

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM**  
3.14  
(ID # 6937)

**MEETING DATE:**

Tuesday, May 8, 2018

**FROM :** RIVERSIDE COUNTY INFORMATION TECHNOLOGY:

**SUBJECT:** RIVERSIDE COUNTY INFORMATION TECHNOLOGY: Approval of the Software License and Maintenance Agreement between County of Riverside and NetBrain Technologies, Inc., without seeking competitive bids, All Districts, [\$146,400, RCIT Operating Budget]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Software License and Maintenance Agreement with NetBrain Technologies, Inc., without seeking competitive bids in the amount not to exceed \$146,400 for a network automation tool;
2. Authorize the Chairman of the Board to execute the Software License and Maintenance Agreement on behalf of County; and;
3. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, as approved by County Counsel to sign amendments to the agreement that do not change the substantive terms of the agreement.

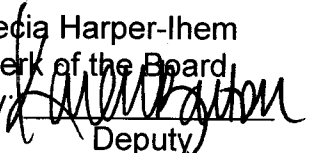
**ACTION:**

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Jeffries, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley  
Nays: None  
Absent: None  
Date: May 8, 2018  
xc: RCIT, Purchasing

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$146,400	\$0	\$146,400	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS: 100% RCIT Operating Funds</b>			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b>	17/18

**C.E.O. RECOMMENDATION:** [CEO use]

**BACKGROUND:**

**Summary**

The request before the Board is for approval of a network automation tool including annual support and maintenance services with NetBrain Technologies, Inc.

Riverside County Information Technology (RCIT) supports the County of Riverside private network, CORNET, with connectivity to more than 40 County departments at approximately 350 locations across the county. As departments make adds, moves, and changes to their locations, RCIT must constantly update network connectivity diagrams. Extensive man hours are spent on keeping these diagrams up to date. Network drawings are used to determine current and future network requirements. Updated drawings are also critical when troubleshooting network problems.

RCIT has been evaluating and proposes the purchase of a sole source solution by a company called NetBrain Technologies, Inc. This software tool automates the creation of network diagrams. This will allow staff the ability to produce a network diagram within minutes, rather than the hours it currently takes. NetBrain also includes On-Demand mapping of the network, which is invaluable in troubleshooting network problems real-time. RCIT has assessed an evaluation copy of the tool. This tool, even in evaluation form, has provided valuable insight into our network quickly and easily. It has also allowed RCIT to provide County Departments an understanding of their current network connectivity throughout CORNET and will allow them to understand where future network investment should be made to meet their ever-growing bandwidth needs.

**Justification**

This software tool will allow RCIT Network Engineers and Network Operations staff to automate anytime changes or updates that are done on the network and to provide the ability to produce a network diagram for troubleshooting purposes within minutes rather than the hours it currently takes.

**Impacts on Citizens and Businesses**

There is no negative impact on residents and businesses.

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**Additional Fiscal Information**

Description:	FY Fund	Total
NetBrain Software (Network Automation Tool including Annual Support and Maintenance Services Fee)	FY17/18	\$146,400
<b>Total</b>		<b>\$146,400</b>

**Contract History and Price Reasonableness**

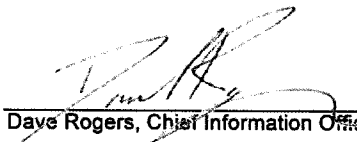
NetBrain offered the County with a 17% discount, which is in line with other government agencies of similar size and scope. NetBrain is not sold through any resellers and is sold exclusively through NetBrain Technologies. This tool will develop diagrams within minutes as opposed to hours or in some cases days for larger departments. This is the most cost-effective approach, considering the time the Network Engineers and Operations staff are taking to develop diagrams of our private network upon request by departments when troubleshooting issues with applications traversing CORNET.

**ATTACHMENTS:**

- 1) Software License and Maintenance Agreement with NetBrain Technologies, Inc.
- 2) Sole Source Justification Forms.

  
Teresa Summers, Director of Purchasing 4/26/2018

  
Gregory V. Priamos, Director County Counsel 4/27/2018

  
Dave Rogers, Chief Information Officer 4/25/2018

DAVE ROGERS  
Chief Information Officer

JIM SMITH  
Chief Technology Officer



LOUIS RAJA ARUL DOSS, ACIO  
Enterprise Applications Bureau  
PATRICK ELLIANO, ACIO  
Converged Communications Bureau  
GIL MEJIA, ACIO  
Technology Services Bureau

**To:** Board of Supervisors/Purchasing Agent **Date:** 18 April 2018  
**Via:** RCIT, Procurement Contract Specialist  
**From:** Dave Rogers, Chief Information Officer  
**Subject:** Sole Source Procurement for NetBrain Network Automation tool

The below information is provided in support of my Department requesting approval for a sole source.

**1. Supplier being requested:**

NetBrain Technologies, Inc.  
15 Network Drive  
Burlington, MA 01803.

**2. Vendor ID:**  
0000213432

**3. Supply/Service being requested:**

NetBrain is a Network Automation tool that can be highlighted by four phases of Automation. First is the intelligent discovery followed by building a model of the live network, then End-to-end network visibility, and adaptable automation. As part of the intelligent discovery NetBrain only requires the IP Address of a core router or switch, NetBrain logs into every device it discovers and analyzes many Command Line Interface (CLI) commands. Netbrain uses Simple Network Management Protocol (SNMP) to identify the vendor make and model, so it knows the proper CLI syntax to execute. During the initial process core router or switch will learn the neighbors of that device via Cisco Discovery Protocol (CDP), Link Layer Discovery Protocol (LLDP) and other Network protocols. NetBrain can discover about 2,000 network devices per hour. As NetBrain performs the discovery, it creates a complex mathematical model of the network. This will benefit the Network and Engineering staff in the future by having a model to build off of and can be used to build every conceivable map required for documentation purposes and/or troubleshooting issues traversing CORNET.

**4. Alternative suppliers that can or might be able to provide supply/service and extent of market research conducted:**

Netbrain Technologies is the sole provider of NetBrain product. Extensive internet research was performed to identify other suppliers of the unique features of Netbrain which are required to meet the county's need. No other provider has the unique features that NetBrain provides. Netbrain is also specifically designed to work with Cisco products which is the county network standard.

**5. Unique features of the supply/service being requested from this supplier, which no alternative supplier can:**

NetBrain provides dynamic network mapping technologies, which includes the automation of network diagrams. NetBrain also includes On-Demand mapping of the network, which is invaluable in troubleshooting network problems real-time.

DAVE ROGERS  
Chief Information Officer

JIM SMITH  
Chief Technology Officer



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Technology Services Bureau

6. **Reasons why my department requires these unique features and what benefit will accrue to the county:**

This software tool will allow RCIT Network Engineers and Network Operations staff to automate anytime changes or updates that are done on the network and to provide the ability to produce a network diagram for troubleshooting purposes within minutes rather than the hours it currently takes.

7. **Period of Performance:**

From 05/01/2018 to 04/30/2019 (total number of years)

Is this an annually renewable contract?  No  Yes

Is this a fixed-term agreement?  No  Yes

8. **Identify all costs for this requested purchase. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)**

Description:	FY17/18	Total
One-time Costs:		
NetBrain Software	\$122,000	\$122,000
Ongoing Costs:		
Annual Support and Maintenance	\$24,400	\$24,400
Total Costs	\$146,400	\$146,400

9. **Price Reasonableness:**

NetBrain offered the county with a 17% discount, which is in line with other government agencies of similar size and scope. This tool will develop diagrams within minutes as opposed to hours or in some cases day's for larger departments. This is the most cost effective approach, considering the time the Network Engineers and Operations staff are taking to develop diagrams of our private network upon request by departments when troubleshooting issues with applications traversing the CORNET.

10. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain)?**

No.


DAVE ROGERS  
Chief Information Officer

JIM SMITH  
Chief Technology Officer



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Technology Services Bureau

11. Projected Board of Supervisor Date (if applicable): 01 May 2018.

  
Dave Rogers, Chief Information Officer

4-25-18  
Date

Purchasing Department Comments:

Approve

Approved with Condition/s

Disapprove

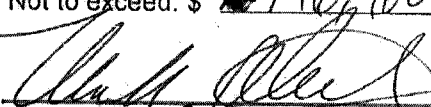
Not to exceed: \$

146,400

One time

Annual Amount through

4/30/19

  
Purchasing Agent

4/26/18  
Date

18-195  
Approval Number

(Reference of Purchasing Documents)

List Attachments:

ATF purchase



**NETBRAIN TECHNOLOGIES, INC.**

**SOFTWARE LICENSE AND MAINTENANCE AGREEMENT**

This Software License and Maintenance Agreement (this "Agreement") is made and entered into this 1st day of May 2018 (the "Effective Date") by and between **NetBrain Technologies, Inc.**, with its principal place of business at **15 Network Drive, Burlington MA 01803** ("NetBrain"), and County of Riverside, with its principal address at 4080 Lemon Street, Riverside, CA 92501 ("County"). County and NetBrain hereby agree to the terms and conditions stated in this Agreement, including its schedules and any exhibits, addenda, appendices or amendments (collectively, the "Agreement").

NetBrain shall provide County with the Programs, modules and Maintenance Services (each as defined herein), at the fees listed in Exhibit A, and subject to the general terms and conditions set forth in this Agreement and the Exhibits hereto. In addition, NetBrain or its Affiliates may from time to time provide County or County's Affiliates with Programs and modules, as set forth on schedules, statements of work or other ordering documents (collectively "Orders") issued by County 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 Order(s) shall constitute "NetBrain" hereunder for purposes of such Order(s), and the entity issuing the Order shall constitute "County" hereunder for purposes of the relevant Order(s). Where NetBrain offers geographic-based licensing (i.e., licensing from a NetBrain Affiliate located outside of the U.S.) and local pricing, all Orders shall be subject to NetBrain's local price list and shall be payable in the currency identified on the quotation for products/services issued by NetBrain (e.g., €, £, etc.).

The parties agree to the terms and conditions of this Software License and Maintenance Agreement as of the Effective Date.

<b>NETBRAIN TECHNOLOGIES, INC.:</b> By: <u>Jeffery Basile</u> Name: <u>Jeffery Basile</u> Title: <u>CFO</u> Date: <u>23 April 2018</u>	<b>COUNTY:</b> By: <u>Chuck Waf</u> Name: <u>Chuck Washington</u> Title: <u>Chairman, Board of Supervisors</u> Date: <u>MAY 08 2018</u>
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ATTEST:  
 KECIA HARPER-IHEM, Clerk  
 By: [Signature]  
 DEPUTY

*Address for Notices Pursuant to Section 12.5:*

<i>Notices to NetBrain:</i>  NetBrain Technologies Inc. 15 Network Drive Burlington, MA 01803 Attention:  <i>With a required copy to:</i>  NetBrain Technologies Inc. 15 Network Drive Burlington, MA 01803 Attention: Legal Department	<i>Notices to County:</i>  County of Riverside Purchasing and Fleet Service Attention: Rick Hai 2980 Washington Street Riverside, CA 92504  <i>With a required copy to:</i>  Riverside County Information Technology Attention: Procurement Management Group 3450 14 <sup>th</sup> Street Riverside, CA 92501
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FORM APPROVED COUNTY COUNSEL  
 BY: [Signature] 4/26/18  
 THOMAS OH DATE

EXHIBIT A

LICENSED PROGRAMS AND MODULES

NetBrain agrees to provide County with the Programs at the fees described in this Exhibit A.

<b>Product code</b>	<b>Description</b>	<b>Qty</b>	<b>Unit Price</b>	<b>Extended Price</b>	<b>Line Discount</b>	<b>Line Total</b>
NB-EE-Seat	Enterprise Edition (EE) floating Seat License.	4	\$12,000	\$48,000	\$8,000	\$40,000
NB-EE-Node	Enterprise Server License by Nodes.	1,600	\$60	\$96,000	\$14,000	\$82,000
NB-EE-Maintenance	Maintenance, Technical Support, and Software Updates and Upgrades. From May 1, 2018, 2018 to April 30, 2019.	1	\$28,800	\$28,800	\$4,400	\$24,400

Any additional Orders issued under this Agreement are hereby incorporated into this Exhibit A by reference.



EXHIBIT B

ESCALATION PROCEDURES AND PROCESSES FOR PROGRAMS ERROR RESOLUTION

**Classification of Errors**

All Errors reported by County 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 County under the terms of this Agreement. Reported Errors shall be classified as follows:

<b>Severity Level</b>	<b>Impact</b>
<b>Severity Level 1</b>	Severity Level 1 implies that the Programs are not functioning as a whole or in material part. <i>Examples:</i> <ul style="list-style-type: none"> <li>Both workstation software and server software is down and could not restart.</li> </ul>
<b>Severity Level 2</b>	Severity Level 2 implies that the Programs are running but that County is unable to use a portion of the Programs that is critical to County's operations, and no Bypass is available. <i>Examples:</i> <ul style="list-style-type: none"> <li>Production system is generating data corruption with no Bypass.</li> <li>Major functional component is unavailable with no Bypass.</li> </ul>
<b>Severity Level 3</b>	Severity Level 3 implies that the Programs are operating close to normal, but there is a material Error for which an operational Bypass exists.
<b>Severity Level 4</b>	Severity Level 4 includes purely cosmetic Errors and Documentation anomalies.
<b>Out-of-Scope</b>	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, County hosted applications or programs, County hardware and cabling, power or environmental conditions, and human error.

**RESOLUTION OF ERRORS**

<b>Severity Level 1</b>	
<b>Error Resolution</b>	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.
<b>Resource Commitment</b>	When a Severity Level 1 Error is reported, NetBrain shall assign resources required to address the Error. If system access is required, County shall provide a contact available to NetBrain and access to its system and Programs for the duration of the Error correction procedures.
<b>Resolution Plan</b>	Within forty-eight (48) hours of receipt of the Error Report, NetBrain will begin development of a resolution plan designed to address the Error.
<b>Escalation and Status Thresholds</b>	When a Severity Level 1 Error Report is opened, the following escalation and status procedures shall be followed.
<b>Hour 1–Hour 24</b>	<ol style="list-style-type: none"> <li>The Error shall be resolved by NetBrain first line support; or</li> <li>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.</li> <li>The County will be notified of the status of the Error.</li> </ol>
<b>Hour 24</b>	<ol style="list-style-type: none"> <li>The maintenance engineering point of contact will resolve the Error; or</li> <li>It will be decided that more resources are required to work on the Error.</li> <li>The County will be notified of the status of the Error.</li> </ol>

<b>Hour 48+</b>	<ol style="list-style-type: none"> <li>1. Resolution Plan completed;</li> <li>2. The maintenance engineering point of contact will resolve the Error; or</li> <li>3. The maintenance engineer will continue working to resolve the Error.</li> <li>4. The County will be notified of the status at this stage.</li> </ol>
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<b>Severity Level 2</b>	
<b>Error Resolution</b>	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.
<b>Resource Commitment</b>	Appropriate technical resources will be assigned to Severity Level 2 issues as long as Severity Level 1 Errors are not open.
<b>Resolution Plan</b>	Within seventy-two (72) hours of receipt of the Error Report, NetBrain will begin development of a resolution plan designed to address the Error.
<b>Escalation and Status Thresholds</b>	When a Severity Level 2 Error Report is opened, the following escalation and status procedures will be followed.
<b>Hour 1 – Hour 36</b>	<ol style="list-style-type: none"> <li>1. The Error shall be resolved by NetBrain; or</li> <li>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.</li> <li>3. The County will be notified of the status at this stage.</li> </ol>
<b>Hour 36 – Hour 72+</b>	<ol style="list-style-type: none"> <li>1. Resolution Plan completed;</li> <li>2. The maintenance engineering point of contact will resolve the Error; or</li> <li>3. The maintenance engineer will continue working to resolve the Error.</li> <li>4. The County will be notified of the status at this stage.</li> </ol>

<b>Severity Level 3</b>	
<b>Error Resolution</b>	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 a future Update.
<b>Resource Commitment</b>	The majority of the Severity Level 3 Fixes shall be included in a future Update.
<b>Completion Goal</b>	The completion goal and objective shall be to correct Errors in a future Update.
<b>Escalation and Status Thresholds</b>	The status of Severity Level 3 Errors shall be available on demand. Upon County's request, a quarterly report will be distributed that will reference any uncorrected Errors that are over ninety (90) days old.

<b>Severity Level 4</b>	
<b>Error Resolution</b>	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.
<b>Escalation and Status Thresholds</b>	The status of Severity Level 4 Errors shall be available on request.

## EXHIBIT C

### TERMS AND CONDITIONS

#### SECTION 1. DEFINITIONS.

Whenever used in this Agreement, 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 County, which permits County 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. A "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 4 hereof, each time that County reports an Error.
- 1.10. "Fix(es)" shall mean the document 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 County for the License(s).
- 1.13. "License(s)" shall mean the license granted by NetBrain to County to use the Programs under Section 2.2.
- 1.14. "Maintenance Fees" shall mean the fees payable by County for continued receipt of Maintenance Services.
- 1.15. "Maintenance Services" shall mean the support services defined in Section 4, to be provided under this Agreement.
- 1.16. "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 a redundant standby network.
- 1.17. "Object Code" shall mean the binary machine readable version of the Programs.
- 1.18. "Output" means all information, data, reports, text, drawings and other materials that are specific to County's internal business which may be by-products that result from or are generated from the provision of the Essential Services (as defined in Section 3).
- 1.19. "Programs" means all of the programs and modules listed in Exhibit A of this Agreement, as they may be upgraded, enhanced, and/or modified by NetBrain, in machine-readable, Object Code form only. Programs include NetBrain Qapps and NetBrain Runbooks (as defined in Section 10) and may also include any Third-Party Software products and related documentation.
- 1.20. "Severity Level" shall mean the level of severity assigned to a reported Error with the Programs, in accordance with the Severity Level definitions set forth in Exhibit B to this Agreement.
- 1.21. "Site" shall mean a County computer facility located in one specific geographic location.
- 1.22. "Third Party Software" means software of companies other than NetBrain that NetBrain has licensed to you under this Agreement.
- 1.23. "Third Party Software Provider" means a company, other than NetBrain, that has licensed Third Party Software to NetBrain, which NetBrain sublicenses to County under this Agreement.
- 1.24. "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 County pursuant to the terms of this Agreement.
- 1.25. "Upgrades" means all releases, Updates and corrections of the Programs licensed to County hereunder (when and if available), specifically only those features and modules specified on Exhibit A to this Agreement as licensed to County 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. Upon execution of this Agreement, NetBrain shall deliver to County the number of licenses as specified on Exhibit A to this Agreement.

2.2. GRANT. Subject to the provisions of this Agreement as well as the payment of all applicable License Fees for the term of such license, NetBrain hereby grants County a perpetual, nonexclusive, nontransferable license to:

- (a) Install and use the Programs ordered by County hereunder for internal processing requirements of County within the number of Concurrent Seats and Nodes authorized under this Agreement. The number of Concurrent Seats and Nodes initially authorized hereunder is set forth on Exhibit A. County may increase the number of authorized Nodes and/or Concurrent Seats from time to time via a purchase order or other ordering document (collectively "Order") in unit quantities and upon payment to NetBrain of the applicable amount as

agreed by both parties, provided that no Order shall be binding unless accepted by NetBrain in writing or via fulfillment of the Order. Any such Order, once accepted by NetBrain, is thereby incorporated by reference and shall become part of this Agreement.

(b) Reproduce the Documentation for the Programs ordered by County hereunder and/or incorporate all or any portion of the Documentation in training materials prepared by the County, in each case solely for the use of the County 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. County shall keep accurate records of the reproduction and location of each copy.

(c) Backup Licenses. Upon request, and subject to NetBrain's written approval in its sole discretion, County 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 Nodes in a duplicate, non-production environment strictly for backup purposes ("Backup Copy"). The Backup Copy may not be used (i) concurrently with County's License that is utilized in active production, (ii) to discover additional Nodes 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.

(d) Quality Assurance. Upon request, and subject to NetBrain's written approval in its sole discretion, County 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 Nodes as determined by NetBrain. If such Quality Assurance Copy is approved by NetBrain, County will be required to purchase Maintenance Services for such copy.

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 County's network environment, or (ii) education and demonstration purposes on County'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.

All rights not expressly granted are reserved by NetBrain.

2.4. ACCEPTANCE. The Programs and Documentation shall be deemed accepted by County on delivery of the Programs and Documentation to County. County 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 County, at no charge, one or more versions of the Program for limited use, including "DevOps" or "DE" and Personal Edition ("PE"). County's use of DE and PE is subject to the terms provided in this Agreement. Notwithstanding 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 8 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 County's right to use DE and PE at any time, without notice.

County'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

County's use of PE is subject to the following additional provisions:

- (i) PE is limited to twelve (12) devices per map;
- (ii) PE displays only one map at a time; and
- (iii) PE may be used only (i) on a home network; (ii) in a lab network; or (iii) in a production network.

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

(a) County shall not modify or prepare derivative works of the Programs or Documentation;

(b) County 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) County 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) County 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 12.7 hereof; and

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

2.7. COMPLIANCE WITH LAWS. NetBrain and County 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) and Documentation contain valuable patent, copyright, trade secret, trademark and other proprietary rights of NetBrain and constitute the sole and exclusive property of NetBrain. Nothing contained herein, including, but not limited to, Section 10, shall be construed to convey to County any right, title or interest in or to the Programs, Documentation, NetBrain Qapps, NetBrain Runbooks or any NetBrain intellectual property. In addition, NetBrain shall be free to use without restriction, any and all suggestions, ideas, enhancement requests, feedback, or recommendations made by County, 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. Except for the license granted herein, NetBrain, and its Third Party Software Providers (if any), reserves all rights in the Programs and Documentation.

2.9. AUDIT. During the term of this Agreement and for a period of one (1) year thereafter, NetBrain may audit County's use of the Programs, provided that it gives County at least thirty (30) days prior written notice. Any such audit shall be conducted during regular business hours at County's facilities and shall not unreasonably interfere with County's business activities. All information disclosed by County during the course of the audit shall be Confidential Information subject to the provisions of Section 12.1, 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 unless the audit reveals a material variance in the use of the Programs and Documentation from the use and distribution authorized under this Agreement, in which case County shall be liable to NetBrain for all reasonable audit expenses incurred by NetBrain. County shall also be liable for any unauthorized use or distribution of the Programs 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 County, such as, but not limited to, percentage (%) of nodes 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 shall be anonymized and aggregated with information collected from other customers and used for internal research and development purposes, and to electronically verify County's compliance with the license limitations set forth in this Agreement.

### SECTION 3. ESSENTIAL SERVICES

3.1. NetBrain offers, for an additional cost, a pre-packaged, remotely-provided consulting service designed to assist in the optimization of the Programs on County's network environment, more fully described at NetBrain's website (the "Essential Services").

3.2. Subject to County's right in Output in accordance with Section 3.3 below, NetBrain owns all right, title and interest in and to the Essential Services and any and all technology, information, 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 Essential Services hereunder, as well as all Intellectual Property Rights therein.

3.3. County owns all right, title, and interest in any Output. All Intellectual Property Rights belonging to a party prior to the execution of this Agreement shall remain vested in that party.

3.4. Unless otherwise expressly set forth on an Order, the Essential Services are to be completed using the current version of the Programs. NetBrain makes no guarantees that the Essential Services will have backward or forward compatibility. Additional work to support other versions or releases of the Programs may require a separate agreement.

3.5. The provision of the Essential Services is dependent on the availability of County, and County understands and agrees to provide reasonable cooperation and any and all information required by NetBrain to perform the Essential Services, including but not limited to, ready access to all appropriate County personnel, and equipment, including any third party computing platforms, documentation (e.g., program source, copybooks, tables, subroutines, etc.), source libraries, test systems, and test data to fully understand County's on-site environment and systems. In the event NetBrain is required to be on-site at County's facilities, County shall grant NetBrain personnel access to County facilities during normal business hours, subject to County's standard security policies and procedures, for the sole purpose of performing the Essential Services. County represents and warrants that it has all authority, rights, licenses, and permissions necessary to grant to NetBrain the access described in this Section 3.5. County will defend, indemnify and hold harmless NetBrain, its officers, directors, employees, agents, representatives and affiliates from and against any and all third party claims, demands, litigation, liabilities or actions arising from County's breach of this Section 3.5 and pay all damages, expenses and costs, including reasonable attorneys' fees, which may be assessed against NetBrain under such claim, demand, litigation, liability or action.

3.6. Upon formal notice of completion by NetBrain, the Essential Services shall be deemed fully delivered. County acknowledges that any estimation of hours to be provided under the Essential Services is for administrative purposes only and shall not obligate NetBrain to provide any additional services beyond completion of the Essential Services as determined by NetBrain.

### SECTION 4. MAINTENANCE SERVICES

4.1. Provided that County has paid NetBrain the applicable Maintenance Fee, NetBrain will provide County with the Maintenance Services described in this Section 4, 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](mailto:support@netbraintech.com). County 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 County's license

information based on County'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 County's telephone calls between the hours of 9:00AM and 5:00PM EST, Monday through Friday, excluding NetBrain observed holidays. The telephone support line is set forth on [www.netbraintech.com/netbrain-support/](http://www.netbraintech.com/netbrain-support/).

(c) **Installation Assistance.** NetBrain shall provide County telephone assistance for the implementation or installation of Bypasses, Fixes, and Updates between the hours of 9:00AM and 5:00 PM EST, Monday through Friday, excluding NetBrain observed holidays.

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

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

(f) **Upgrades.** County is entitled to free Upgrades to the Programs, 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 County under this Agreement.

(g) **Regular Activity Reports.** Upon written request by County, 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.

4.2. **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 County's sole and exclusive remedy. NetBrain does not warrant that the Maintenance Services or Programs will be uninterrupted or error free.

### 4.3. 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 County at NetBrain's then-existing rates with a one-hour minimum per call. Any such amount billed to County will be mutually agreed upon by the Parties and be subject to County approval, not to be unreasonably withheld.

(d) Any travel and expenses incurred in conjunction with Out-of-Scope Maintenance and support shall be billed to County at NetBrain's actual costs, provided all such travel and expenses are approved by County in advance, in writing.

4.4. **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, 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, County forfeits the right to use or schedule such Training Services and will not receive any refund or credit.

4.5. OTHER CONSULTING SERVICES. County 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 County unless agreed by both parties.

#### SECTION 5. COMPENSATION

5.1. LICENSE FEE. County will pay NetBrain the License Fee according to the payment schedule set forth on the Exhibit A to this Agreement.

#### 5.2. FEES FOR MAINTENANCE SERVICES

(a) The Maintenance Term shall continue for the maintenance period set forth in Exhibit A or the relevant Order and shall accrue from the date of delivery of the Programs and Documentation. During the Initial Maintenance Term, County shall pay NetBrain the Maintenance Fee set forth on the Exhibit A of this Agreement. Maintenance Services shall renew on an annual basis upon mutual agreement of the parties and payment of the applicable fees.

(b) Lapsed Maintenance Services may be reinstated within ninety (90) days, subject to County's payment of back-Maintenance Fees. If coverage has lapsed for more than ninety (90) days but less than twelve (12) months, Maintenance Services can be reinstated by paying the applicable Maintenance Fee plus a reinstatement fee equal to fifty percent (50%) of the lapsed Maintenance Fee. The applicable Maintenance Fee itself is the annual Maintenance Fee starting from the expiration date of the last paid maintenance term through the end of the desired new maintenance term. After twelve (12) months of lapsed coverage, NetBrain cannot offer reinstatement and County would be required to purchase the latest version of the Programs and an annual Maintenance commitment.

(c) County acknowledges that in the event it permits Maintenance Services to lapse, County will not receive Updates, Enhancements, Upgrades or any other modifications or changes to the Programs or Documentation typically provided as part of Maintenance Services, some of which may be critical. Accordingly, NetBrain does not recommend use of the Programs or Documentation on a production grade network unless County is a current subscriber to Maintenance Services.

#### 5.3. PAYMENT.

(a) All fees, charges and other sums payable to NetBrain under this Agreement will be due and payable on the dates specified on Exhibit A to this Agreement, or within thirty (30) days after the invoice date if no date is specified on Exhibit A. County shall pay all amounts due under this Agreement to NetBrain at the address set forth herein or such other location as NetBrain designates in writing. NetBrain will not accept or process credit card payments for invoices of more than \$20,000 USD or the equivalent in other currencies.

(b) 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 less, determined and compounded on a daily basis from the date due until the date paid, and County shall be liable for any costs of collection. In addition, in the event County fails to fulfill its payment obligations, NetBrain reserves the right to suspend the Licenses and/or Maintenance Services, as applicable, without notice.

(c) All fees, charges and other sums payable to NetBrain under this Agreement do not include any sales, use, excise or other applicable taxes, tariffs or duties, payment of which shall be the sole responsibility of County, excluding any applicable federal and state taxes based on NetBrain's net income.

(d) This Agreement applies whether County purchases the Programs and/or Maintenance Service directly from NetBrain or through a reseller, or any third party (collectively, "Reseller"). If County purchases through

a Reseller, Resellers are not authorized to make any promises or commitments on NetBrain's behalf, and NetBrain is not bound by any obligations to County other than as specified in this Agreement. County acknowledges that NetBrain reserves the right to suspend and/or terminate the Licenses and/or Maintenance Services hereunder, without notice or liability, due to non-payment by the Reseller.

#### SECTION 6. TERM AND TERMINATION

6.1. The license granted herein shall commence on the date of full execution of the Agreement and shall remain in effect unless terminated in accordance with the provisions of this Agreement.

6.2. TERMINATION BY COUNTY FOR CONVENIENCE. County may terminate this Agreement and the license for any reason by providing NetBrain with thirty (30) days prior written notice. No refunds of License Fees or Maintenance Fees will be provided for termination by County pursuant to this Section 6.2.

6.3. TERMINATION BY EITHER PARTY FOR CAUSE. If either party defaults in the performance of or compliance with any of its material obligations under this Agreement, and such default has not been remedied or cured within thirty (30) days after the other party gives the breaching party written notice specifying the default or, 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 discretion, then the other party may terminate this Agreement and the License, in addition to its other rights and remedies at law or in equity. In the case of termination due to breach by NetBrain, County shall receive a pro-rata refund of Maintenance Fees for the remaining Maintenance term paid for beyond the termination date.

#### 6.4. POST TERMINATION.

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

(b) All charges required under this Agreement incurred prior to the date of the termination shall be fully paid by County.

#### SECTION 7. WARRANTIES AND REMEDIES

7.1. PERFORMANCE WARRANTY AND REMEDY. NetBrain warrants to County 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 thirty (30) days after the date of delivery of the Programs at the County 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 4.2. NetBrain also warrants that it shall promptly provide County 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 7.1, NetBrain shall use reasonable commercial efforts to correct the noncompliance, provided that County promptly notifies NetBrain of the noncompliance of the Programs within the warranty period, and NetBrain is able to reproduce the noncompliance as communicated by County to NetBrain. If after the expenditure of reasonable efforts, NetBrain is unable to correct any such noncompliance, NetBrain shall refund to County the License Fee paid by County to NetBrain for such Programs in full satisfaction of County's claims relating to such noncompliance upon County's return of said Programs and, for the avoidance of doubt, County shall have no further claim or remedy against NetBrain, said refund constituting County's sole and exclusive remedy.

7.2. PERFORMANCE WARRANTY LIMITATIONS. The warranties set forth in Section 7.1 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, 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 County in contradiction of the terms of this Agreement (unless otherwise approved by NetBrain in writing).

7.3. 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 7.3, 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 County the License Fee paid by County 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 County's sole and exclusive remedy for such noncompliance.

#### SECTION 8. INDEMNIFICATION

NetBrain agrees, at its own expense, to defend, indemnify and hold harmless County for, and at NetBrain's option to settle, any and all claims, demands, litigation, liabilities or actions brought against County alleging that the Programs as used within the scope of this Agreement infringe any United States patent, copyright, trademark, trade secret or any other intellectual property right of any third party by, and to pay all damages, expenses and costs, including reasonable attorney's fees, which may be assessed against County under any such claim, demand, litigation, liability or action. NetBrain shall be released from the foregoing obligation unless County provides NetBrain with (i) prompt written notice after County 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) sole control and authority over the defense or settlement thereof (County 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 County as contemplated herein, NetBrain will, at its sole option and expense, either (a) procure for County 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 Programs 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 County 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 County'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 if the infringement would have been avoided by use of the most recent version.

THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF NETBRAIN AND THE EXCLUSIVE REMEDY OF COUNTY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE PROGRAMS.

#### SECTION 9. DISCLAIMER OF WARRANTY, HOLD HARMLESS, AND LIMITATION OF LIABILITY

9.1. NetBrain shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage, to the extent caused by the acts, or omissions of NetBrain, its officers, employees, subcontractors, agents or representatives resulting in property damage, bodily injury, or death. NetBrain's indemnification obligations shall not be limited by the limitation of liability set forth in Section 11.

9.2. With respect to any action or claim subject to indemnification herein by NetBrain, NetBrain shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes NetBrain's indemnification obligations to Indemnitees as set forth herein.

9.3. NetBrain's obligation hereunder shall be satisfied when NetBrain has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe NetBrain's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

#### SECTION 10. DISCLAIMER OF WARRANTIES.

EXCEPT AS SET FORTH IN THIS AGREEMENT AND ALL ATTACHMENTS REFERENCED HEREIN, NETBRAIN MAKES NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING THE PROGRAMS OR THE DOCUMENTATION OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO COUNTY 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 FORGOING. 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.

#### SECTION 11. LIMITATION OF LIABILITY

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, INCLUDING NEGLIGENCE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS SET FORTH IN SECTIONS 8 AND 9, NETBRAIN'S LIABILITY UNDER THIS AGREEMENT FOR DAMAGES WILL NOT, IN ANY EVENT, EXCEED TWO TIMES THE AGGREGATE AMOUNT PAID BY THE COUNTY TO NETBRAIN UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE TIME SUCH LIABILITY AROSE.

#### SECTION 12. QAPPS & RUNBOOKS

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

##### (a) CUSTOMER QAPPS AND RUNBOOKS.

14.11. 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.

14.12. FORCE MAJEURE. Neither party will be liable for, or be considered to be in breach of or default under 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, terrorism, insurrection, war, riots, failure of transportation or power supply, communications outage, Internet outage, cyber-attack, or performance (or lack thereof) of third parties.

14.13. 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.

14.14. 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. NetBrain is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the County. It is expressly understood and agreed that NetBrain (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which County employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and NetBrain shall hold County harmless from any and all claims that may be made against County based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

14.15. 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.

14.16. COUNTERPARTS. This Agreement may be signed in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument.

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

14.18. 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, County's unsatisfied payment obligations.

14.19. NON-DISCRIMINATION. NetBrain shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and all other applicable laws or regulations.

## SECTION 15. INSURANCE

Without limiting or diminishing NetBrain's obligation to indemnify or hold the County harmless, NetBrain shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the County herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

### A. Workers' Compensation:

If NetBrain has employees as defined by the State of California, NetBrain shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$500,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

### B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of NetBrain's performance of its obligations hereunder. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

### C. Vehicle Liability:

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then NetBrain shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

### D. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) NetBrain shall furnish the County of Riverside with a copy of NetBrain's insurance certificates, either 1) a properly executed Certificate(s) of Insurance and copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide copies all Endorsements and all attachments thereto, showing such insurance is in full force and effect.

3) It is understood and agreed to by the parties hereto that NetBrain's insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

4) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by NetBrain has become inadequate. Any such adjustment shall be effective upon a duly-executed amendment between the parties referencing and incorporating this Agreement.

5) NetBrain shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

6) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the County.