

## NEOSYSTEMS LLC GENERAL TERMS AND CONDITIONS

These NeoSystems LLC General Terms and Conditions (“**Terms and Conditions**”) govern the sale, resale, license or sublicense (“**Sales**”) of its Products and Services to Clients and are hereby incorporated by reference in all Agreements. All Sales by NeoSystems to Client are expressly limited to and conditioned on a Client’s acceptance of these Terms and Conditions.

### 1. **DEFINITIONS.**

1.1 “**Agreement**” means any agreement, order, contract, subcontract, statement of work (“**SOW**”), change order (“**CO**”), or other document executed by the Parties that incorporates these Terms and Conditions by reference and that provides for the delivery of Products or Services from NeoSystems to Client.

1.2 “**Client**” means the Party with whom NeoSystems is entering into an Agreement, and may also be referred to as “**Buyer**,” “**Customer**,” “**Purchaser**,” or other term as may be designated in an Agreement.

1.3 “**Client Affiliate**” means any Client parent, affiliate, or subsidiary entities, and subcontractors of any tier, customers, users, and each of their respective directors, officers, managers, agents, representatives, consultants, employees, invitees, insurers and heirs.

1.4 “**Client Data**” means all Data provided to or created by NeoSystems for processing or storage on behalf of Client under the terms of an Agreement, as well as any Data derived from such Data. Client Data includes, without limitation, (a) Data on electronic media, paper or non-electronic media provided to NeoSystems for processing or storage; (b) Data provided to NeoSystems by Client’s Affiliates; and (c) personally identifiable information, personal data or personal information, in each case as may be defined under applicable law, from Client or Client Affiliates.

1.5 “**Data**” means information or content, including all text, sound, video, or encoded binary and image files, and software (including machine images), documents, or other information including, but not limited to writings, designs, specifications, reproductions, pictures, drawings, or other graphical representations and any works of a similar nature and any documentation relating thereto.

1.6 “**Documentation**” means (i) the manuals and other written materials concerned with the operation and support of the Licensed Program, Software as a Service (“**SaaS**”), and the NeoSystems Provided Equipment; (ii) the written training manuals, other written materials and any video or audio or other media to be supplied in conjunction with training; and (iii) all other written materials used by, developed for, or paid for by Client in connection with the performance of the Services by NeoSystems under an Agreement.

1.7 “**Hosting Services**” means the Service of maintaining on

NeoSystems’ computing servers certain hosted applications as specified in an Agreement, and making such hosted applications available to Client via network access, together with any hosting support Services, as set forth in an Agreement.

1.8 “**Intellectual Property Rights**” means all copyrights, patents, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same, belonging to a Party or to a Third Party Vendor.

1.9 “**Licensed Programs**” means, collectively, NeoSystems’ and any Third Party Vendor computer software programs to be provided to Client for use on certain hardware on Client’s premises or a third party’s premises as set forth in an Agreement. The Licensed Programs shall include any fixes, work-arounds, updates, revisions, modifications, enhancements and any derivative works that are provided to Client by NeoSystems under an Agreement.

1.10 “**Licensed Materials**” means the Licensed Programs (including the software in object code format and its operating instructions) and the Documentation.

1.11 “**NeoSystems**” means NeoSystems LLC, a wholly owned subsidiary of NeoSystems HoldCo, Inc., a Virginia corporation having its principal offices located at 1861 International Dr., Suite 200, McLean, VA 22102. NeoSystems is a software reseller, systems integrator, and provider of diverse Services. NeoSystems LLC is the operating company and contracting entity, and is a single member LLC of which NeoSystems HoldCo, Inc. is the sole member. An Agreement may reference NeoSystems by name, or alternatively, as “**Provider**,” “**Consultant**,” “**Supplier**,” “**Contractor**,” or such other term as may be designated in an Agreement.

1.12 “**NeoSystems Affiliate**” means any NeoSystems parent, affiliate, or subsidiary entities, and subcontractors of any tier, and each of their respective directors, officers, managers, agents, representatives, consultants, employees, invitees, insurers and heirs.

1.13 “**NeoSystems Provided Equipment**” means the NeoSystems hardware, peripherals, and other goods and materials (other than the Licensed Materials) provided, installed, or to be provided or installed by NeoSystems at the

Client's premises or third party premises as set forth in an Agreement, for the purposes of enabling the Client to use the Services as specified in an Agreement.

1.14 "**NeoSystems Tools**" means any of NeoSystems' proprietary information and know-how used at any time by NeoSystems in the conduct of business, including without limitation, technical information, designs, templates, software modules, processes, methodologies, systems used to create computer programs or software, procedures, code books, computer programs, plans, or any other similar information including improvements, modifications or developments thereto.

1.15 "**Party**" (or collectively "**Parties**") means NeoSystems and any Client as designated in an Agreement.

1.16 "**Product**" or "**Products**" means, collectively, the Licensed Materials and the NeoSystems Provided Equipment provided by NeoSystems to Client as designated in an Agreement.

1.17 "**Professional Services**" means services including, but not limited to, one or more of the following: technical support, consulting, education/training, customer support, managed services (which may include, without limitation, managed/outsourced accounting services, human capital services, cyber/ data security services, and/ or IT services), or other professional services to be provided by NeoSystems as designated in an Agreement.

1.18 "**Services**" means, collectively, the Professional Services, Hosting Services and services relating to the Products as set forth in an Agreement.

1.19 "**System**" means, collectively, the Licensed Programs and the NeoSystems Provided Equipment and NeoSystems network as the same operate together in the provision of the Services as set forth in an Agreement.

1.20 "**Third Party Vendors**" means all persons or entities who own the Intellectual Property Rights in the Licensed Programs or who have license rights in the Licensed Programs or any part or parts thereof and which license rights are superior to the license rights of NeoSystems and/or the Client.

## 2. **INVOICING AND PAYMENT.**

2.1 **Invoicing.** NeoSystems will tender invoices to Client's designated point of contact as specified in an Agreement as follows:

2.1.1 **Professional Services.** NeoSystems will tender invoices for Fees and Expenses (as defined below) for all Professional Services billed on a time and materials basis, on a monthly basis in arrears.

2.1.2 **Hosting Services.** NeoSystems will tender invoices for Hosting Services upon commencement of such Hosting Services and thereafter monthly in advance.

2.1.3 **Licensed Programs.** NeoSystems will tender invoices for Licensed Programs upon delivery of software to Client. NeoSystems will tender invoices for Licensed Program renewals approximately thirty (30) days prior to the renewal date.

2.2 **Reimbursable Expenses.** Client will reimburse NeoSystems for reimbursable expenses ("**Expenses**") set forth in an invoice as may be specified in an Agreement.

2.3 **Payment.** The Client agrees to pay NeoSystems fees for the Products and Services ("**Fees**") at the rates set forth in an Agreement. Client agrees to pay all NeoSystems' undisputed charges within thirty (30) days after NeoSystems invoices Client as set forth in Section 2.1, above. Interest on money due under an invoice will accrue at a monthly rate of 1.50% on undisputed amounts outstanding greater than 30 calendar days. If Client in good faith disputes any charges in an invoice, whether in whole or in part, then Client will provide written notice to NeoSystems of the disputed amount adequately supported by a bona fide explanation and documentation within five (5) business days after the tender of such invoice to Client ("**Payment Dispute Notice**"), and will pay all amounts for which a dispute has not been documented in accordance with this Section 2.3. If Client fails to provide such Payment Dispute Notice within such five day period, Client agrees that it has accepted the Products or Services associated with such invoice. For a Payment Dispute Notice to be valid, it must specify in detail the extent to which and the reasons why Client disputes the invoice. The Parties will resolve all invoice disputes in accordance with Section 12 (Dispute Resolution). Upon resolution of the dispute, Client will pay all previously unpaid disputed amounts in accordance with such resolution within fifteen (15) calendar days. Time is of the essence with respect to Client's obligations under this Section 2.3.

2.4 **Taxes.** Amounts due under an Agreement are payable to NeoSystems without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld at the source. If applicable law requires withholding or deduction of such taxes or duties, Client shall separately pay NeoSystems the withheld or deducted amount. NeoSystems will charge Client sales tax as a separate line item on the invoice, as applicable. If Client claims to be exempt from sales or use taxes, Client will provide NeoSystems with the appropriate certificate upon execution of the applicable Agreement.

## 3. **DEFAULT**

3.1 **Default.** Client shall be deemed to be in default ("**Default**") of an Agreement in the event that (a) Client fails to function as a going concern; (b) a receiver, trustee, or other custodian for Client or its assets is appointed, applied for, or consented to; (c) Client becomes insolvent or unable to pay its debts as they mature in the ordinary course; (d) Client makes an assignment for the benefit of creditors; (e) Client is liquidated or dissolved; (f) any proceedings are commenced by or against Client under any bankruptcy, insolvency, or

debtor's relief law and not dismissed within 60 days; (g) Client fails to observe and perform a material term of an Agreement and such failure continues for a period of thirty (30) days after receipt of written notice from NeoSystems; or (h) Client fails to make any payment of Fees or Expenses required hereunder when due, and such failure continues for a period of ten (10) days. In the event of Client's Default hereunder, NeoSystems may (i) suspend performance and/or terminate the applicable Agreement; and/or (ii) pursue any equitable or legal remedies NeoSystems may have under an Agreement.

#### 4. WARRANTIES.

##### 4.1 **NeoSystems Warranties.**

4.1.1 **Services.** NeoSystems will perform the Services in material conformance with the terms of an applicable Agreement during the term thereof. NeoSystems further warrants that NeoSystems' employees assigned to perform the Services are qualified to perform their assigned tasks. Client's sole and exclusive remedy for breach of this warranty will be, at NeoSystems' sole option (a) re-performance of the nonconforming Services materially as described in the Agreement; or (b) a pro rata refund of Fees previously paid to NeoSystems for the nonconforming Services.

4.1.2 **Products.** Except as otherwise provided herein, NeoSystems warrants that the Products will perform in material conformance with the technical specifications set forth in the applicable Agreement upon delivery to Client. Client's sole and exclusive remedy for breach of this warranty is (a) if the creator, owner or licensor is not NeoSystems, to receive reasonable assistance from NeoSystems to seek redress directly from the creator or owner of such Product; or (b) if the creator, owner or licensor is NeoSystems, at NeoSystems' sole option, the repair or replacement of the nonconforming Product, or the refund of its purchase price. NeoSystems does not warrant that the Products will perform without error or that they will run without material interruption.

4.1.3 **Exclusions.** NeoSystems provides no warranty regarding, and will have no responsibility for, any claim arising out of (i) a modification of the Products or Services made by anyone other than NeoSystems; (ii) use of the Products or Services in combination with any operating system, hardware, or software not authorized in the applicable Agreement; (iii) damage to the Products or Services by Client, including without limitation through misapplication, misuse, abuse, accident, neglect, or mishandling; (iv) the performance of the Products or Services after the expiration or earlier termination of the applicable Agreement; or (v) the acts or omissions of Client. Client may not bring a claim under an Agreement more than eighteen (18) months after the cause of action arises. No warranties under this Section 4.1 shall extend to any third party.

4.1.4 **Third Party Components.** NeoSystems shall, at Client's sole cost and expense, (a) use reasonable efforts to pass through to Client any warranty right it receives from a Third Party Vendor with respect to any Licensed Materials owned or licensed by Third Party Vendor ("**Third Party**

**Components**") to the extent NeoSystems has the right or reasonable ability to do so; and (b) reasonably cooperate with Client in enforcing such rights. NEOSYSTEMS PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THIRD PARTY COMPONENTS, AND NEOSYSTEMS WILL NOT BE LIABLE FOR ANY FAILURE OF ANY THIRD PARTY COMPONENT TO FUNCTION AS EXPECTED.

4.1.5 **Software Options.** If Client purchases a software option in which Client is responsible for acquiring the license, and NeoSystems agrees to install the third-party software for Client, Client is solely responsible for obtaining a valid license from the Third Party Vendor. If NeoSystems purchases any third-party software on Client's behalf, Client agrees to sign any required third-party license agreements prior to delivery or installation of the third-party software. If NeoSystems installs third-party software at Client's request and acceptance of license terms is effected electronically, Client authorizes NeoSystems to accept the third-party license terms on Client's behalf.

##### 4.2 **Client Warranties.**

4.2.1 **Client Data.** Client warrants that any Client Data will not (a) infringe or violate a copyright, trademark, trade secret, privacy, confidentiality or contractual right; (b) be illegal, unlawful, fraudulent, harmful, pornographic, defamatory, of a harassing nature, or invasive of personal privacy or private rights; (c) create a risk of harm or any other loss or damage to any person or property; (d) violate the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising; (e) constitute or contribute to a crime or a tort; (f) contain any Data that Client does not have a right to upload into the System; (g) constitute information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), unless Client has a signed Business Associate Agreement (as defined by HIPAA) with NeoSystems; (h) otherwise be prohibited as specified in the Agreement; or (i) classified information as defined in 50 U.S. Code § 834.

4.2.2 **Data Management and Security.** As between NeoSystems and Client, Client shall at all times remain the sole and exclusive owner of Client Data, and NeoSystems' use and possession thereof is solely on Client's behalf. NeoSystems' may access and use Client Data only as necessary to provide the Services and Products, perform or enforce contractual obligations, comply with applicable law, as necessary to monitor and improve the Services, and for statistical, analytical or aggregate non-personally identifiable use. Client is solely responsible for ensuring the Product or Service and its security is appropriate for Client's Data and Client's intended use. Client is responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of Data under its control, including without limitation, to the extent non inconsistent with the Service being provided, removing personal identifiers and encrypting Client Data before it is uploaded into the System. Except as expressly set forth in an Agreement, Client is responsible for providing any notices to its users of the Products and Services, and obtaining any legally required

consents therefrom. Client represents and warrants to NeoSystems that it has the right under applicable law (including without limitation providing all required notices, obtaining all necessary consents and complying with applicable contractual obligations) to disclose or provide access to Client Data to NeoSystems and to authorize NeoSystems to use, retain or otherwise process Client Data for purposes of complying with its obligations and providing the Services and Products under this Agreement. Client agrees to obtain and maintain in effect cyber liability insurance at all times during the term of this Agreement in accordance with the requirements of Section 9.2, below. Notwithstanding anything to the contrary contained herein, except as otherwise required by law, any statutory or regulatory notice of breach obligation which may arise with respect Client Data shall be Client's sole and exclusive responsibility and obligation at Client's sole cost and expense. NeoSystems undergoes annual SOC 1 and SOC 2 audits and is subject to federal statutory and regulatory requirements related to is data security practices. NeoSystems shall notify Client of any data security breach resulting in unauthorized access to the Client Data within seventy-two (72) hours after becoming aware of such breach. NeoSystems shall not be responsible for retaining any Client Data more than thirty (30) days after termination of the Service. Client Data may be deleted after thirty (30) days following the date of Service termination. Except as expressly set forth in an Agreement, NeoSystems will not restore, provide on any storage media, or send out any Data pertaining to a terminated Service. It is Client's responsibility to arrange for migration of Client Data prior to the expiration of the thirty (30) day period following termination of Service.

**4.2.3 Risk of Exposure.** NeoSystems uses commercially reasonable practices to maintain security and privacy of Client Data. Some service offerings may include compliance with specific security standards and regulations as set forth specifically in an Agreement (collectively, the "Data Security Standards"). Notwithstanding the foregoing, Client recognizes and agrees that hosting Data online involves risks of unauthorized disclosure or exposure, and that in accessing and using the System, Client assumes such risks. Client understands and agrees that NeoSystems makes no security guaranty beyond the requirements of the Data Security Standards for the applicable Services to be provided as set forth in an Agreement. Notwithstanding anything to the contrary herein, NeoSystems does not guarantee and expressly disclaims security and compliance with Data Security Standards with respect to non-vendor supported hardware and software (e.g. end of life) ("EOL Products"), and Client hereby expressly assumes all responsibility for the use of EOL Products and any and all liability arising therefrom.

**4.2.4 Data Accuracy.** NeoSystems will have no responsibility or liability for the accuracy of Client Data.

**4.2.5 EU Data.** If Client engages in the "processing" of "personal data" (as such terms are defined in the EU General Data Protection Regulation 2016/679 ("GDPR")) from the European Union, then Client will (a) inform NeoSystems in writing of Client's intended use of the Products or Services for processing personal data from the EU; (b) comply with all requirements of the GDPR and all

implementing rules, associated policies, and directives; (c) execute, as between Client and NeoSystems, a data processing agreement in compliance with the GDPR (on NeoSystems' standard form), whereby Client is the data controller and NeoSystems is the data processor or whereby Client is the data processor and NeoSystems is the sub-processor (as said terms are defined in the GDPR); (d) adhere to the GDPR, including the designation of Client's data protection officer and execution by Client of data processing agreements with data controllers and Client's own sub-processors; and (e) ensure that Client is fully transparent about the nature and purpose of its processing of personal data.

**4.2.6 Personal Information under the California Consumer Privacy Act.** For purposes of this Agreement, NeoSystems is a "service provider" as defined under the California Consumer Privacy Act of 2018, Cal. Civil Code § 1798.100 et seq., as amended, and any regulations promulgated thereunder (the "CCPA"). NeoSystems shall not: (a) sell personal information, or (b) retain, use or disclose any personal information for any purpose other than for the specific purpose of providing the Services and Products to Client pursuant to this Agreement, or as otherwise permitted by the CCPA. NeoSystems certifies that it understands and will comply with its obligations under the CCPA. In addition to the term "service provider," the terms "personal information" and "sell" in this Section shall have the same meanings as set forth in the CCPA.

**4.3 Mutual Warranties.** Each Party warrants to the other that (i) it has the full corporate right, power and authority to enter into, execute and perform its obligations under this Agreement; (ii) the performance of its duties and obligations hereunder do not and will not violate any agreement or other legal obligation by which it is bound; and (iii) it has complied with its duties to all applicable governing authorities. Each Party acknowledges and agrees that it will be solely responsible for complying with all laws, regulations and rules applicable to its performance under an Agreement.

**4.4 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN SECTION 4.1, ABOVE, TO THE EXTENT PERMITTED BY LAW, NEOSYSTEMS MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING ITS DELIVERY OR PROVISION OF THE PRODUCTS OR SERVICES, AND NEOSYSTEMS HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE OF ENJOYMENT, ACCURACY OF ANY INFORMATIONAL CONTENT COMPILED, PROCESSES, PROVIDED OR TRANSMITTED, SYSTEM INTEGRATION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, QUALITY, OR ANY OTHER IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. THE

**PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED “AS IS” WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH THE USER OF SUCH PRODUCTS OR SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING NEOSYSTEMS DOES NOT REPRESENT OR WARRANT THAT THE PRODUCTS OR SERVICES WILL (A) PERFORM WITHOUT INTERRUPTION OR ERROR; (B) BE SECURED FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CLIENT DATA WILL REMAIN PRIVATE OR SECURE; (C) BE FREE OF VIRUSES; (D) ENSURE OR MAINTAIN THE ACCURACY OR INTEGRITY OF CLIENT DATA; (E) MEET CLIENT’S BUSINESS REQUIREMENTS OR OPERATE WITH CLIENT’S EXISTING HARDWARE, SOFTWARE, OR SYSTEMS; OR (F) NOT CONTAIN ANY DEFECTS THAT AN EXAMINATION SHOULD HAVE REASONABLY REVEALED.**

## **5. CONFIDENTIALITY.**

**5.1 Confidential Information.** “**Confidential Information**” refers to the following items one Party to an Agreement (“**Discloser**”) discloses to another Party (“**Recipient**”): (a) any document Discloser marks “Confidential”; (b) any information Discloser orally designates as “Confidential” at the time of disclosure, provided Discloser confirms such designation in writing within three (3) business days; (c) any pricing information or source code disclosed by NeoSystems and any names of actual or potential customers disclosed by Client, whether or not marked as “Confidential”; and (d) any other nonpublic, sensitive information disclosed by Discloser. Notwithstanding the foregoing, Confidential Information does not include information that (i) is in Recipient’s possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser. Confidential Information is provided “as is” and without warranty, express or implied, of any kind.

**5.2 Restrictions on Use.** Recipient shall not use Confidential Information for any purpose other than to facilitate the transactions contemplated by an Agreement (the “**Purpose**”). Recipient (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Section 5.2; and (b) shall not disclose Confidential Information to any other third party without Discloser’s prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Discloser’s Confidential Information with the same degree of care it uses to protect its own Confidential Information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to

Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise contest such required disclosure, at Discloser’s expense.

**5.3 Injunction.** Recipient agrees that breach of this Section 5 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

**5.4 Termination and Return.** The obligations of Section 5.2 above will survive the termination of this Agreement for a period of five (5) years; provided, however, that such obligations related to Confidential Information constituting Discloser’s trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.

**5.5 Exception & Immunity.** Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

**5.5.1 Immunity.** An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

**5.5.2 Use of Trade Secret Information in Anti-Retaliation Lawsuit.** An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

**5.6 Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Except to the extent another section of this Agreement specifically provides to the contrary, Discloser will retain all right, title, and interest in and to all Confidential Information.

**5.7 Feedback.** Nothing in this Agreement or in the Parties’ dealings arising out of or related to this Agreement will restrict NeoSystems’ right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback (as defined below), without compensating or crediting Client or the individual

providing such Feedback, except to the limited extent that Section 5 (Confidentiality) governs Feedback that constitutes Client's Confidential Information. Notwithstanding the provisions of Section 5 (Confidentiality), Client may not designate Feedback as its Confidential Information to the extent that such Feedback relates to NeoSystems or its Products or Services. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of NeoSystems' Products or Services.)

**5.8 Monitoring.** NeoSystems may monitor and collect configuration, performance, and usage data relating to Client's use of the Products and Services (a) to facilitate delivery of the Products and Services; and (b) improve delivery of the Products and Services. Client shall not interfere with such monitoring.

## **6. INTELLECTUAL PROPERTY.**

**6.1 Acknowledgement of Ownership.** Client acknowledges that, except with respect to Third Party Components not owned by or licensed to NeoSystems, all applicable Intellectual Property Rights in the Products and Services, and any modifications or enhancements thereto made by NeoSystems, whether or not made at Client's request, are and shall belong to and remain the property of NeoSystems.

**6.2 No Work for Hire.** No modifications or changes made to the Products or Services by NeoSystems pursuant to Client's request shall be considered as constituting, producing, or resulting in a "work for hire" under the copyright laws of the United States. NeoSystems shall for all purposes be deemed the author and originator of all Products and Services directly resulting from any work performed by NeoSystems pursuant to an Agreement.

**6.3 License.** During the term of an Agreement, subject to payment of Fees and Expenses by Client as provided therein, NeoSystems grants, and Client accepts, a limited, personal, non-exclusive, non-transferable, non-assignable, revocable object code license without the right to sublicense, to use the Licensed Materials and NeoSystems Tools owned or licensed by NeoSystems pursuant to the terms of an Agreement and subject to the terms of any license agreement between NeoSystems and any Third Party Vendor; provided, however, that Client may not (a) disclose or make available to third parties any portion of such NeoSystems Tools or Licensed Materials without NeoSystems' advance written permission; (b) copy or duplicate such NeoSystems Tools or Licensed Materials; (c) reverse engineer, decompile, disassemble, or recompile such NeoSystems Tools or Licensed Materials; or (d) modify or make derivative works of such NeoSystems Tools or Licensed Materials. "Use" as used in this Section 6.3 shall mean the ability to run, execute and display the Licensed Programs for internal business purposes only in object code form, only in the United States, and only on the hardware on which it is installed for the sole purpose of enabling Client to receive the Services. Client acknowledges that the NeoSystems Tools and Licensed Materials are copyrighted, that title to such NeoSystems Tools and Licensed Materials remains with NeoSystems or its suppliers, and that

the content and design of such NeoSystems Tools and Licensed Materials are valuable trade secrets. Any license granted hereunder may be terminated by NeoSystems in the event of Client's breach of the terms of the license or an Agreement, including without limitation any Default under Section 3.1. Upon termination of an Agreement, the licenses granted in this Section 6.3 will terminate, Client shall cease all use of the NeoSystems Tools and Licensed Materials, and each Party shall promptly return to the other Party any property belonging to such other Party.

**6.4 IP Rights to the System.** During the term of an Agreement, Client may access and use the System pursuant to an Agreement. Notwithstanding anything to the contrary herein, NeoSystems retains all right, title, and interest in and to the System, including without limitation all software used to provide the System, all graphics and user interfaces reproduced through the System, and any and all Intellectual Property Rights therein. An Agreement does not grant Client any Intellectual Property Rights or license in or to the System or any of its components. Client recognizes that the System and its components are protected by copyright and other laws.

**6.5 License of Server Content.** Client agrees to and hereby grants to NeoSystems a limited, nonexclusive, royalty-free, license to use, store, transmit, copy, display, process, delete, retain, and modify Client Data (a) as necessary to provide the Services to Client under this Agreement; (b) to perform or enforce contractual obligations; (c) to comply with applicable law; (d) as necessary to monitor and improve the Services; and (e) for statistical, analytical and other aggregate non-personally identifiable use, alone and/or together with other Data.

**6.6 Publicity.** Client agrees that NeoSystems may publicly disclose that NeoSystems is or has provided Services or Products to Client and may use Client's name and logo to identify Client as a customer of NeoSystems in promotional materials, including without limitation press releases.

**7. INDEPENDENT CONTRACTORS.** The Parties are each independent contractors. A Party will not be considered to be an employee, partner, or joint venturer of or with the other Party within the meaning or application of any federal, state, or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, workmen's compensation, industrial accident, labor, or taxes. NeoSystems and Client are now and will remain during the term of any Agreement separate and independent entities. As such, neither Party has the power or right to bind or obligate the other Party, and will not hold itself out as having such authority.

**8. NON-SOLICITATION.** To the extent permitted by law, the Parties will not, without the prior written consent of the other Party, hire nor solicit for employment, directly or indirectly, employees, subcontractors, or independent contractors of the other involved in the performance of the Party's obligations under an Agreement for a period of one (1) year following the termination or completion of the applicable Agreement. If a Party breaches this Section 8, the aggrieved Party may seek

equitable or injunctive relief as well as damages in a court of competent jurisdiction.

## 9. INSURANCE.

9.1 **NeoSystems Insurance.** NeoSystems will maintain the insurance listed below during the term of an Agreement. NeoSystems will furnish Client with certificates of insurance upon Client's written request.

9.1.1 **Worker's Compensation Insurance:** Statutory Workers Compensation in accordance with all country, state, local, or other applicable jurisdictional requirements of the location in which work is to be performed.

9.1.2 **Commercial General Liability Insurance:** \$1,000,000 each occurrence; \$2,000,000 general aggregate (including bodily injury, property damage, personal injury, advertising injury, products and completed operations, and contractual liability).

9.1.3 **Business Automobile Liability Insurance:** \$1,000,000 per occurrence (Owned and Non-owned).

9.1.4 **Excess or Umbrella liability insurance:** \$5,000,000 each occurrence; \$5,000,000 general aggregate. Limit applies in excess of Employers' Liability, Commercial General Liability, and Business Automobile Liability policies.

9.1.5 **Professional Liability, Errors and Omissions Insurance, and Cyber Liability Insurance:** \$2,000,000 per occurrence and in the aggregate.

9.1.6 **Property Insurance:** covering the full replacement value (less wear and tear and applicable depreciation) of any property specified in an Agreement to be placed in NeoSystems' care, custody and/or control to the extent and during such time that NeoSystems maintains such care, custody, and/or control.

9.2 **Client Insurance.** Client will maintain the insurance listed below during the term of an Agreement. Client will furnish NeoSystems with certificates of insurance upon NeoSystems' written request.

9.2.1 **Cyber Liability Insurance:** \$2,000,000 per occurrence and in the aggregate.

9.2.2 Such insurance as may be required to meet Client's indemnity obligations in Section 11.2 hereof.

## 10. LIMITATION OF LIABILITY.

**10.1 Limitation on Indirect Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE PRODUCT OR SERVICES, OR LOSS OR INACCURACY OF DATA FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS (SUBJECT TO THE OBLIGATIONS UNDER AN**

**APPLICABLE SLA), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION OF LIABILITY APPLIES REGARDLESS OF WHETHER A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**

**10.2 Limitation on Direct Damages. IN NO EVENT WILL NEOSYSTEMS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS UNDER THE AGREEMENT EXCEED THE TOTAL FEES PAID TO NEOSYSTEMS UNDER THE AGREEMENT GIVING RISE TO THE CLAIM IN THE IMMEDIATELY PRECEDING 12 MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATION OF LIABILITY UNDER THIS SECTION 10.2 IS CUMULATIVE AND NOT PER INCIDENT.**

**10.3 Scope and Exclusions.** For the avoidance of doubt, NeoSystems' liability limits and other rights set forth in this Section 10 apply likewise to NeoSystems Affiliates. The liabilities limited in this Section 10 shall not apply to (a) Fees payable under an Agreement; (b) claims for which either party is insured; (c) Infringement Claims; (d) Third Party Claims; (e) liquidated damages; (f) attorneys' fees and costs; (g) breach of government restricted rights; or (h) claims arising from a breach of Section 5 (Confidentiality). **NEOSYSTEMS' LIABILITY ARISING OUT OF OR RELATED TO SECTION 11.1 (INDEMNIFICATION BY NEOSYSTEMS) WILL NOT EXCEED TWO TIMES THE TOTAL FEES PAID TO NEOSYSTEMS UNDER THE AGREEMENT GIVING RISE TO THE CLAIM IN THE IMMEDIATELY PRECEDING 12 MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.**

## 11. INDEMNIFICATION.

**11.1 Indemnification by NeoSystems.** Subject to the remainder of this Section 11.1, NeoSystems will defend or settle any third party claim of infringement of Intellectual Property Rights enforceable in the United States resulting from Client's use of NeoSystems' Products or Services under an Agreement during the term of the applicable Agreement ("**Infringement Claim**"), and indemnify Client from the resulting costs and damages finally awarded against Client to a third party by a court of competent jurisdiction or government agency, or agreed to by NeoSystems in a written settlement, provided that Client (a) provides NeoSystems with prompt notice of any Infringement Claim; (b) allows NeoSystems, at its option, sole control of the defense and settlement of the Infringement Claim; and (c) reasonably cooperates in response to NeoSystems' requests for assistance with regard to the Infringement Claim. NeoSystems' obligations set forth in the preceding sentence include retention and payment of attorneys and payment of court costs,



as well as settlement at NeoSystems' expense and payment of judgments. Neosystems' indemnity obligation set forth in this Section 11.1 will be excused to the extent Client's failure to provide prompt notice or to reasonably cooperate prejudices the defense. NeoSystems will not, without Client's written consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement of any Infringement Claim that obligates Client to admit any wrongdoing or liability or subjects it to any ongoing affirmative obligations.

**11.1.1 NeoSystems Obligations.** If a Product or Service becomes or in NeoSystems' opinion is likely to become the subject of an Infringement Claim, NeoSystems will, at its option and expense (a) secure the rights necessary for Client to continue using the Product or Service; or (b) replace or modify the Product or Service to make it non-infringing without materially reducing its functionality as set forth in an Agreement; or (c) terminate an Agreement and refund any prepaid Fees on a pro rata basis.

**11.1.2 Exclusions.** NeoSystems shall have no obligation under this Section 11 or otherwise with respect to any Infringement Claim based on (a) combination of the Products or Services with non-NeoSystems products or services or any Data, including Client Data and/or any third party Data; (b) use of the Products or Services for a purpose or in a manner not permitted by an Agreement; (c) any modification to the Products or Services made without NeoSystems' express written approval; (d) any claim that relates to open source software or freeware technology or any derivative or other adaptation thereof that is not embedded by NeoSystems into the Products or Services; (e) Client's failure to incorporate updates or upgrades, or Client's failure or refusal to approve NeoSystems' performance of the incorporation of such updates or upgrades, to the Products and Services that would have avoided the alleged infringement; (f) NeoSystems' modifications of the Products or Services in compliance with specifications provided by Client; (g) Client's use of Third Party Components; (h) any Products or Services provided on a no-charge basis; or (i) the acts or omissions of Client.

**11.1.3 Sole Remedy.** This Section 11.1 states Client's sole and exclusive remedy and NeoSystems' entire liability for any Infringement Claims.

**11.2 Indemnification by Client.** Client will defend and indemnify NeoSystems and any NeoSystems Affiliates against any third party claim, suit, or proceeding arising out of, related to, or alleging: (a) infringement or violation of any Intellectual Property Rights or privacy or confidentiality rights by written material, images, logos or other Client Data uploaded into the System; (b) exposure or disclosure of personally identifiable information or other private information (whether such Data belongs to Client, to one of Client's customers or users, or to other third parties), caused by an act or omission of Client; (c) that use of the System through Client's account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising; (d) alleged or actual misuse of, or failure to use the Products or Services, including without limitation claims

by Client's users, subscribers, employees, or customers; (e) injury to or death of any individual, or any loss of or damage to real or tangible or intangible property, caused by the act or omission of Client or any of its agents, subcontractors, or employees; (f) Client's breach or misrepresentation with respect to Client Data; or (g) Client's breach of the EU General Data Protection Regulation 2016/679 ("GDPR") or other applicable law (collectively "Third Party Claims"), provided that NeoSystems (i) provides Client with prompt notice of any Third Party Claims; and (ii) reasonably cooperates in response to Client's requests for assistance with regard to Third Party Claims. Client's obligations set forth in the preceding sentence include retention and payment of attorneys and payment of court costs, as well as settlement at Client's expense and payment of judgments. Client's indemnity obligation set forth in this Section 11.2 will be excused to the extent NeoSystems' failure to provide prompt notice or to reasonably cooperate prejudices the defense. Client will not, without NeoSystems' written consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement of any Third Party Claim that obligates NeoSystems to admit any wrongdoing or liability or subjects it to any ongoing affirmative obligations. Client agrees to obtain and maintain sufficient insurance to meet its indemnity obligations hereunder.

## **12. DISPUTE RESOLUTION.**

**12.1** If a dispute arises between the Parties, the Party initiating such dispute will notify the other Party in writing ("**Dispute Notice**") and provide a reasonable level of detail as to the nature of the dispute, including any specific performance demanded by the Party making such claim. Following the tender of such notice, the Parties will work in good faith to resolve the dispute through successive escalation as follows:

**12.1.1 First escalation:** Upon receipt of the Dispute Notice, the Parties' respective account or project management representatives will communicate promptly and make diligent and sustained efforts to resolve the dispute within ten (10) calendar days.

**12.1.2 Second escalation:** If the Parties' respective account/project management representatives are unsuccessful in resolving the dispute, the Parties will promptly escalate the dispute to their respective senior management representatives (VP level or above), who will make diligent and sustained efforts to resolve the dispute within twenty (20) calendar days from the receipt of the Dispute Notice.

**12.1.3 Final escalation:** If the Parties' respective senior management representatives are unsuccessful in resolving the dispute, the Parties will promptly escalate the dispute to their respective C-level executive management. Each Party represents and warrants that its designated executive has full power and authority to legally bind their respective company. The Parties' respective executive designees will make diligent and sustained efforts to resolve the dispute within thirty (30) calendar days from the receipt of the Dispute Notice.

**12.2** All Dispute Notice discussions will occur and conclude within the thirty (30) calendar day escalation process from the



date of receipt of the initial Dispute Notice. Notwithstanding anything to the contrary contained herein, for disputes relating to Client's failure to pay any Fees and Expenses under any Agreement that are not resolved within the thirty (30) calendar day period, NeoSystems may proceed to litigate such non-payment disputes in a court of law in accordance with subsection 13.10 (Governing Law and Venue).

12.3 All other disputes arising under an Agreement will be settled by binding arbitration in Fairfax County, Virginia, or another location mutually agreeable to the Parties. The arbitration will be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of such arbitration will be in writing and will provide an explanation for all conclusions of law and fact and will include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration will be conducted before an arbitrator experienced in the subject matter of an Agreement and will include a written record of the arbitration hearing. An award of arbitration may be confirmed in a court of competent jurisdiction.

### **13. ADDITIONAL TERMS AND CONDITIONS.**

13.1 **Amendment.** NeoSystems may amend these Terms and Conditions from time to time by posting an amended version thereof on the NeoSystems web site. Such amendment will become effective thirty (30) days after such publication. Client's continued use of the Products or Services after such thirty (30) day period will be deemed acceptance of such amended Terms and Conditions. It is Client's responsibility to check the NeoSystems web site periodically for modifications of these Terms and Conditions. Except as otherwise provided herein, an Agreement may not be modified except in a written agreement signed by authorized representatives of the Parties.

13.2 **Assignment.** Any Agreement entered into by the Parties will bind and inure to the benefit of each Party's permitted successors and assigns. Neither Party may assign an Agreement, in whole or in part, without the other Party's prior written consent; provided however that either Party may assign an Agreement to an acquirer of all or substantially all of its stock or assets. Any other attempt to assign an Agreement without such consent will be null and void. Notwithstanding the foregoing, Client expressly acknowledges that NeoSystems may engage contractors to contribute to or assist with NeoSystems' obligations under an Agreement, and Client expressly agrees that such engagement of contractors is permitted and will not constitute an assignment.

13.3 **Severability.** Should a provision of these Terms and Conditions or an Agreement be found unenforceable or invalid by a court of competent jurisdiction, the provision will be stricken and the remaining provisions will be construed to give as much effect as possible to the remaining valid or enforceable provisions.

13.4 **Waiver.** No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver. No waiver

will be effective unless it is in writing and signed by an officer of the waiving Party. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

13.5 **Necessary Actions.** Each Party agrees to prepare, execute, and deliver to the other Party such other instruments, documents, and statements, and to take such other action as may be reasonably necessary to carry out the purposes of an Agreement.

13.6 **Counterparts.** Any Agreement may be executed in any number of separate counterparts, each of which will be deemed an original, but all such counterparts will constitute a single instrument.

13.7 **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in these Terms and Conditions or any Agreement confers upon any person or entity, other than the Parties, any legal or equitable right, benefit, or remedy of any nature.

13.8 **Entire Agreement.** These Terms and Conditions together with any applicable Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, between the Parties with respect to such subject matter. Neither party has relied upon any such prior or contemporaneous communications. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to these Terms and Conditions or any Agreement, or any oral amendments thereto based solely on course of dealing, waiver, release, estoppel, or other similar legal theory. The terms of these Terms and Conditions shall supersede any conflicting or additional terms, including without limitation any and all Client-supplied terms that may be different from or additional to these Terms and Conditions, in any form, including without limitation the terms and conditions of any purchase order or other purchasing-related document or communication issued by Client relating to the Products or Services.

13.9 **Construction.** The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

13.10 **Governing Law and Venue.** These Terms and Conditions and any Agreement which incorporates these Terms and Conditions by reference will be governed solely by the laws of the Commonwealth of Virginia without reference to (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. Each Party consents to the personal and exclusive jurisdiction of the federal and state courts of Fairfax County, the Commonwealth of Virginia as the sole and exclusive venue for any legal action or proceeding arising from these Terms and Conditions and/or any Agreement.

13.11 **Survival.** The following sections of these Terms and Conditions shall survive the expiration or termination of any Agreement: Section 2 (Invoices and Payment), Section 4 (Warranties), Section 5 (Confidentiality), Section 6 (Intellectual Property), Section 8 (Non-Solicitation), Section 10 (Limitation of Liability), Section 11 (Indemnification), Section 12 (Dispute Resolution), Section 13.8 (Entire Agreement), and any other provision of these Terms and Conditions that must survive to fulfill its essential purpose.

13.12 **Export Matters.** Client shall not (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export the Product or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Client shall not permit any third party to access or use the System in, or export the Product to, a country subject to United States embargo.

13.13 **Headings.** The section headings in the Agreement are inserted for convenience of reference only, are not substantive, and shall not be interpreted to define, describe, modify, or otherwise limit the interpretation or scope of any provision of the Agreement.

13.14 **Notices.** Any notice or communication under an Agreement must be in writing and will be deemed to have been given if delivered personally or by courier service, United

States mail, or email with confirmation of receipt at the addresses set forth below:

**NeoSystems LLC** Attention: Contracts Department  
1861 International Dr., Suite 200  
Tysons Corner, VA 22102-4412  
(571) 234-5094  
[contracts@neosystemscorp.com](mailto:contracts@neosystemscorp.com)

**Client:** To Client's address, facsimile, and/or e-mail as set forth in an Agreement.

13.15 **Force Majeure.** Except with respect to Client's obligation to pay Fees and Expenses when due hereunder, neither Party shall be liable to the other Party for default or failure to perform under an Agreement due to causes beyond the performing Party's reasonable control including, but not limited to, acts of any governmental body, acts of war, terrorism, insurrection, armed conflict, riots or other acts of civil disorder, embargoes, fire, flood, hurricanes, earthquakes, other acts of God or nature, strikes, labor disputes or other industrial or supply chain disturbances, global health emergencies, epidemics, pandemics, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software, or inability to obtain raw materials, supplies, or power used in or equipment needed for the delivery of Products or Services.

Last updated: June 19, 2020