

NETBRAIN PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("**Agreement**"), effective as of the Order Date (defined below), governs the provision of all professional services delivered by a NetBrain entity listed on an applicable Order ("**NetBrain**") and the customer and/or its Affiliate set forth in an applicable Order or Statement of Work for services (individually and collectively, "**Customer**").

1. **Definitions.** As used in this Agreement, the following terms shall have the meanings below:

- 1.1. "**Affiliate**" means any entity directly or indirectly controlling, controlled by, or under common control with another entity, where "control" means ownership of more than fifty percent (50%) of the voting stock, assets, or other equity interests of an entity, or the right to direct the management of such entity.
- 1.2. "**Deliverables**" means the specific services as defined in the relevant Service Package Offerings found at <https://www.netbraintech.com/legal-tc/> or as specified in an applicable Statement of Work.
- 1.3. "**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, and 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.
- 1.4. "**Order**" means a NetBrain order form, quotation, estimate, along with any applicable Statement of Work, or other equivalent NetBrain ordering document.
- 1.5. "**Order Date**" means the date set forth on an Order submitted to and accepted by NetBrain.
- 1.6. "**Professional Services**" means all services provided by NetBrain to Customer pursuant to an Order, including, but not limited to, training, deployment services, consulting services, implementation services, and custom development services, but does not include Support Services or Maintenance Services as they may be defined in an applicable End User License Agreement.
- 1.7. "**Service Package**" means NetBrain's pre-configured offerings of Professional Services, as more particularly set forth in the relevant Service Package Offerings found at <https://www.netbraintech.com/legal-tc/>. The Service Package Offerings are subject to change at any time in NetBrain's sole discretion, and any changes are incorporated into this Agreement by reference.
- 1.8. "**Product**" means NetBrain's proprietary software Programs and Documentation as defined in the applicable NetBrain End User License Agreement or mutually agreed upon software license agreement ("**EULA**").
- 1.9. "**Statement of Work**" or "**SOW**" means the document entered into between the parties which details specific Professional Services and Deliverables to be provided by NetBrain to Customer.

2. **Professional Services.**

- 2.1. NetBrain will provide Customer with the Professional Services specified in an applicable Order. In addition, NetBrain may, from time-to-time, provide Customer with additional Professional Services pursuant to additional Orders. All such Orders shall be such subject to the provisions of this Agreement.
- 2.2. The Professional Services shall be deemed delivered and completed in full in accordance with the provisions in the relevant Service Package Offerings found at <https://www.netbraintech.com/legal-tc/>.
- 2.3. NetBrain owns all right, title, and interest in and to all technology, ideas, designs, specifications, concepts, systems, techniques, works of authorship, inventions, or processes of any kind that are generated, discovered, invented, composed, conceived, or reduced to practice by NetBrain in connection with performing the Professional Services, as well as all Intellectual Property Rights therein. In addition, NetBrain shall be free to use without restriction, any

and all suggestions, ideas, enhancement requests, feedback, or recommendations made by Customer. All enhancements and modifications made to the Product or other offerings of NetBrain shall continue to be owned solely and exclusively by NetBrain. All Intellectual Property Rights belonging to a party prior to the Order Date shall remain vested in that party.

2.4. The Professional Services provided under this Agreement may support Customer's license to use the Product, pursuant to the EULA. The provisions of such EULA shall govern all use by Customer of the Product, including the Deliverables, and this Agreement does not grant any additional license or any other rights.

2.5. Unless otherwise provided for by applicable law and/or required for the designated use of the Deliverables, Customer will not:

- 2.5.1. Modify or prepare derivative works of the Deliverables except as expressly permitted under this Agreement or EULA;
- 2.5.2. Reverse engineer, disassemble, or decompile the Deliverables, or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats, or programming interfaces of the Deliverables by any means whatsoever;
- 2.5.3. Remove, obscure, or alter any notice of patent, copyright, trade secret, trademark, or other proprietary rights notices present on or in the Deliverables;
- 2.5.4. Sublicense, sell, lend, rent, lease, distribute, or otherwise transfer (or attempt to do any of the foregoing) all or any portion of the Deliverables to any third party, except as may be permitted by Section 11.4 hereof; and,
- 2.5.5. Use the Deliverables to provide services to third parties, or otherwise use the same on a "service business" basis.

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

3. **Change Orders.** Any changes to the Professional Services ordered by Customer pursuant to an Order, including any deviations from the standard Service Package configurations, including any changes to the fees, must be reflected in a written instrument signed by both parties.

4. **Payment.**

4.1. **Payment Terms.** In consideration for the Professional Services, Customer shall pay NetBrain the fees on the Order. Unless otherwise stated in an Order, NetBrain shall invoice Customer in advance and all fees shall be due and payable within thirty (30) days of the invoice date.

4.2. **Failure to Make Payment.**

4.2.1. Notwithstanding anything in this Agreement to the contrary, if Customer fails to make payment to NetBrain when due, NetBrain shall have the right to suspend the Professional Services, and if such failure has not been cured within fourteen (14) days of the due date, NetBrain may terminate this Agreement and any outstanding Orders without liability.

4.2.2. This Agreement applies whether Customer purchases the Professional Services, in whole or in part, directly from NetBrain or through any other third party (collectively, "**Third-Party Seller**"). If Customer purchases through a Third-Party Seller, such Third-Party Seller is not authorized to make any promises or commitments on NetBrain's behalf, and NetBrain is not bound by any obligations to Customer other than as specified in this Agreement. Customer acknowledges that NetBrain reserves the right to suspend and/or terminate this Agreement and any outstanding SOWs and/or Orders hereunder, without notice or liability, due to non-payment by the Third-Party Seller.

- 4.2.3. Any amount not paid when due will bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is more, determined and compounded daily from the date due until the date paid, and Customer shall be liable for any reasonable costs of collection incurred by NetBrain. In addition, if Customer fails to fulfill its payment obligations hereunder, NetBrain reserves the right to suspend the Professional Services without notice.
- 4.2.4. All fees, charges, and other sums payable to NetBrain under this Agreement do not include any sales, use, excise, value added, or other applicable taxes, tariffs, or duties, payment of which shall be the sole responsibility of Customer, excluding any applicable taxes based on NetBrain's net income, revenues, employees, and/or property. If NetBrain should be liable, vis-à-vis the respective authority, for any sales, use, excise, value added, or other applicable taxes, tariffs, or duties, the fee, charge, or other sum payable from Customer to NetBrain shall be increased by the amount of such tax, tariff, or duty. Customer shall provide NetBrain with all information reasonably required by NetBrain to fulfill its obligations under applicable tax-, tariff- or duties-laws; this shall include the provision of Customer's business address as well as the VAT-ID or other relevant tax number of Customer (if any). If Customer purchases through a Third-Party Reseller, payment terms between Customer and the Third-Party Reseller are set by the Third-Party Reseller, and NetBrain is not involved in nor responsible for such payment terms.

5. Term and Termination.

- 5.1. Term. This Agreement will commence as of the initial Order Date and will remain in effect until terminated as provided for herein. The commencement and termination dates for an Order will be provided in each Order.
- 5.2. Termination for Convenience. Either party may terminate this Agreement upon thirty (30) days written notice to the other party if there are no Orders for Professional Services currently in process.
- 5.3. Termination for Breach. If either party defaults in the performance of or compliance with any of its material obligations under this Agreement and/or any Order, and such default has not been remedied or cured within thirty (30) days after the other party gives the breaching party written notice specifying the default or, if the nature of the default is such that more than thirty (30) days are required for the cure thereof, and the breaching party fails to commence its effort to cure such breach or default within such thirty (30) days and to diligently prosecute the same to completion thereafter to the other party's satisfaction in its sole reasonable discretion, then the other party may terminate this Agreement and the relevant Orders (if applicable) hereunder, in addition to its other rights and remedies at law or in equity.
- 5.4. Effect of Termination. Upon termination of this Agreement or an Order in accordance with Section 5.3:
- 5.4.1. Unless otherwise specified in writing, NetBrain will cease to perform the Professional Services under any applicable Order, and Customer will pay NetBrain all amounts due to NetBrain for any Professional Services provided, and expenses of any kind incurred, prior to the effective date of termination.
- 5.4.2. All Orders that have not been commenced shall be deemed cancelled as of the effective date of such termination.
- 5.4.3. Any amounts pre-paid by Customer to NetBrain for Professional Services not provided under such Order will be refunded to Customer.

6. Access and Implementation Assistance.

- 6.1. The Professional Services provided by NetBrain to Customer are dependent on the availability of Customer resources, and Customer understands and agrees to provide to NetBrain all information which may be reasonably necessary to perform the Professional Services. Customer will provide ready access to all appropriate Customer computing platforms, documentation (e.g., program source, copybooks, tables, subroutines, etc.) and personnel necessary to fully understand Customer's on-site environment and systems necessary to provide the Professional Services. If applicable, Customer will also provide office space and equipment for NetBrain's on-site personnel, and access to Customer's source libraries, test systems, and test data.

- 6.2. To the extent required to provide the Professional Services, Customer shall provide NetBrain personnel with access to relevant Customer Third-Party Software and equipment, and shall grant NetBrain all permissions, license grants, or any other rights necessary to use the same solely for the purpose of providing the Professional Services. For purposes of this Agreement, "Customer Third Party Software" means any software materials not licensed to Customer by NetBrain. Customer is responsible for arranging the timely technical support required for any Customer Third-Party Software or Customer equipment that may be necessary to facilitate NetBrain's provision of the Professional Services.
- 6.3. Customer acknowledges that the use of the Product, and the provision of Professional Services and Deliverables, may be dependent on certain hardware requirements. Customer shall ensure that all hardware necessary for NetBrain to deliver the Product, Professional Services, and Deliverables is available. NetBrain does not provide any hardware, nor is NetBrain responsible for procuring any hardware.
- 6.4. NetBrain will not be liable for any delay or failure by Customer: (a) to permit the access required in this Section; (b) to perform caused by any Third-Party Software and equipment, or Customer's hardware; or (c) to fulfil its obligations hereunder which impact NetBrain's performance. For the avoidance of doubt, any delay or failure will not obligate NetBrain to extend the Term of the applicable Order.
- 6.5. The Professional Services are intended only for the two (2) most recently released versions of the Product published and generally made commercially available by NetBrain to its licensees of the Product with a change in the integer or tenths digit of the version number (e.g., a change from version x.x to y.x or x.y) (a "Current Release"). If Customer is not using a Current Release, NetBrain makes no representations, warranties, or guarantees that the Professional Services and/or Deliverables will have backward or forward compatibility. Additional work to support other versions or releases of the Product will require a separate Order.
7. **DISCLAIMER OF WARRANTIES.** EXCEPT AS SET FORTH IN THIS AGREEMENT AND ALL EXHIBITS AND/OR ATTACHMENTS REFERENCED HEREIN AND SO FAR AS IT IS PERMITTED TO DO SO UNDER APPLICABLE LAW, NETBRAIN MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING, OR RELATING TO, THE DELIVERABLES, PRODUCT, OR ANY MATERIALS FURNISHED, OR PROVIDED, TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, TITLE, USE, OR NON-INFRINGEMENT. NETBRAIN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SATISFACTORY QUALITY WITH RESPECT TO THE DELIVERABLES, PRODUCT, AND ANY OTHER MATERIALS FURNISHED, OR PROVIDED, BY NETBRAIN, 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 DELIVERABLES OR PRODUCT, OR THAT THEY WILL OPERATE WITHOUT INTERRUPTION, OR ARE ERROR FREE.
8. **Indemnification.**
- 8.1. **Customer's Indemnification Obligations.** Customer agrees, at its own expense, to indemnify and defend NetBrain, its Affiliates, and their respective directors, officers, employees, and agents, and their respective licensors and/or resellers from and against any and all third-party claims, demands, litigation, liabilities, judgment, actions, or otherwise (collectively "**Claims**"), and any and all expenses, costs (including reasonable attorney's fees), judgments, damages, and/or other liabilities resulting from such Claims, that arise or result from Customer's: (a) use or misuse of the Deliverables in violation of this Agreement; (b) violation of any material term herein; and/or (c) violation of any applicable law or regulation.
- 8.2. **NetBrain's Indemnification Obligations.** NetBrain agrees, at its own expense, to defend and indemnify Customer, its Affiliates, and their respective directors, officers, employees, and agents for, and at NetBrain's option to settle, in its sole discretion, any and all third-party Claims brought against Customer alleging that the Deliverables, as used within the scope of this Agreement, infringe any valid and enforceable patent of the United States, United Kingdom, or the European Union, or any copyrights or trademarks. NetBrain has the right, in its sole discretion, to: (a) procure for Customer the right to use the allegedly infringing Deliverables as provided herein; (b) replace the allegedly infringing Deliverables with non-infringing, functionally equivalent products; (c) suitably modify the allegedly infringing Deliverables to eliminate the Claims of infringement, with no material loss of functionality; or (d) in the event NetBrain determines, in its sole discretion, that (a), (b), and/or (c) are not possible or commercially reasonable,

NetBrain may terminate the license hereunder to the Deliverables, accept return of the infringing Deliverables and refund to Customer the Professional Services fee paid therefor. Notwithstanding the foregoing, NetBrain assumes no liability for infringement Claims arising from: (x) combination of the Deliverables with any other products not provided, or authorized, by NetBrain; (y) any modifications to the Deliverables by any person other than, or authorized by, NetBrain; or (z) the Customer's specific business use of the Deliverables which is the basis of the Claim is different than the business use intended by NetBrain in creating or performing the Deliverables. THE FOREGOING PROVISIONS OF THIS SECTION 8.2 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF NETBRAIN, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT RIGHT BY THE DELIVERABLES.

8.3. **Process for Indemnification.** In order to receive indemnification, the party requesting indemnification ("**Indemnified Party**") must provide the other party ("**Indemnifying Party**") with: (a) prompt written notice (no later than ninety (90) days) after the Indemnified Party first becomes aware of the Claim; (b) sole control and authority over the defense or settlement (the Indemnified Party shall, at its sole expense, have the right to employ separate counsel to monitor the defense and settlement of the Claim); and (c) proper and full information as is reasonable, and reasonable assistance to settle and/or defend any such Claim. For the avoidance of doubt, the Indemnifying Party shall have sole control and authority over the defense or settlement of any Claim, but shall not settle a Claim that, confidentially or otherwise, includes an admission of fault or infringement by the Indemnified Party.

9. **LIMITATION OF LIABILITY.** THE FOLLOWING SECTIONS 9.1 AND 9.2 SHALL NOT APPLY IF THE NETBRAIN AFFILIATE WITH WHICH THE CUSTOMER CONTRACTS UNDER THIS AGREEMENT IS NETBRAIN TECHNOLOGIES GMBH (SEE ATTACHMENT A). THE LIMITATIONS IN SECTION 9.2 SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR TO CUSTOMER'S INFRINGEMENT OF NETBRAIN'S INTELLECTUAL PROPERTY RIGHTS:

9.1. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY DIRECT OR INDIRECT LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, COST TO REPLACE, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH, OR ARISING OUT OF, THE FURNISHING, PERFORMANCE, OR USE OF THE DELIVERABLES OR ANY MATERIALS FURNISHED OR PROVIDED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. EITHER PARTY'S MONETARY LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE AMOUNT PAID OR PAYABLE BY THE CUSTOMER TO NETBRAIN UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE TIME SUCH LIABILITY AROSE.

10. **Confidential Information.**

10.1. During the performance of this Agreement, the parties may have access to information that is confidential to one another ("**Confidential Information**"). Confidential Information will include, but is not limited to: all technical and business information, including without limitation all Programs and Documentation provided by NetBrain, planning, pricing and offerings for products and services; other product information including, but not limited to, configuration and packaging details; terms and pricing under this Agreement; 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 it is designated as Confidential Information. A party's Confidential Information will not include information that: (a) is or becomes generally known to the public through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party, as can be evidenced by the written record; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as can be evidenced by the written record.

10.2. The parties agree to hold each other's Confidential Information as confidential during the term of this Agreement, and for a period of three (3) years thereafter. Notwithstanding the foregoing, Customer will keep the Programs and Documentation confidential indefinitely after termination or expiration of this Agreement; and the parties will maintain each other's trade secrets as confidential for so long as they are trade secrets under applicable

law. The parties agree, unless required by law or with the written consent of the other party, not to make each other's Confidential Information available in any form to any third party for any purpose except to the extent necessary to exercise its rights under this Agreement, and to treat Confidential Information of the other party with the same degree of care with which it would treat its own Confidential Information of a like nature, but in no case with less than a reasonable degree of care.

- 10.3. It shall not be a breach of this section if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided the party served with such request promptly notifies the other party in writing and provides reasonable assistance so the other party may seek a protective order against public disclosure (except if providing such notification is legally prohibited), and in the event such disclosure is necessary, then only the minimum required information may be disclosed.
- 10.4. Each party agrees to limit the disclosure of Confidential Information to those of its employees and agents who have a need to know such Confidential Information, and each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, shall be liable for any such disclosure or distribution, and in the event such disclosure is necessary, then only the minimum required information may be disclosed.
- 10.5. 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, 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. Miscellaneous.

- 11.1. Export Regulations. Customer and NetBrain acknowledge that the Programs, Documentation, and all related technical information, documents, and materials may be subject to export controls under applicable law, including the U.S. Export Administration Regulations, and therefore, to the extent applicable, Customer and NetBrain shall at all times: (a) comply with all requirements set forth in such laws and regulations; and (b) reasonably cooperate with each other in any official, or unofficial, audit or inspection that relates to such export requirements. Without limiting the generality of the foregoing, Customer agrees that the Programs are prohibited for export or re-export to any person or entity on the U.S. Department of Commerce Denied Persons List, or on the U.S. Department of Treasury's List of Specially Designated Nationals, Specially Designated Narcotics Traffickers, or Specially Designated Terrorists, as such is changed from time-to-time. Should Customer become an entity or person on the Sanctions Lists, such event shall constitute an incurable default under this Agreement, and NetBrain may terminate this Agreement with immediate effect and the provisions of Section 5 shall apply.
- 11.2. Publicity. Notwithstanding the confidentiality provisions of this Agreement, Customer permits NetBrain to use Customer's name, trademark, logo, and/or likeness ("**Customer Trademark(s)**") for marketing purposes, including, but not limited to, customer references, joint press releases, customer case studies, speaking to press and analysts, and other mutually agreed upon, in writing, joint marketing activities, for use in NetBrain marketing materials, or on NetBrain's website. NetBrain agrees not to use the Customer Trademarks in any offensive manner or any manner likely to confuse, mislead, or deceive the public, or which is adverse to the best interests of Customer. NetBrain understands and agrees that the Customer Trademarks are proprietary to Customer, and Customer retains all rights, title, and interest thereto. In addition, for marketing purposes only, Customer permits NetBrain to publish and otherwise use any statements or testimonies made by the Customer's user(s) of the Programs. Customer and/or its Affiliates will not use, register, or take other action with respect to any name, logo, trademark, service mark, or other identifier used anywhere in the world by NetBrain, or confusingly similar to one used by NetBrain, and will promptly report to NetBrain any suspected infringing or unauthorized use or reproduction of the NetBrain Product or trademarks.
- 11.3. Notices. All notices, requests, demands, and other communications hereunder shall be in writing, and shall be personally delivered (including, without limitation, via overnight mail, or other similar service), or mailed by registered or certified mail, postage prepaid with return receipt requested, to the address of each party hereto or as set forth in an applicable Order, or via email attachments, but emails or text messages alone will not be valid as notice or amendments. Notices shall be deemed received by: (a) the next business day, if sent by personal delivery

or email attachment; or (b) within five (5) business days if sent by certified or registered mail. Either party may change its address or facsimile number by giving written notice to the other party in the same manner as specified in this Section.

- 11.4. Assignment. Customer may not 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 NetBrain. **"Change of Control"** means: (a) a transfer to a single entity, or group of related entities (whether in a single transaction or a series of transactions), of more than fifty percent (50%) of the stock, assets, or other equity interests in an entity; or (b) a transfer of the right to direct the management of such entity. An initial public offering of an entity's stock shall not constitute a Change of Control within the meaning of this Agreement.
- 11.5. Non-Waiver. A failure of either party to insist upon or enforce performance by the other party of any of the provisions, 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.
- 11.6. Compliance with Laws. NetBrain and Customer shall each comply with all applicable laws, regulations, rules, orders, and other requirements, now or hereafter in effect, of any applicable governmental authority, in their performance of this Agreement.
- 11.7. Governing Law and Venue.
- 11.7.1. The rights and obligations of the parties under this Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods, but instead shall be governed by and construed under the laws of the country and/or state in which the relevant NetBrain contracting entity is incorporated. In the event of any controversy, claim, or dispute between the parties arising out of or relating to this Agreement ("**Claim**"), such Claim may be tried solely in the courts of the country and city in which the relevant NetBrain contracting entity's is incorporated, and the parties hereby irrevocably consent to the jurisdiction, forum, and venue of such courts.
- 11.7.2. In the event of any Claim arising out of this Agreement, the parties agree to escalate the Claim to members of their respective senior management team, and such personnel shall negotiate in good faith to attempt to resolve the dispute. If the parties' senior managers are unable to resolve the Claim, except as otherwise provided in this Agreement, the matter must be submitted for non-binding mediation to a nationally recognized mediator or mediation service ("**Mediator**"), which will be chosen by agreement of the parties. Either party may commence mediation by providing a written request for mediation to the other party and to the Mediator, setting forth the subject of the Claim and the relief requested. The parties will cooperate with the Mediator and each other in selecting an individual mediator from Mediator's panel of neutrals, and in scheduling the mediation proceedings. The parties agree to: (a) participate in the mediation in good faith; (b) pay their respective attorneys' fees; and (c) share equally the costs of mediation. All conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the individual mediator and any employees of the Mediator, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration, litigation, or other proceeding between the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- 11.7.3. In the event the Mediator is unsuccessful, the parties agree to resolve all Claims solely by binding arbitration in the applicable jurisdiction before a single nationally recognized arbitrator or arbitration service ("**Arbitrator**"), which will be chosen at NetBrain's sole discretion, and 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 applicable laws of the designated jurisdiction and subject to the Federal Arbitration Act, (9 U.S.C. §§1-16, 201-208, and 301-307). The parties agree to pay their respective attorneys' fees. The parties agree that any Claim, mediation, and/or arbitration (including the materials, proceedings, and existence thereof) are Confidential Information.

- 11.7.4. Notwithstanding the foregoing, either party may seek equitable relief from a court of competent jurisdiction, prior to the mediation, to protect its intellectual property rights and Confidential Information.
- 11.8. Force Majeure. Except for the parties' confidentiality obligations, any infringement of NetBrain's intellectual property rights attributable to Customer, its Affiliates, or its or their employees, contractors or agents, Customer's indemnification obligations, and Customer and/or its Affiliates' payment obligations hereunder, neither party will be liable for default, or be considered to be in breach of, this Agreement as a result of any cause or condition beyond such party's reasonable control, including, but not limited to, acts of civil or military authority, national emergencies, third-party labor difficulties, fire, flood or other catastrophe, acts of God, pandemic or epidemic, terrorism, any government authority's law, regulation, or act, insurrection, war, riots, failure of transportation or power supply, communications outage, internet outage, cyber-attack, or performance (or lack thereof) of third parties.
- 11.9. Severability. If any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid, or otherwise unenforceable, such provision (or part thereof) will be enforced, to the extent possible, consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force, and remain in effect according to its stated terms and conditions.
- 11.10. Relationship of the Parties. This Agreement shall not be construed as creating any agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties. The parties shall always be and remain independent entities. Except as expressly agreed to by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party, or to bind the other party in any respect whatsoever.
- 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. All communications and notices made or given pursuant to this Agreement shall be in the English language.
- 11.12. Titles and Headings; Clerical Errors. The title and section headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement. Clerical errors are subject to correction by mutual agreement of the parties.
- 11.13. No Rule of Strict Construction. The language used in this Agreement will be deemed to be the language jointly chosen by NetBrain and Customer to express their mutual intent, and no rule of strict construction will be applied against either party. No provision of this Agreement will be interpreted in favor of, or against, either of the parties hereto by reason of such party having drafted such provision or this Agreement.
- 11.14. Counterparts. Where the parties prefer to sign this Agreement, this Agreement may be signed in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument.
- 11.15. Entire Agreement. This Agreement and any Orders hereunder constitute the entire agreement between the parties with respect to the Professional Services and Deliverables, and supersede all prior negotiations, representations, and agreements, whether written or oral, between the parties with respect to the subject matter hereof. Any terms and conditions contained in any purchase order, RFP, RFI or other document submitted by Customer in connection with this Agreement or any Order shall be of no force and effect, and NetBrain's subsequent provision of the Professional Services shall not constitute acceptance of such terms. All amendments, modifications, or supplements to this Agreement must be in writing and signed by the authorized representatives of both parties. All such changes shall reference this Agreement and identify the specific section(s) or attachment(s) of this Agreement to be amended, modified, or supplemented.
- 11.16. Survival. All provisions which by their nature and context impose continuing obligations on a party or both parties shall survive any termination of this Agreement and/or Order, including, but not limited to, Customer's payment obligations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date of last signature below.

NetBrain

Customer: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A
NETBRAIN TECHNOLOGIES GMBH SPECIFIC TERMS AND CONDITIONS

1. **GERMAN SPECIFIC LIMITATION OF LIABILITY.** IF THE NETBRAIN AFFILIATE WITH WHICH THE CUSTOMER CONTRACTS UNDER THIS AGREEMENT IS NETBRAIN TECHNOLOGIES GMBH, THE FOLLOWING SUPERSEDES ANY OTHER PROVISION RELATED TO THE SAME SUBJECT MATTER, INCLUDING, BUT NOT LIMITED TO, SECTION 9 OF THIS AGREEMENT:
 - 1.1. NETBRAIN SHALL BE LIABLE FOR THE FULL EXTENT OF DAMAGE IN THE EVENT OF INTENTIONAL BEHAVIOUR (*VORSATZ*) OR GROSS NEGLIGENCE (*GROBE FAHRLÄSSIGKEIT*) BY NETBRAIN ITSELF OR ITS VICARIOUS AGENTS. IN ADDITION, NETBRAIN SHALL BE FULLY LIABLE: (A) IN THE CASE OF NON-OBSERVANCE OF GUARANTEES (*GARANTIEN*); (B) IN THE CASE OF OTHER DEFINITE PROMISES, IN THE CASE OF CULPABLE INJURY TO LIFE, BODY, AND HEALTH; AND (C) UNDER THE GERMAN PRODUCT LIABILITY ACT (*PRODUKTHAFTUNGSGESETZ*).
 - 1.2. IN THE CASE OF CULPABLE VIOLATION OF ESSENTIAL CONTRACTUAL OBLIGATIONS, MEANING THE PRINCIPAL OBLIGATIONS ENABLING THE PROPER EXECUTION OF THE AGREEMENT AND UPON WHICH THE CUSTOMER 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 AGREEMENT 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 PAID FROM CUSTOMER TO NETBRAIN UNDER THE AGREEMENT IN AN APPLICABLE ORDER.
 - 1.3. 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.
 - 1.4. 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.

NETBRAIN PROFESSIONAL SERVICES PACKAGE OFFERINGS

1. **Jumpstart Offering.**

1.1. **Description.** Professional Services to assist with installation, configuration, on-the-job training, initial discovery, and automation. For an existing Customer, it may include assisting with upgrading.

1.2. **Commencement.**

1.2.1. The Jumpstart Offering will begin with the initial set-up and installation phase of the Product.

1.2.2. Professional Services under the Jumpstart Offering must commence within ninety (90) days from the Order Date and will expire if not begun within such period.

1.2.3. Once begun, Professional Services under the Jumpstart Offering must be completed within one hundred eighty (180) days from the Order Date and the Jumpstart Offering will expire on the last day of such period.

1.3. **Completion.** Professional Services under the Jumpstart Offering will be deemed completed and delivered in full upon the earlier of: (a) notice of completion delivered by NetBrain to Customer; or (b) one hundred eighty (180) days from the Order Date.

2. **Automation Service Offering.**

2.1. **Description.** Professional Services in a twelve (12) month term delivered by a NetBrain Automation Engineer. The NetBrain Automation Engineer will help analyze customer ticket data and create NetBrain automations to achieve automation goals.

2.2. **Commencement.** The Automation Offering begins on the Order Date.

2.3. **Completion.** The Automation Offering expires twelve (12) months from the Order Date.

3. **Managed NetBrain Service (Foundation) Offering**

3.1. **Description:** Professional Services in a twelve (12) month term delivered by a NetBrain Services Engineer. The NetBrain Services Engineer will be responsible for ongoing management and maintenance of the NetBrain platform application layer.

3.2. **Commencement:** The Managed NetBrain Service (Foundation) Offering begins on the Order Date.

3.3. **Completion:** the Managed NetBrain Service (Foundation) Offering expires twelve (12) months from the Order Date.

4. **Customized Offering (SOW-based).**

4.1. **Description.** Professional Services as stated in a Statement of Work ("SOW"), and as defined in the applicable Professional Services Agreement.

4.2. **Commencement.** Professional Services under the Customized Offering must begin within ninety (90) days from the Order Date and will expire if not begun within such period.

4.3. **Completion.** The Customized Offering will be deemed completed and delivered in full upon the earlier of: (a) delivery of the Deliverables described in the SOW, as notified by NetBrain to Customer; or (b) one hundred eighty (180) days from Order Date.