

## 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. Notwithstanding anything to the contrary herein, any and all use of the Products and Services is subject to these Terms and Conditions. By using the Products and Services, you agree to these Terms and Conditions. If you do not agree to these Terms and Conditions, do not use the Products or Services.

### 1. DEFINITIONS.

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

**1.2 “Client”** means the party with whom NeoSystems or a NeoSystems authorized reseller 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 Programs, 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’ or a third party’s 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 Materials”** means the Licensed Programs (including the software in object code format or Software as a Service “**SaaS**”) and the Documentation.

**1.10 “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.

**1.11 "NeoSystems"** means NeoSystems LLC, a wholly owned subsidiary of NeoSystems HoldCo, Inc., a Virginia corporation having its principal offices located at 11107 Sunset Hills Road, Suite 100, Reston, Virginia 20190- 5376. 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/or 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, contract management services, consulting 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, 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 as set forth in the applicable Agreement.

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

**2.1.4 Fixed Fees.** NeoSystems will tender invoices for fixed Fees relating to the Products and Services as set forth in an Agreement.

**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; provided, however, that for Third Party Vendor computer software licenses or subscriptions, Client agrees to pay all NeoSystems’ undisputed charges within fifteen (15) days after NeoSystems invoices Client as set forth in Section 2.1. 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 and does not dispute the same. 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. All payments pursuant to an Agreement shall be made solely in the currency of the United States of America.

**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 or any bank or other payment related fees. 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; (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; or (i) Client communicates its intent to not honor its obligations under an Agreement. Except as otherwise required by law, in the event of Client’s Default hereunder, NeoSystems may (i) suspend its performance and/or terminate the applicable Agreement; (ii) accelerate all payments payable under the applicable Agreement without notice in the amount of sixty-five percent (65%) of the amounts payable thereunder; and/or (iii) pursue any equitable or legal remedies NeoSystems may have with respect to an Agreement. It is understood and agreed by the Parties that (A) NeoSystems shall be damaged by Client’s Default, (B) any sums which would be payable under this Section 3.1(ii) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (C) the payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such Default.

### **4. WARRANTIES.**

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

**4.1.1 Services.** NeoSystems warrants that NeoSystems and any NeoSystems Affiliate assigned to perform the Services will

perform the Services in material conformance with the terms of an applicable Agreement during the term thereof. NeoSystems further warrants that NeoSystems and any NeoSystems Affiliate 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 applicable 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 with respect to such Products and Services; 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 a 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 an Agreement; or (i) classified information as defined in 50 U.S. Code § 834. Client further 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 an Agreement.

**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. Without prejudice to Sections 4.2.3, below, Client is responsible for (a) any required notices, consents and/or authorizations related to Client's provision of, and NeoSystems' processing of, Client Data (including any personal information as said term is defined by applicable law) as part of the Services, (b) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Client Data, including any viruses, Trojan horses, worms or other harmful programming routines contained in Client Data, (c) any use by Client or Client's users of the Services in a manner that is inconsistent with the terms of an Agreement or the Data Processing Addendum, and (d) taking and maintaining

appropriate steps to protect the confidentiality, integrity, and security of Data under its control, including without limitation, to the extent not inconsistent with the Service being provided, removing personal identifiers and encrypting Client Data before it is uploaded into the System.. Client Data may not include any data that imposes specific data security, data protection, or regulatory obligations on NeoSystems in addition to or different from those specified in the Data Processing Addendum or in an Agreement. If Client Data includes any of the foregoing data (e.g., certain regulated health or payment card information), NeoSystems will process such data only pursuant to the terms of an Agreement and the Data Processing Addendum. Client is responsible for complying with its specific regulatory, legal or data security obligations which may apply to such Data. If available for the Services, Client may purchase additional services from NeoSystems designed to address specific data security, data protection or regulatory requirements applicable to such Client Data.

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. 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 to Client Data shall be Client's sole and exclusive responsibility and obligation at Client's sole cost and expense. 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 the 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 and processing Data online involves risks of unauthorized disclosure or exposure, and that in accessing and using the System and the Products and Services, 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 Personal Data.** If Client engages in the processing of personally identifiable information (whether identified as "personal data," "personal information" or other defined term ("collectively, "Personal Data")), in each case that is subject to applicable national, federal, state, local or other data privacy, security, breach notification or comparable laws, regulations, or rules, including, without limitation, the EU General Data Protection Regulation 2016/679, the United Kingdom General Data Protection Regulation, the California Consumer Privacy Act of 2018, and Cal. Civil Code § 1798.100 et seq., as amended, and, in each case, any regulations promulgated under such laws (collectively, "Data Protection Laws"), then Client will (a) inform NeoSystems in writing of Client's intended use of the Products or Services for processing of Personal Data; (b) comply with all requirements of the Data Protection Laws; (c) where necessary to comply with Data Protection Laws, execute, as between Client and NeoSystems, a data processing agreement in compliance with the Data Protection Laws, whereby Client is the data controller (or "business") and NeoSystems is the data processor (or "service provider" or "contractor") or whereby Client is the data processor and NeoSystems is the sub-processor (as said terms are defined in the Data Protection Laws); (d) adhere to the Data Protection Laws, including, where applicable, the designation of Client's data protection officer and execution by Client of data processing agreements with businesses and 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. NeoSystems shall not sell, share, retain, use or disclose any Personal Data for any purpose other than for the specific purpose of providing the Services and Products to Client pursuant to an Agreement, or as otherwise permitted by the Data Protection Laws.

**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 each 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, PROCESSED, 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 AN 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 OR RANSOMWARE ATTACKS; (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, source code, or names of actual or potential customers disclosed by Discloser, whether or not marked as “Confidential”; (d) the terms of any Agreement between the Parties; and (e) 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. Nothing herein shall prevent Recipient from disclosing Confidential Information to the extent necessary to its auditors or legal advisors; provided that (i) Recipient has informed its auditors and legal advisors of the nondisclosure and other obligations of Recipient under an Agreement; and (ii) the Recipient will be responsible for any actions of its auditors or legal advisors that would breach the terms of an Agreement if such auditors or legal advisors were Parties to such Agreement. Notwithstanding anything to the contrary herein, NeoSystems may disclose the terms of an Agreement in a redacted format provided all Client identifiers are removed. The Parties agree that no unauthorized data breach shall constitute a violation of the confidentiality obligations in this Section 5.

**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 seek 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 an 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 an Agreement or upon request of Discloser, Recipient shall promptly (but no later than sixty (60) days following the date of such request) account for and

return all tangible evidences or embodiments of Discloser's Confidential Information to Discloser, or certify, in writing, the destruction thereof, except that each Party may retain an archived copy to be used only in case of a dispute arising under an Agreement, and in such case only to the extent disclosure is reasonably necessary in connection with any dispute, claim, or action between the Parties. Notwithstanding the foregoing, the obligations to return or destroy Confidential Information shall not cover information that is maintained on routine computer system back up storage devices; in each case so long as such retained or backed up information is kept confidential in accordance with the confidentiality obligations hereunder.

**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 an 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.** No Agreement shall transfer ownership of Confidential Information or grant a license thereto. Except to the extent another section of an Agreement specifically provides to the contrary, Discloser will retain all right, title, and interest in and to all Confidential Information. Neither Party shall reverse engineer, reverse translate, disassemble or decompile any computer programs, appliances, prototypes or other tangible objects that embody the other Party's Confidential Information or that are provided to the Party under an Agreement.

**5.7 Feedback.** Nothing in an Agreement or in the Parties' dealings arising out of or related to an 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 license without the right to sublicense, to use the Licensed Materials and NeoSystems Tools owned or licensed by NeoSystems for its own internal business purposes during and 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 an 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.

**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 and to the extent not inconsistent with applicable antitrust laws and regulations, the Parties will not during the term of an Agreement and for a period of one (1) year following the termination or completion of thereof, 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 Party with whom a Party has had contact or first became known to a Party in connection with an Agreement, except that neither Party shall be precluded from hiring any such employee of a Party that (a) has been terminated by the other Party; (b) responds to a general solicitation or public advertisement (including through the use of employment agencies) placed by the other Party, provided that such general solicitation or public advertisement was not directed toward any such employee or group of employees of a Party; or (c) contacts the other Party of their own accord without direct or indirect solicitation or encouragement by the other Party. If a Party breaches this Section 8, the breaching Party agrees to pay the aggrieved Party an amount equal to one (1) time the first year total compensation of said employee, and the aggrieved Party may seek equitable or injunctive relief as well as damages in a court of competent jurisdiction. The prevailing Party shall be entitled to collect from the other Party all costs incurred in connection with such dispute, including attorneys' fees. The Parties agree that this provision is reasonably necessary to support the purpose of the Agreements between the Parties.

## **9. INSURANCE.**

**9.1** During the term of this Agreement, each Party shall maintain from a reputable insurance carrier a policy or policies of comprehensive general liability insurance, including coverage for owned contractual liability for the services it is providing under this Agreement, cyber liability, Errors and Omissions coverage, and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located and each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.

## **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 PRODUCTS OR SERVICES, OR LOSS OR INACCURACY OF DATA FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM OR BACKUP FAILURES, OR OTHER INTERRUPTIONS (SUBJECT TO THE OBLIGATIONS UNDER AN APPLICABLE SERVICE LEVEL AGREEMENT), 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. CLIENT'S PAYMENT OBLIGATIONS UNDER AN AGREEMENT SHALL NOT BE CONSIDERED NEOSYSTEMS' LOST PROFITS OR LOSS OF REVENUE.

**10.2 Limitation on Direct Damages.** IN NO EVENT WILL NEOSYSTEMS' OR ANY NEOSYSTEMS AFFILIATE'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO AN AGREEMENT EXCEED THE TOTAL FEES PAID BY CLIENT TO NEOSYSTEMS FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. THE LIMITATION OF LIABILITY UNDER THIS SECTION 10.2 IS CUMULATIVE AND NOT PER INCIDENT. THE LIMITATION OF LIABILITY AND REMEDIES IN THIS SECTION 10 ARE A REFLECTION OF THE RISKS ASSUMED BY THE PARTIES IN ORDER FOR NEOSYSTEMS TO PROVIDE AND FOR CLIENT TO OBTAIN ACCESS TO THE SERVICES AND PRODUCTS FOR THE SPECIFIED FEES.

**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) Infringement Claims; (c) Third Party Claims; (d) liquidated damages; or (e) attorneys' fees and costs.

## **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' Provided Equipment 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 NeoSystems Provided Equipment or Service; or (b) replace or modify the NeoSystems Provided Equipment or Service to make it non-infringing without materially reducing its functionality as set forth in an Agreement; or (c) terminate the NeoSystems Provided Equipment or Service and refund any prepaid Fees therefor 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, indemnify, and hold harmless NeoSystems and any NeoSystems Affiliates against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, and fees and costs of enforcing any right to indemnification under an Agreement, incurred by NeoSystems or any NeoSystems Affiliate relating to 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 NeoSystems Provided Equipment 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 it reasonably believes necessary 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 within thirty (30) calendar days from the receipt of the Dispute Notice.

**12.2** Notwithstanding anything to the contrary contained herein, in the event of nonpayment of undisputed Fees or Expenses under an Agreement, NeoSystems may proceed to litigate such claims in a court of law in accordance with subsection 13.10 (Governing Law and Venue) without delay, and shall be entitled to collect from Client all costs incurred in connection with such claims, including attorneys' fees (including allocable costs of in-house counsel).

**12.3** All other disputes arising under an Agreement, including disputes relating to the issue of waiver by conduct, 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 (including allocable costs of in-house counsel). 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. The prevailing Party shall be entitled to collect from the other Party all costs incurred in connection with such arbitrated dispute, including filing fees, arbitrator's fees, and attorneys' fees (including allocable costs of in-house counsel). If it becomes necessary for either Party to compel arbitration or to enforce an arbitration award, that Party may bring an action in any court of competent jurisdiction and the prevailing Party shall recover from the other Party its costs and expenses, including court costs and reasonable attorneys' fees (including allocable costs of in-house counsel).

## **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 that identifies itself as an amendment to the Agreement.

**13.2 Assignment.** All Agreements 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. Failure to make such assignment or failure of assignee to accept such assignment shall not relieve a Party of its obligations under an Agreement. 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 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 under an Agreement 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 an Agreement will constitute a waiver of any other breach of an 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.** Agreements 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 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 constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede 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 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 any Agreement result from negotiations between them. No Agreement will be construed in favor of or against either Party by reason of authorship.

**13.10 Governing Law and Venue.** All Agreements 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 any Agreement. Notwithstanding anything to the contrary herein, the Parties hereby agree to waiver of a jury trial.

**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 an Agreement 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 Products or otherwise remove them 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 Products to, a country subject to United States embargo.

**13.13 Headings.** The section headings in an 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 an 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

11107 Sunset Hills Road, Suite 100

Reston, VA 20190-5376

(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, quarantine restrictions, 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.

**13.16 Data Processing Addendum.** Each Party agrees to the Data Processing Addendum attached as Exhibit A hereto, which is incorporated herein by reference, including all terms, conditions and exhibits included therein.

**13.17 VMware Products.** In the event that Client's Products or Services incorporate VMware products or services as set forth in an Agreement, Client agrees that its use of those products or services is subject to the VMware General Terms found at: <https://www.vmware.com/agreements.html>.

Version 1.16, last updated December 13, 2024

EXHIBIT A  
DATA PROCESSING ADDENDUM

**1. Definitions**

All capitalized terms not otherwise defined herein shall have the meanings given them in the Terms and Conditions.

1.1 Terms such as “Business,” “Business Purpose,” “Commercial Purpose,” “Consumer,” “Personal Information,” “Sell” (and “selling,” “sale,” and “sold”), and “Share” (and “shared” or “sharing”) whether capitalized or not shall have the same meaning ascribed to them in the CCPA or CPRA (as applicable)

1.2 “Data Breach” means a breach of security in which Personal Data is accidentally or unlawfully destroyed, lost, altered, accessed or disclosed without authorization.

1.3 “Data Controller” or “Controller” means the individual or entity that determines the purpose and means of processing Personal Data.

1.4 “Data Processor” or “Processor” means an individual or entity that processes Personal Data on behalf of a Controller.

1.5 “Data Protection Laws” means in relation to any Personal Data which is processed in the performance of an Agreement, all laws and regulations of any jurisdiction, in each case as amended or superseded from time to time, that is applicable to such processing, including without limitation: the EU Data Protection Directive 95/46/EC, as repealed by the General Data Protection Regulation (EU) 2016/679 (“EU GDPR”) with effect from 25 May 2018 and EU Member State laws supplementing the GDPR; the EU GDPR and the Data Protection Act of 2018, in each case as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419), together with all regulations issued in connection therewith and all laws supplementing, amending or replacing any of the foregoing from time to time (“UK GDPR,” and together with the EU GDPR, as applicable, the “GDPR”); the EU Directive 2002/58/EC, including laws regulating the use of cookies and other tracking means as well as unsolicited direct marketing communications; the EU Member State laws regulating security breach notification and imposing data security requirements; the Virginia Consumer Data Protection Act of 2021 (“VCDPA”); the Connecticut Data Privacy Act (“CTDPA”); the Utah Consumer Privacy Act (“UCPA”); the Colorado Privacy Act (“CPA”); Title 1.81.5 California Consumer Privacy Act of 2018, codified at California Civil Code §§ 1798.100 – 1798.199, and its implementing regulations (“CCPA”); and the California Privacy Rights Act of 2020, 2020 Cal. Legis. Serv. Proposition 24, as codified at California Civil Code §§ 1798.100 et seq., and its implementing regulations (“CPRA”).

1.6 “Data Subject” means the identified or identifiable person so whom Personal Data relates, and shall include any person whose Personal Data is subject to protection under, or who has any legally exercisable rights under, the applicable Data Protection Laws. Data Subjects include without limitation “consumers” as such term is defined under applicable Data Protection Laws.

1.7 “EEA” means the European Economic Area, which for purposes of this Addendum includes the United Kingdom;

1.8 “Personal Data” means any information relating to an identified or identifiable living individual as meant under the applicable Data Protection Law, where such data is Client Data. Personal Data includes without limitation, “personal data,” “personal information,” as such terms are defined under applicable Data Protection Laws.

1.9 “process, processing, processes, or processed” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, including, but not limited to, collecting, recording, organizing, structuring, storing, adapting, altering, retrieving, consulting, using, disclosing by transmitting, disseminating or otherwise making available, aligning, combining, restricting, erasing or destroying.

1.10 “Services” and “Products” means the services and/or products described in an Agreement;



1.11 “Service Provider” means both a Service Provider and Contractor, as such terms are defined in the CCPA or CPRA (as applicable);

1.12 “Sub-processor” means any Data Processor appointed by NeoSystems to process Personal Data on behalf of NeoSystems or Client.

1.13 “Supervisory Authority” means (a) an independent public authority which is established by an EU Member State pursuant to Article 51 GDPR, or (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws.

Notwithstanding the foregoing, any term that is defined or used in this Addendum and that is also defined in any Data Protection Law shall have the definition set forth in and shall have an interpretation that is consistent with, such Data Protection Law to the extent such law is in effect and applicable to the processing of personal data under this Addendum and an Agreement, including without limitation if such law is in effect in the jurisdiction in which the relevant data subjects are located, the Services are performed, or where Client or NeoSystems are located, as applicable.

## **2. Applicability of Addendum and Processing of Personal Data**

2.1 This Addendum shall apply only to the extent Client or NeoSystems are established within a jurisdiction subject to a Data Protection Law and/or to the extent NeoSystems processes Personal Data of data subjects located in such a jurisdiction on behalf of Client or a Client affiliate or otherwise Client or NeoSystems are subject to the applicable Data Protection Law.

2.2 The parties agree that Client is a Data Controller and that NeoSystems is a Data Processor for the purposes of processing Personal Data pursuant to this Addendum. Client shall at all times comply with all Data Protection Laws that are applicable to it in connection with the processing of Personal Data. Client shall ensure all instructions given by it to NeoSystems in respect of Personal Data (including the terms of this Addendum) shall at all times be in accordance with applicable Data Protection Laws.

2.3 NeoSystems shall process Personal Data solely for the purposes of providing Services and Products to Client pursuant to an Agreement and in compliance with the applicable Data Protection Laws and the terms of this Addendum. NeoSystems shall only process (and shall ensure its personnel only Process) the Personal Data in accordance with Client’s authorizations and as set forth Appendix I of this Addendum (and not otherwise unless alternative processing instructions are agreed between the parties in writing), except where otherwise required by applicable law (and NeoSystems shall inform Client of that legal requirement before processing, unless applicable law prevents it from doing so on important grounds of public interest). If NeoSystems believes that any instruction received by it from Client is likely to infringe the Data Protection Laws, it shall promptly inform Client and be entitled to cease to provide the relevant Services and Products until the parties have agreed to appropriate amended instructions which are not infringing.

2.4 Client, irrespective of the Client’s role as a Data controller or a Data processor, shall be responsible for ensuring that, in connection with Personal Data and the Services and Products:

- a) it has complied, and will continue to comply, with all applicable laws relating to privacy and data protection, including applicable Data Protection Laws; and
- b) it has, and will continue to have, the right to transfer, or provide access to, the Personal Data to NeoSystems for processing in accordance with the terms of an Agreement and this Addendum.

2.5 If Client uses the Services or Products to process any categories of Personal Data not expressly covered by this Addendum, Client acts at its own risk and NeoSystems shall not be responsible for any potential compliance deficits related to such use.

2.6 The subject matter, the nature and purpose of the use of Personal Data and duration of the use of Personal Data is determined by and provided for by an Agreement. The types of Personal Data and categories of Data Subjects under an Agreement and this Addendum are set out in Annex I of this Addendum.

## **3. NeoSystems Personnel and Security**

3.1 NeoSystems shall keep the Personal Data confidential and will instruct its staff who have access to the Personal Data and any processors to do the same and ensure that such persons are subject to obligations of confidentiality.

3.2 Taking into account the state of technical development and the nature of processing, NeoSystems shall implement and maintain the technical and organizational measures set out in Annex II of this Addendum to protect the Personal Data against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, or access.

3.3 Upon becoming aware of confirmed Data Breach, NeoSystems shall notify Client without undue delay and pursuant to the terms of an Agreement and shall provide such timely information as Client may reasonably require to enable Client to fulfill any data breach reporting obligations under applicable Data Protection Laws.

#### **4. Use of Sub-processors**

4.1 NeoSystems shall:

- a) Not permit any processing of Personal Data by any agent, subcontractor, or other third party (except its or its sub-processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Personal Data) without the prior written authorization of Client;
- b) Not engage a Sub-processor without first providing Client an opportunity to object to such engagement.
- c) Prior to the relevant Sub-processor carrying out any processing activities in respect of the Personal Data, appoint each Sub-processor under a written contract containing materially the same obligations as under this Addendum that is enforceable by NeoSystems and ensure each such Sub-processor complies with all such obligations;
- d) Remain fully liable to Client under this agreement for all the acts and omissions of each Sub-processor as if they were its own; and
- e) Ensure that all persons authorized by NeoSystems or any Sub-processor to process Personal Data are subject to a binding written contractual obligation to keep the Personal Data confidential.

#### **5. Assistance.**

5.1 NeoSystems shall (at Client's cost) provide reasonable assistance to Client with data protection impact assessments (which may include providing necessary information to conduct data protection assessments) or prior consultations in connection with Client's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to NeoSystems.

5.2 NeoSystems shall (at Client's cost) taking into account the nature of the processing, assist Client (by appropriate technical and organizational measures), insofar as this is possible, for the fulfilment of Client's obligations to respond to requests for exercising the data subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Personal Data. For the avoidance of doubt, Client is responsible for responding to data subject requests for access, correction, restriction, objection, erasure or data portability of that data subject's Personal Data.

#### **6. International Transfers.**

6.1 NeoSystems shall not process and/or transfer, or otherwise directly or indirectly disclose, any Personal Data in or to countries outside the EEA or to any international organization without the prior written consent of Client. Further, in the event of approved international transfers of Personal Data between Client or its affiliates to NeoSystems that require the use of a valid, cross-border transfer mechanisms to ensure the protection of the Personal Data as may be authorized or required by the applicable Data Protection Laws, the parties agree to adopt and implement such mechanisms as the parties may mutually agree in good faith. The parties agree that such transfer mechanisms may include, without limitation, execution of applicable standard contractual clauses approved by the appropriate

supervisory authorities in the relevant jurisdiction in compliance with applicable Data Protection Laws.

## 7. Audits and Processing.

7.1 NeoSystems shall, in accordance with Data Protection Laws, make available to Client such information that is in its possession or control as is necessary to demonstrate NeoSystems compliance with the obligations placed on it under this Addendum and to demonstrate compliance with the obligations on each party imposed by applicable Data Protection Laws, and allow for and contribute to audits, including inspections, by Client for this purpose (subject to a maximum of one audit request in any 12 month period under this Section 7), in each case in accordance with Client's rights under an Agreement. If an Agreement does not include audit rights, NeoSystems and Client will discuss and mutually agree in advance on the reasonable start date, scope and duration of and security and confidentiality controls applicable to any audit; and NeoSystems reserves the right to charge a reasonable fee (based on NeoSystems' reasonable costs) for any such audit. NeoSystems will provide further details of any applicable fee and the basis of its calculation to Client in advance of such audit. NeoSystems shall also have the right (but not the obligation), with Client's prior written consent, to satisfy its audit obligations hereunder by engaging an independent auditor to audit NeoSystems' policies and security standards against an appropriate and accepted control standard or framework and assessment procedure for such audit or assessment. NeoSystems shall provide a report of such audit or assessment to Client upon request.

7.2 Notwithstanding the above, NeoSystems will, subject to the confidentiality arrangements that will satisfy both parties, make available to Client all information held by NeoSystems necessary to demonstrate its compliance with the obligations under the Data Protection Laws. If Client wishes to receive such further information to which it is entitled under the Data Protection Laws, Client shall submit a request for additional information to NeoSystems in writing for that additional information. Where NeoSystems is in possession of such information, and subject to the aforementioned confidentiality arrangements, NeoSystems shall supply this information to Customer as soon as reasonably practicable.

## 8. CCPA, CPRA AND SERVICE PROVIDER OBLIGATIONS

8.1 Processing of Consumer Personal Information. For purposes of this Section 8, the terms "process" and "processing" shall have the same meaning ascribed to them in the CCPA and CPRA, as applicable. Further, the parties acknowledge that Client is a Business and NeoSystems is both a service provider and contractor, as such terms are defined in the CCPA and CPRA (collectively, "**Service Provider**") for purposes of the CCPA and CPRA. Each of Client and NeoSystems acknowledges and agrees that it is responsible for its compliance with its own obligations, respectively, under the CCPA and the CPRA. To the extent that any provisions of this Section 8 conflict with any other provisions of this Addendum, the provisions of this Section 8 shall govern.

8.2 Business Purpose. NeoSystems acknowledges that in the process of providing deliverables, products, or services to Controller in accordance with an Agreement, Client may provide NeoSystems with the Personal Information of Consumers solely for the purpose of providing deliverables, products, or services to Client in accordance with an Agreement (the "**Business Purpose**").

8.3 Prohibitions. NeoSystems acknowledges and agrees that it is prohibited from, and shall not: (a) Sell any Personal Information provided by or Collected on behalf of Client or Share any Personal Information provided by or Collected on behalf of Client except as authorized by Client under an Agreement; (b) process, retain, use, or disclose such Personal Information for any Commercial Purpose other than the Business Purpose, except as otherwise permitted by the CCPA or CPRA, as applicable; (c) process, retain, use, or disclose such Personal Information outside of the direct relationship between the NeoSystems and Client, except as authorized under an Agreement; or (d) combine Personal Information that NeoSystems receives from Client with any other Personal Information or data Collected or received from other sources, including NeoSystems own interaction with Consumers, except as necessary to perform NeoSystems obligations under an Agreement or as permitted by applicable regulations.

8.4 Obligations. In addition to the other obligations under this Addendum applicable to NeoSystems with respect to Personal Information, NeoSystems shall: (a) maintain the confidentiality and security of Personal Information in its possession as required under the CCPA, the CPRA, an Agreement and this Addendum; (b) grant the right to and permit Client to take reasonable and appropriate steps to ensure that NeoSystems is using Personal Information in a manner consistent with Client's obligations under the CCPA and CPRA, as applicable; (c) grant the right to and permit Client to take reasonable and appropriate steps to stop and remediate any unauthorized use of Personal Information by NeoSystems; (d) notify Client in writing if NeoSystems is unable to comply with the CCPA

or CPRA, as applicable; and (e) permit Client to monitor the NeoSystems compliance with this Addendum through reasonable measures including, but not limited to, the audit rights set forth in Section 10 of this Addendum, manual reviews, regular assessments, annual audits, and technical testing once every 12 months.

**8.5 Notice of and Assistance with Requests.** In the event that that NeoSystems receives any correspondence or complaint from any governmental authority related to Client or any Personal Information processed in accordance with an Agreement or this Addendum, or any request from any Consumer whose Personal Information was provided to NeoSystems by or on behalf of Client with respect to the exercise of such Consumer's rights under the CCPA and CPRA, as applicable, NeoSystems shall (to the extent permitted by law) notify and forward a copy of such correspondence or request to Client as soon as possible but no later than five (5) days after NeoSystems receipt of such correspondence or request. With respect to Consumer requests, NeoSystems shall cooperate with Client in verifying the legitimacy of the Consumer and the request and in assisting Client with timely responding to such request. With respect to any correspondence or complaint from any governmental authority related to Client or any Personal Information processed in accordance with an Agreement or this Addendum (whether or not received by NeoSystems), NeoSystems shall provide reasonable assistance to Client in responding to any such correspondence or complaint. Notwithstanding the foregoing, nothing in this Addendum shall be deemed to prohibit, limit, assume responsibility for, or excuse NeoSystems from providing its own response to such request as required under, or otherwise complying with its obligations under, the CCPA or CPRA, as applicable.

**8.6 Subcontracting.** In the event that NeoSystems subcontracts any of its obligations as a Service Provider under an Agreement and this Addendum (provided such subcontracting is otherwise permitted by an Agreement), NeoSystems shall identify such subcontractor in Annex II and otherwise comply with Section 4 of this Addendum with respect to such subcontractor. NeoSystems warrants that such subcontractor(s) are in each case subject to the terms between NeoSystems and the subcontractor which are no less protective than those set out in this Addendum. Where a subcontractor fails to fulfil its obligations, NeoSystems shall remain fully liable to the Client for the performance of the subcontractor's obligations. For the purpose of clarity, "subcontractors" shall not be construed to include telecommunication providers or NeoSystems general vendors, such as utilities, cloud service, and internet.

**8.7 Certification.** NeoSystems hereby certifies to Client that it understands its obligations under this Addendum, including without limitation the prohibitions set forth in Section 8.3, and NeoSystems shall comply with them.

## **9. Deletion/Return and Survival.**

9.1 Upon termination or expiration of an Agreement, at Client's cost and Client's option, and to the extent not already addressed in an Agreement, NeoSystems shall either delete or return all of the Personal Data to Client or securely dispose of the Personal Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires NeoSystems to store such Personal Data. This Addendum shall survive termination or expiration of an Agreement.

## **10. Miscellaneous**

10.1 In the event that NeoSystems, any of its Sub-processors, or Client receives any regulatory request, order, or other binding decision or recommendation from the Supervisory Authority that requires amendments to the provisions hereof or any changes to the processing of Personal Data hereunder ("**Regulatory Request**"), NeoSystems and Client as well as, to the extent necessary and/or reasonably practicable, representatives of a respective Sub-processor, shall, within a reasonable time after receiving and reviewing the Regulatory Request, discuss and work in good faith towards agreeing on a plan ("**Compliance Review Plan**") to determine the details of how the Regulatory Request can be addressed. A timeframe for reviewing the Regulatory Request and preparing the Compliance Review Plan will be agreed between the parties, taking into account the requirements of applicable Data Protection Laws and the urgency of the matter as well as doing everything commercially reasonable given the circumstances and nature of the Services and Products to meet specific time frames set by the relevant Supervisory Authority in connection with the Regulatory Request. If NeoSystems, any of its Sub-processors, or Client believe that it is not possible to meet a specific time frame set by the relevant Supervisory Authority in connection with the Regulatory Request, NeoSystems and/or its Sub-processor will provide reasonable assistance to Client to explain this to the relevant Supervisory Authority.

10.2 In the event that there is a change in any applicable law related to processing, collection, storage, retention or other processing of any Personal Data under an Agreement or this Addendum, including without limitation the Data Protection Laws, the parties agree,

upon the request of either party, to amend this Addendum as necessary to comply with such laws.

10.3 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

10.4 Except as amended by this Addendum, an Agreement will remain in full force and effect. If there is a conflict between an Agreement and this Addendum the terms of this Addendum will control.

10.5 Any claims brought under this Addendum shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations, set forth in an Agreement. This Addendum shall be governed by and construed according to laws governing an Agreement. Any dispute arising out of or in connection with this Addendum shall be referred for resolution in accordance with the provisions of the applicable Agreement.



## **ANNEX I**

### **Data Processing Details**

#### **TYPES OF PERSONAL DATA:**

##### **Client Employees**

First Name

Last Name

Middle Name

Organization

Job Title

SSN

Postal Address

Email Address

Telephone Numbers

Birth Date

Hire Date

Termination Date

Compensation - Hourly Amount

Compensation - Annual Amount

Employee Type

Employee User ID

Asset Information – IP address, System Hostname

Labor Category

##### **Client Vendors**

Vendor Name

Vendor Address(es)

Vendor Contacts

DUNS

CAGE

UEI

Vendor Classification

##### **Client Employees' Emergency Contacts (Human Capital Management Services)**

Relation

First Name

Last Name

Middle Name

Postal Address

Email Address

##### **Banking Information**

Bank Name

Bank Account Number

Routing Number

IBAN Code

SWIFT Code

#### **CATEGORIES OF DATA SUBJECTS:**

Client employees, subcontractors, and representatives

Client customer employees, contacts and representatives

Client vendors and representatives

**ANNEX II****Minimum Technical and Organizational  
Security Measures**

NeoSystems shall implement and maintain the following technical and organizational security measures to protect the protected data:

In accordance with the data protection laws, taking into account the state of the art, the costs of implementation and the nature, scope, context, and purposes of the processing of the protected data to be carried out under or in connection with this agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Protected Data transmitted, stored, or otherwise processed, NeoSystems shall implement appropriate technical and organizational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR, and in other applicable Data Protection Law