NETBRAIN VENDOR TERMS AND CONDITIONS

1. **GENERAL**. The vendor (the "**Vendor**") identified on the attached Purchase Order (the "**PO**") shall provide to the purchaser, the NetBrain entity as identified on the PO ("**NetBrain**") all products and/or services set forth in the PO in accordance with the terms and conditions set forth herein (collectively, such product, services, and any other consideration promised, the "**Deliverables**").

2. **PURCHASE ORDER**. The PO, these terms and conditions, and any written instructions or schedules supplied by NetBrain herewith or issued by NetBrain pursuant hereto (collectively, this "**Agreement**"), constitute the complete and final agreement between NetBrain and Vendor with respect to the Deliverables, and no agreement or other understanding in any way purporting to modify or rescind the Agreement shall be binding upon NetBrain unless otherwise agreed to by NetBrain in writing. If the Vendor has submitted a bid or proposal that contains any terms or conditions that are different from, in addition to, or inconsistent with the terms and conditions herein, NetBrain expressly rejects such terms and conditions, and the terms and conditions of this Agreement shall govern. Any acceptance by NetBrain of Vendor's bid, proposal, or other ordering document is expressly made conditional on Vendor's assent to all terms and conditions of this Agreement. This Agreement shall be deemed to be accepted by Vendor as of the earliest date on which Vendor does any of the following: (a) signs the PO; or (b) either, (i) consents to the Agreement by writing; or (ii) commences providing any part of the Deliverables, at which point and on which date a legally binding contract between the parties as to the Agreement comes into existence. Acceptance of this Agreement constitutes acceptance of all specifications, terms, and conditions herein. Any addition to or modification of any terms or conditions of this Agreement by Vendor is to be construed as a proposal for additions to this Agreement.

3. **DELIVERY**. Delivery shall be made at such place(s) as NetBrain may specify, in accordance with the shipping instructions provided by NetBrain. Vendor shall keep NetBrain fully informed of progress under the PO and shall promptly notify NetBrain of any delays in delivery. Vendor shall follow NetBrain's instructions as to manner of shipment, carriers, routing, prepayment of freight, and other matters. NetBrain may at any time, by notice to Vendor, make changes in: (i) the Specifications (DEFINE) applicable to the Deliverables; and (ii) the method of shipment and packing, the place of delivery/performance, and/or the delivery/performance schedules for the Deliverables. If any such changes increase or decrease the cost or time required to perform under this Agreement, NetBrain may make, in its sole discretion, an equitable adjustment in the purchase price or the delivery schedule, or both.

4. **TIMELINESS**. Time is of the essence in this Agreement and with respect to the fulfillment of the PO. Vendor shall provide the Deliverables in accordance with the time frame(s) set forth in the PO or otherwise communicated by NetBrain to Vendor. NetBrain shall not be obligated to pay for any Deliverables that are not delivered to NetBrain within such time frame(s).

5. **OWNERSHIP**. Vendor agrees: (i) that any services rendered, equipment and personnel supplied, and rights granted pursuant to this Agreement shall not confer in Vendor any rights of ownership in the subject matter of this Agreement, the Deliverables, or any part thereof, which

shall remain exclusively in NetBrain; and (ii) any material produced by or on behalf of NetBrain pursuant to this Agreement shall be considered a "work made for hire" as contemplated by the United States Copyright Act and to the extent said material is not recognized as a "work made for hire," Vendor hereby assigns all rights of copyright and copyright renewal in said material or any part thereof to NetBrain.

6. **WARRANTIES**. Vendor represents and warrants that: (i) the Deliverables shall be provided in a professional manner with reasonable skill, care and diligence and in accordance with industry standards; and (ii) the Deliverables shall not infringe upon the intellectual property rights or misappropriate or violate in any respect, when used by NetBrain, the confidentiality rights of any third parties; (iii) the Deliverables will conform to the specifications, instructions, drawings, requirements, standards, samples, or other descriptions set forth in this Agreement (including the PO) or otherwise furnished or specified by NetBrain (collectively, the "**Specifications**"), and will be fit and sufficient for the purposes intended, and are merchantable, of good material and workmanship, and free from defect; and (iv) all Deliverables provided hereunder shall meet the highest standards of the relevant industry (including without limitation information security standards). Vendor warrants that the Deliverables and NetBrain's purchase, use or sale of thereof, in the form furnished to NetBrain, or as changed or combined in accordance with Vendor's specifications or recommendations, will not violate, misappropriate and/or infringe any valid patent, copyright, trademark, trade secret or other proprietary rights, and Vendor agrees to defend any claim, action, or suit that may be brought against NetBrain for infringement of patent, copyright, trademark, trade secret or other proprietary right by reason of NetBrain's purchase, use, or sale of such Deliverables. The warranties recited in this Agreement shall be in addition to those implied by or available at law and shall exist notwithstanding the acceptance and inspection by NetBrain of all or a part of the Deliverables with respect to which such warranties and remedies are applicable.

7. **ACCEPTANCE**. NetBrain shall have thirty (30) days from delivery of any such Deliverable(s) to notify Vendor in writing, setting forth in reasonable detail any non-conformities, errors or deficiencies ("**Acceptance Period**"). If NetBrain fails to accept or reject the Deliverables during the Acceptance Period, the Deliverables will be deemed accepted. If NetBrain rejects the Deliverables during the Acceptance Period, any fees paid by NetBrain for such Deliverables will be refunded by Vendor. If NetBrain determines at its sole discretion that the Deliverables do not satisfy the Specifications, NetBrain may, at its option, require that Vendor (i) promptly re-perform or replace the Deliverables such that they satisfy all Specifications; or (ii) terminate this Agreement and/or any portion of the PO, in which case Vendor shall immediately refund to NetBrain all amounts previously paid for the applicable Deliverables, and NetBrain shall have no further payment obligation for the terminated Deliverables.

8. **INVOICES & PAYMENT TERMS**. The fees payable for the Deliverables are as set forth in the PO, and are inclusive of all costs and expenses necessary to provide the Deliverables (except as expressly set forth herein), and no extra charges of any kind, including charges for boxing, packing, loading, or freight, will be allowed unless specifically agreed to by NetBrain in writing. NetBrain shall not be required to pay for Deliverables rendered by Vendor until NetBrain receives

a complete and accurate invoice for such Deliverables from Vendor. No partial invoicing shall be permitted unless expressly set forth in the PO. NetBrain has sixty (60) days from NetBrain's receipt of a complete and accurate invoice to pay for the Deliverables described therein, unless expressly provided otherwise in the PO. Notwithstanding the foregoing, NetBrain may withhold payment of invoiced amounts that NetBrain disputes in good faith. In the event NetBrain withholds payment of any disputed amounts as provided in the previous sentence, Vendor shall continue to perform its obligations under the PO notwithstanding such dispute.

9. **TAXES**. There shall be added to any charges under this PO amounts equal to any applicable taxes, however designated, levied or based on the Deliverables, including sales and use taxes, paid or payable by NetBrain. Such taxes shall be identified separately as such on the invoice(s). Vendor shall be responsible for collecting and remitting taxes imposed in connection with purchasing or using the Deliverables hereunder, as required by applicable taxing or governmental authorities, and for any resulting penalties or interest imposed by such authorities for failure to collect and remit. NetBrain shall not be charged for, and Vendor shall pay, any taxes based on the net or gross income of Vendor or taxes imposed on Vendor in lieu of income taxes or income tax increases.

10. **TERMINATION**. The term of this Agreement shall commence on the date set forth in the PO (or, if earlier, the date on which this Agreement is accepted as described in Sections 2 and 7) and shall continue until Vendor has completed providing all Deliverables to NetBrain's satisfaction. NetBrain may terminate this Agreement, in whole or in part, at any time without cause and without incurring any liability. NetBrain's sole and exclusive obligation to Vendor upon such termination shall be the payment of unpaid charges due and payable for Deliverables properly performed or provided in accordance with the terms hereof as of the effective date of termination.

11. **SECURITY**.

A. ACCESS TO NETBRAIN SYSTEMS. To the extent Vendor may be given access to NetBrain's hardware, software, applications, equipment, network or computer systems (collectively, "**NetBrain Systems**"), Vendor shall comply with the applicable NetBrain Systems security policies and/or procedures as provided and/or communicated to Vendor and as may be revised by NetBrain from time to time, and will not tamper with, compromise or circumvent those security policies or procedures. Vendor shall be responsible for all actions of Vendor's personnel ("**Vendor Personnel**") relating to its and their access to the NetBrain Materials (as defined in Section 11 hereof) and NetBrain Systems, including without limitation, use of any logon IDs, passwords or other authentication methods provided to Vendor and/or Vendor Personnel. Unless otherwise permitted by NetBrain in writing, Vendor and Vendor Personnel shall not access, and shall not permit unauthorized persons or entities within its control to access NetBrain Systems without NetBrain's express written authorization, and any such actual or attempted access must be consistent with any such authorization. All connectivity or attempted connectivity of Vendor and Vendor Personnel to NetBrain Systems shall be only through NetBrain's security gateways or firewalls. To the greatest extent possible, Vendor shall restrict access to the NetBrain Materials and NetBrain Systems to the least degree of access required to provide the Deliverables (principle of least privilege). Any access by Vendor and Vendor Personnel to the NetBrain Materials and/or NetBrain Systems shall be solely and exclusively for providing the Deliverables. Vendor and

Vendor Personnel shall not access from, store, cache or download any NetBrain Materials to any means of physical or electronic data storage now known or later developed, not limited to physical, portable, and cloud based electronic data storage devices and services (**"Data Storage Device or Medium"**) unless such Data Storage Device or Medium is protected by Vendor's firewall. Any Data Storage Device or Medium used by Vendor or Vendor Personnel to access NetBrain Materials and/or the NetBrain Systems must be explicitly authorized by NetBrain for such purpose and subject to full disk encryption at the device level (using a commercially recognized encryption algorithm) (**"Vendor Authorized Device"**). Failure to materially comply with this Section 11 and the NetBrain security policies shall be a material breach of this Agreement.

B. SECURITY INCIDENT NOTIFICATIONS. Vendor shall immediately notify NetBrain if it becomes aware of any actual or suspected unauthorized access, disclosure, loss, or use of the NetBrain Materials and/or NetBrain Systems (a "**Security Incident**"). Vendor shall cooperate with NetBrain (and/or its agents or any governmental or regulatory authority) and provide all documentation and information as requested by NetBrain or such third party on NetBrain's behalf in any investigation of a Security Incident, and the results of any such investigation will be the Confidential Information of NetBrain. Vendor shall not publicize or serve any notice with respect to any Security Incident, except as may be required by law.

12**. AUDIT**. During the Subscription Period and for a period of two (2) years thereafter, NetBrain may audit Vendor and Vendor's records to confirm its compliance with the terms of this Agreement, provided that it gives Vendor at least thirty (30) days prior written notice. Any such audit shall be conducted during regular business hours and shall not unreasonably interfere with Vendor's business activities. All information disclosed by Vendor during the course of the audit 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. All audits shall be conducted at NetBrain's sole cost and expense unless the audit reveals a material variance in compliance with the terms of this Agreement, in which case Vendor shall be liable to NetBrain for all reasonable audit expenses incurred by NetBrain.

13. **CONFIDENTIALITY**.

A. Any technical, financial, or other information of NetBrain, and any other information, property, trade secrets, materials, documentation, or data of NetBrain and/or any affiliate, subsidiary, or parent of NetBrain (each, a "**NetBrain Affiliate**"), and any employee or contactor of NetBrain or any NetBrain Affiliate that is received by Vendor is referred to herein as "**NetBrain Materials**". Vendor shall hold in confidence and not disclose the NetBrain Materials, and Vendor shall not use the NetBrain Materials for any purpose except solely as needed to provide the Deliverables. Vendor shall not access or attempt to access any NetBrain Materials that are not provided by NetBrain for the purposes of providing the Deliverables hereunder. Vendor shall return (or, to the extent expressly instructed by NetBrain, destroy) all NetBrain Materials at the earlier to occur of NetBrain's request or the termination or expiration of this Agreement. All NetBrain Materials are the Confidential Information of NetBrain and shall remain the sole and exclusive property of NetBrain. Vendor shall be responsible for any and all risk of loss and damage to NetBrain Materials that are provided to Vendor in connection with this Agreement. The obligations set forth

in this Section 13 hereunder shall survive for a period of three (3) years following the last date on which Vendor provides any Deliverables hereunder.

B. Neither party shall disclose any of the other party's Proprietary Information (as defined herein) to any third party and shall use and disclose such Proprietary information only on a need-to-know basis for purposes of performing its obligations under this Agreement, or in the case of NetBrain, for purposes of using the Deliverables and/or exercising its rights granted hereunder. "**Proprietary Information**" means the know-how, trade secrets, and Confidential Information of the disclosing party (or of a third party providing such information to the disclosing party). "**Confidential Information**" means any information or material in tangible or intangible form that: (a) is confidential and proprietary to the disclosing party, which derives economic value from not being generally known and is the subject of reasonable efforts by the disclosing party to maintain its secrecy; or (b) the disclosing party obtains from any third party which the disclosing party treats as proprietary or confidential whether or not owned by the disclosing party. This Agreement and its terms are Confidential Information. Notwithstanding anything to the contrary herein, NetBrain shall have the right to share or disclose all or any part of this Agreement, and all associated documents and amendments, and any Proprietary Information disclosed to NetBrain with any NetBrain Affiliate. For purposes of this Agreement, Proprietary Information shall not include information or material which (i) enters the public domain (other than as a result of a breach of this Agreement); (ii) was in the receiving party's possession prior to its receipt from the disclosing party; (iii) is independently developed by or on behalf of the receiving party without the use of the disclosing party's Proprietary Information; (iv) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (v) must be disclosed due to a judicial or governmental requirement or order, provided that where permitted by law (A) the receiving party has given the disclosing party reasonable prior notice of such requirement or order to give the disclosing party a reasonable opportunity to object or to seek a protective order or other appropriate remedy, (B) the receiving party reasonably cooperates with the disclosing party so that it may object or seek a protective order or other appropriate remedy, and (C) the receiving party in any event discloses only that portion of the Proprietary Information that it is legally required to disclose. The confidentiality obligations set forth in this Section 13 shall continue for three (3) years following termination or expiration of this Agreement. The receiving party acknowledges that disclosure of any Confidential Information or trade secret by it or its employees or subcontractors will give rise to irreparable injury to the disclosing party or the owner of such information, not adequately compensated by damages. Accordingly, the disclosing party will be entitled to equitable relief, including injunctive relief and specific performance against the breach or threatened breach of the undertakings in this Section 13, in addition to any other legal remedies which may be available. The receiving party further acknowledges and agrees that the covenants contained in this Section 13 are necessary for the protection of the disclosing party's legitimate business interests and are reasonable in scope and content. All Proprietary Information shall remain the property of the disclosing party and no license or other rights to the disclosing party's Proprietary Information is granted or implied hereby. Upon the earlier of the disclosing party's request or the termination or expiration of this Agreement, the receiving party shall, at the disclosing party's option, promptly destroy or return all Proprietary Information, including all

copies thereof in whatever medium, in its possession or control, and in either event provide a written certification confirming the same.

C. Vendor shall not submit any Sensitive Personal Information to NetBrain or NetBrain's Affiliates in any manner or by any means, including but not limited, to Vendor's submission of any tax form or other document required for Vendor's incorporation into NetBrain's payment system. Vendor will hold NetBrain and/or NetBrain's Affiliates free of all liability and responsibility for any actions or results or adverse situations created as a result of any Sensitive Personal Information Vendor submits to NetBrain or NetBrain's Affiliates, and Vendor will indemnify and defend NetBrain and/or NetBrain's Affiliates and hold NetBrain and/or NetBrain's Affiliates harmless from any third party claim arising in connection with Vendor's failure to comply with this Section 13. For the purposes of this Section 13, "**Sensitive Personal Information**" means government Identification numbers or financial account numbers associated with individual persons (e.g US. Social Security numbers, driver's license numbers, or personal credit card or banking account numbers), and medical records or health care claim information associated with individuals, including claims for payment or reimbursement for any type of medical care for an individual.

14. **REMEDIES; WAIVER**. The remedies herein reserved shall be cumulative, and additional to any other or further remedies provided at law or equity. No failure to enforce or insist upon strict compliance with any provision of this Agreement shall be deemed to constitute a waiver of rights to demand strict compliance with the terms hereof. No waiver of any term or condition of this Agreement shall be deemed or construed to be a waiver of such term or condition in the future, or of any subsequent breach of said term or any other terms of this Agreement. In the event of a breach by NetBrain, Vendor waives equitable relief and its remedies shall be limited solely to an action for damages at law. Vendor acknowledges that (a) the Deliverables are of a unique nature, (b) NetBrain cannot be adequately compensated at law for any breach by Vendor, and (c) NetBrain shall be entitled to, among other remedies, injunctive relief in the event of Vendor's breach.

15. **INDEMNIFICATION**. A. Vendor indemnifies and holds NetBrain, and NetBrain Affiliates, its and their licensees, successors and assigns, and each of their respective officers, directors, agents and employees (referred to collectively hereinafter as "**Indemnified Parties**") harmless from and against any damages, liabilities, claims, demands, costs, and expenses, including without limitation, court costs and reasonable attorneys' fees and expenses, of whatsoever type or nature or howsoever incurred (referred to collectively hereinafter as "**Damages**"), incurred by the NetBrain Indemnified Group in connection with any claims, demands, litigation, liabilities, or actions brought against NetBrain alleging that (i) the Services infringe any patent, copyright, trade secret, trademark, or any other proprietary right of any third party or; (ii) for Vendor's breach of any provisions of this Agreement. Vendor also agrees to indemnify and hold NetBrain harmless from and against all claims, demands, judgments, decrees, damages, costs, and expenses recovered against NetBrain or sustained by NetBrain on account of such actual or alleged infringement.

16. **INSURANCE**. Vendor shall maintain in full force and effect during the term of this Agreement the following insurance coverage: (i) employer's liability insurance coverage including bodily injury coverage, with a minimum of five hundred thousand dollars ($500,000) for each employee;

(ii) comprehensive general liability insurance coverage, including contingent coverage, bodily injury, and property damage with minimum limits of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate, (iii) excess umbrella limits of five million dollars ($5,000,000), and (iv) errors and omissions coverage with a limit of five million dollars ($5,000,000). This insurance shall continue to be maintained by Vendor for a period of not less than one (1) year following termination of this Agreement. Upon NetBrain's request, Vendor shall provide NetBrain with a copy of Vendor's certificate of insurance naming NetBrain as an additional insured.

17**. LIMITATION OF LIABILITY**. UNDER NO CIRCUMSTANCES SHALL NETBRAIN OR NETBRAIN AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, ALL (DIRECT OR INDIRECT) LOST PROFITS OR LOST BUSINESS OPPORTUNITIES, HOWEVER ARISING, WHETHER FROM THIS AGREEMENT, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, WHETHER OR NOT NETBRAIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, UNDER NO CIRCUMSTANCES SHALL NETBRAIN'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, EXCEED THE LESSER OF (i) FEES PAID BY NETBRAIN TO VENDOR IN THE PRIOR TWELVE (12) MONTHS OR (ii) TEN THOUSAND DOLLARS ($10,000 USD).

18**. NAME USAGE**. Vendor shall not use or reference NetBrain's or any NetBrain Affiliate's name, logo, marks, or materials for any advertising, marketing, sales, or promotional purposes (including press releases or the inclusion of NetBrain's or any NetBrain Affiliate's name on any customer list of Vendor) or any other purpose without the express written consent of NetBrain in each instance.

19. **ASSIGNMENT AND DELEGATION**. Except by written consent of NetBrain, Vendor shall not delegate or subcontract in any manner to any other person or entity the performance of any Deliverables nor assign this Agreement and/or any of Vendor's rights or obligations hereunder.

20. **COMPLIANCE WITH LAW AND INDUSTRY BEST PRACTICES.** Vendor shall comply with all applicable international, federal, state and local laws, rules, regulations, and orders. Vendor shall adhere to industry best practices and applicable industry compliance (including security) standards.

21. **NOTICES**. Any notice or communication required to be given by either party under this Agreement shall be in writing and shall be hand delivered, sent by certified or registered mail, return receipt requested, or sent by a nationally recognized overnight courier to the addresses indicated below. Such notices shall be deemed given on the date delivered if hand delivered or on the date it is officially recorded as delivered by return receipt or recordation by the overnight courier service. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this Section 21. All notices to Vendor shall be provided at the address set forth in the PO. All notices to NetBrain shall be provided at the address set forth in the PO with

a copy to: ATTN: Purchasing Department, NetBrain Technologies, Inc., 15 Blue Sky Drive, Burlington, MA 01803, USA.

22**. GOVERNING LAW; JURISDICTION AND VENUE**.

A. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of Delaware, USA, without regard to its conflict of law provisions. The exclusive jurisdiction for any dispute, controversy or claim arising out of or relating to this Agreement shall be the state and federal courts located in Wilmington, Delaware; provided that either Party may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce or protect its intellectual property rights or Confidential Information.

B. In the event of any Dispute arising out of this Agreement, the parties agree to escalate the dispute to members of their respective senior management team, and such personnel shall negotiate in good faith to attempt to resolve the Dispute.

C. In the event the parties' senior managers are unable to resolve the Dispute, except as otherwise provided in this Agreement, no civil action or arbitration with respect to any Dispute may be commenced until the matter has been submitted for non-binding mediation in Wilmington, Delaware, USA to a single mediator through the American Arbitration Association and conducted in accordance with its Commercial Mediation Procedures ("**Mediator**"). The parties agree to participate in the mediation in good faith, to share equally the Mediator fees and costs, and to otherwise bear their own respective attorneys' fees and costs incurred in connection with any mediation hereunder. 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, shall be governed by Rule 408 of the Federal Rules of Evidence.

D. Notwithstanding the foregoing, either party may seek equitable relief from a court of competent jurisdiction in Wilmington, Delaware, USA at any time in order to protect its Intellectual Property Rights and Confidential Information. Except for such an action to obtain equitable relief, neither party may commence an arbitration or civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first.

E. Thereafter, and subject to the equitable relief exception detailed above, the parties agree to resolve all Disputes solely by binding arbitration in Wilmington, Delaware, USA before a single arbitrator through the American Arbitration Association and in conducted accordance with its Commercial Arbitration Rules ("**Arbitrator**"), on an individual basis only (i.e., neither party may bring a claim in arbitration or in court as a class action or in a representative capacity, nor participate as a member in any such class or representative action). This Section is a written agreement to arbitrate governed by the Federal Arbitration Act. Each party shall pay their respective attorneys' fees. The parties agree that any dispute, mediation, and arbitration (including the materials, proceedings, and existence thereof) is Confidential Information. UNLESS A SHORTER TERM IS PROVIDED FOR UNDER APPLICABLE LAW, ANY ACTION

AGAINST NETBRAIN MUST BE BROUGHT NO LATER THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

23. **FORCE MAJEURE**. Neither NetBrain nor Vendor shall be liable for any delay in performing or a failure to perform under this Agreement arising from strikes, labor unrest, fires, acts of God, war, acts of government or any federal, state, local, public, or administrative authority, or any other causes, contingencies, or occurrences beyond the control and without the fault or negligence of NetBrain or Vendor. In the event of a failure by Vendor to perform under this Agreement arising from any of the causes or events set forth in this Section, NetBrain shall be entitled to terminate this Agreement as to all undelivered Deliverables or unperformed services or any part thereof or to obtain Deliverables covered by this Agreement elsewhere for the duration of such failure and to reduce, pro rata, and without any obligation to Vendor, the quantity or amount of Deliverables ordered from Vendor under this Agreement.

24. **HEADINGS**. The headings at the beginning of each of the Sections hereof are for reference only and shall not affect the meaning or construction of this Agreement.

25. **SURVIVAL**. The definitions contained herein and all Sections not explicitly excluded within this Agreement shall survive the termination or expiration of this Agreement for any reason.

26. **INDEPENDENT CONTRACTORS**. Vendor acknowledges and agrees that Vendor and its employees, agents, and contractors, are independent contractors, and are not agents or employees of NetBrain. Nothing herein shall be deemed to create an employment, joint venture, agency, or partnership relationship between the parties hereto, and neither party is authorized nor shall act toward any third party, individual, entity, or the public in any manner that would indicate any such relationship to the other.