

NETBRAIN PROOF OF CONCEPT & EVALUATION TERMS OF USE

These Proof of Concept and Evaluation Terms of Use (“Evaluation Terms”) govern the use of NetBrain’s software and service offerings for evaluation or proof of concept purposes between NetBrain Technologies, Inc. (“NetBrain”) and the party (“Customer” or “you”) who creates a user account, logs in to, or uses the NetBrain software or services (collectively, “Services”). These Evaluation Terms incorporate any existing non-disclosure agreements between the parties, which shall supersede the confidentiality obligation herein. These Evaluation Terms also incorporate and apply to any proof of concept or evaluation plan (“Plan”) provided to the Customer.

Customer and NetBrain agree to keep confidential all non-public, proprietary, or confidential information that Customer and NetBrain provide to each other in connection with the performance of these Services. Customer and NetBrain further agree to disclose Confidential Information that Customer or NetBrain receive under these Evaluation Terms only to those employees, advisors, and agents of Customer or NetBrain, as the case may be, who have a strict need to know the information being shared and who are bound by legal or contractual obligations to protect the confidentiality and security of the Confidential Information that are at least as restrictive as the obligations set forth in these Evaluation Terms. “Confidential Information” includes, without limitation, business information, development plans, product and service roadmap details, systems, strategic plans, source code, services, products, pricing, methods, processes, financial data, programs, trade secrets, know-how, and marketing plans in any form that are designated as “confidential” or a reasonable person knows or reasonably should understand to be confidential. Customer and NetBrain shall keep all Confidential Information received under these Evaluation Terms in the strictest confidence until such time as, and only to the extent that, such information is (a) already rightfully known to Customer or NetBrain at the time it is received, free from any obligation to keep such information confidential; (b) or becomes publicly known or available through no wrongful act of Customer or NetBrain or any third party; (c) rightfully received from a third party without restriction and without breach of this Agreement; or (d) developed by Customer or NetBrain without the use of any proprietary, non-public information received under these Evaluation Terms.

Customer and NetBrain shall each take reasonable steps to maintain the privacy and security of the Confidential Information that Customer and NetBrain receive, using measures that are at least as protective as those taken to protect information of a similar sensitivity that belongs to Customer or NetBrain, but in no event using less than a reasonable standard of care. In the event of any unauthorized use or disclosure of the other party’s Confidential Information, Customer and NetBrain agree to provide notice to the affected party of such unauthorized use or disclosure and cooperate to regain control of, and to prevent further unauthorized use or disclosure of, the Confidential Information.

The Services may only be used for Customer's internal evaluation purposes. The Services are licensed; not sold or otherwise transferred to Customer in any manner. Any form of benchmarking, decompiling, disassembling, or reverse engineering of the Services is prohibited. The term of the Services shall be sixty (60) days, or as otherwise agreed to by the parties in writing or in the Plan ("Term"). Either party may terminate these Evaluation Terms and/or a Plan at any time for any reason. Unless otherwise agreed to by the parties in writing, there are no fees for the Services. The Services may at times be inoperable, unavailable, or incomplete. NetBrain owns and retains any and all rights, title, and interest in and to the Services, documentation, tools, APIs, plans, templates, and other materials and artifacts utilized in or related to the Services. Information uploaded by Customer to the Services will be subject to deletion at the end of the Term unless otherwise agreed to by the parties in writing. Customer shall not use the Services in any manner that violates laws or interferes with the security, integrity, or availability of the Services. Customer will be fully liable for any damages caused by such uses. These Evaluation Terms shall be governed by Massachusetts law and controlling United States federal law, without regard to choice or conflicts of law provisions.

NOTWITHSTANDING ANYTHING ELSE IN THESE EVALUATION TERMS, THE SERVICES ARE PROVIDED "AS IS" AND NETBRAIN PROVIDES NO WARRANTY, INDEMNITY, SERVICE LEVEL METRIC, OR SUPPORT. NETBRAIN SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE NETBRAIN'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE SERVICES IS \$100.00.