NetBrain to use Ordering Activity's name, for marketing purposes to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, including, but not limited to use in NetBrain marketing materials or on NetBrain's website. NetBrain agrees not to use the Ordering Activity Trademark. NetBrain understands and agrees that the Ordering Activity Trademark is proprietary to Ordering Activity, and Ordering Activity retains all rights, title, and interest thereto.

11.4 NON-SOLICITATION. During the term of this Agreement and for a period of one (1) year following termination, Ordering Activity shall not directly or indirectly solicit, encourage or attempt to hire or engage any employee of NetBrain to become employed by Ordering Activity, or to become engaged as a contractor or subcontractor except through NetBrain, without NetBrain's prior written consent except that Ordering Activity shall not be precluded from hiring any employee who (a) initiates discussions regarding such employment without any direct or indirect solicitation by Ordering Activity; (b) responds to any public advertisement placed by Ordering Activity; or (c) has been terminated by NetBrain prior to commencement of employment discussions between Ordering Activity and such employee.

11.5 NOTICES. All notices, demands, or other communications herein provided to be given or that may be given by any party to the other shall be deemed to have been duly given when made in writing and delivered in

person, or upon receipt, if (a) deposited in the postal system/mail, postage prepaid, certified or registered mail, return receipt requested, or (b) sent by reputable overnight courier addressed to the relevant parties at the address set forth at the beginning of this Agreement.

11.6 AMENDMENTS. All amendments, modifications, or supplements to this Agreement must be in writing and signed by the authorized representatives of both parties, and all such changes shall reference this Agreement and identify the specific articles or sections of this Agreement to be amended, modified, or supplemented.

11.7 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, not to be unreasonably withheld or delayed, except to the extent any proposed assignment by Ordering Activity is to an existing client of NetBrain, in which case NetBrain may withhold consent in its sole discretion. Any assignment by NetBrain will be in accordance with FAR 42.1204. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of, and is enforceable by the parties and their respective successors and assigns.

11.8 NON-WAIVER. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement 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.

11.9 ENTIRE AGREEMENT. This Agreement and all of its attached exhibits, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitute the entire agreement, and supersede any and all prior agreements, including any discussions, whether written or oral, between NetBrain and Ordering Activity relating to the Programs and Documentation, services and other items subject to this Agreement. Any terms and conditions contained in any non-negotiated Order, request for proposal, request for information or other documents submitted by Ordering Activity 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. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. By entering into this Agreement, Ordering Activity acknowledges and agrees that it shall receive only the Programs, Maintenance 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.

11.10 GOVERNING LAW, JURISDICTION AND MEDIATION. This Agreement will be governed by the Federal laws of the United States.

11.11 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.

11.12 FORCE MAJEURE. Excusable delays shall be governed by FAR 52.212-4(f).

11.13 SEVERABILITY. In the event that 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.

11.14 RELATIONSHIP OF THE PARTIES. This Agreement shall not be construed as creating an 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 contractors. Except as expressly agreed 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.

11.15 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.

11.16 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.

11.17 NO RULE OF STRICT CONSTRUCTION. The language used in this Agreement will be deemed to be the language jointly chosen by NetBrain and Ordering Activity 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.

11.18 SURVIVAL. All provisions which by their nature and context impose continuing obligations on the parties shall survive any termination of this Agreement, including but not limited to, Ordering Activity's unsatisfied payment obligations.

EXHIBIT B

ESCALATION PROCEDURES AND PROCESSES FOR PROGRAMS ERROR RESOLUTION

Classification of Errors

All Errors reported by Ordering Activity to NetBrain shall be assigned a Severity Level by NetBrain. The point of contact throughout this initial Error reporting procedure shall be the applicable NetBrain support representative available to Ordering Activity under the terms of this Agreement. Reported Errors shall be classified as follows:

Severity Level 1: Severity Level 1 implies that the Programs is/are not functioning as a whole or in material part.

Examples:

Both workstation software and server software is down and could not restart.

Severity Level 2: Severity Level 2 implies that the Programs is/are running but that Ordering Activity is unable to use a portion of the Programs that is critical to Ordering Activity's operations, and no Bypass currently exists.

Examples:

Production system is generating data corruption with no Bypass.

Major functional component is unavailable with no Bypass.

Severity Level 3: Severity Level 3 implies that the Programs is/are operating close to normal, but there is a material Error for which an operational Bypass currently exists.

Severity Level 4: Severity Level 4 includes purely cosmetic Errors and Documentation anomalies.

Out-of-Scope: A reported problem is out-of-scope when it is determined not to be related to the Programs and is beyond the bounds of NetBrain's responsibility. Examples of such unrelated problems include, but are not limited to, Ordering Activity hosted applications or programs, Ordering Activity hardware and cabling, power or environmental conditions, and human error.

RESOLUTION OF ERRORS

Severity Level 1

Error Resolution: Immediate steps shall be taken toward solving the Error. If required, NetBrain staff shall be moved off of lower Severity Level Errors to service Severity Level 1 Errors.

Resource Commitment: When a Severity Level 1 Error is reported, NetBrain shall assign resources required to address the Error. If system access is required, Ordering Activity shall provide a contact available to NetBrain and access to its system and Programs for the duration of the Error correction procedures.

Resolution Plan: Within forty-eight (48) hours of receipt of the Error Report, NetBrain will begin development of a resolution plan designed to address the Error.

Escalation and Status Thresholds: When a Severity Level 1 Error Report is opened, the following escalation and status procedures shall be followed.

Hour 1–Hour 24

1. The Error shall be resolved by NetBrain first line support; or
2. The Error will be referred to the maintenance engineering group. All log files and a description of the work done by NetBrain will be transferred to this group. The report will receive an Error Report number which will be entered into the case manager. The error will be passed to the maintenance engineering group via e-mail.
3. The Ordering Activity will be notified of the status of the Error.

Hour 24

1. The maintenance engineering point of contact will resolve the Error; or
2. It will be decided that more resources are required to work on the Error.
3. The Ordering Activity will be notified of the status of the Error.

Hour 48+

1. Resolution Plan completed;
2. The maintenance engineering point of contact will resolve the Error; or
3. The maintenance engineer will continue working to resolve the Error.

4. The Ordering Activity will be notified of the status at this stage.

Severity Level 2

Error Resolution: Severity Level 2 Errors will be analyzed in the order that they are reported. Severity Level 1 Errors will take priority over Severity Level 2 Errors.

Resource Commitment: Appropriate technical resources will be assigned to Severity Level 2 issues as long as Severity Level 1 Errors are not open.

Resolution Plan: Within seventy-two (72) hours of receipt of the Error Report, NetBrain will begin development of a resolution plan designed to address the Error.

Escalation and Status Thresholds: When a Severity Level 2 Error Report is opened, the following escalation and status procedures will be followed.

Hour 1 – Hour 36

1. The Error shall be resolved by NetBrain; or
2. The maintenance point of contact person will be contacted. All log files and a description of the work done by NetBrain will be transferred to this group. An Error Report number will be assigned and entered in the trouble tracking system.
3. The Ordering Activity will be notified of the status at this stage.

Hour 36 – Hour 72+

1. Resolution Plan completed;
2. The maintenance engineering point of contact will resolve the Error; or
3. The maintenance engineer will continue working to resolve the Error.
4. The Ordering Activity will be notified of the status at this stage.

Severity Level 3

Error Resolution: Severity Level 3 Errors shall be researched after Severity Level 1 and Severity Level 2 Errors. The majority of the Severity Level 3 Errors shall be scheduled for correction and be resolved as part of scheduled future Update.

Resource Commitment: The majority of the Severity Level 3 Fixes shall be included in a future Update.

Completion Goal: The completion goal and objective shall be to correct Errors in a future Update.

Escalation and Status Thresholds: The status of Severity Level 3 Errors shall be available on demand. Upon Ordering Activity 's request, a quarterly report will be distributed that will reference any uncorrected Errors that are over ninety (90) days old.

Severity Level 4

Error Resolution: Severity Level 4 Errors shall be addressed at NetBrain's discretion after Severity Level 1, Severity Level 2, and Severity Level 3 Errors are corrected. Severity Level 4 Errors shall be reviewed by NetBrain's maintenance engineering team for correction in a future release of the Programs.

Escalation and Status Thresholds: The status of Severity Level 4 Errors shall be available on request.