NEOED

SERVICES AGREEMENT
APPLICABLE TO CUSTOMERS OF NEOED RESELLERS

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You are acquiring a subscription to a proprietary NEOED web-based software-as-a-service application (a "SaaS Application") and Professional Services (collectively referred to as the "Services") operated by Governmentjobs.com, Inc. (D/B/A/ NEOED), for and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) (collectively, "NEOED" and, where applicable, its other affiliates; "Customer", "you", "your" means the client, customer, or subscriber identified in the Order Form (as defined below) from an unrelated third party authorized to sell such subscriptions ("Reseller") under a separate agreement with NEOED ("Reseller Agreement"). In addition to any terms and conditions related to your use of the Services pursuant to any agreement by and between you and the Reseller, this Agreement contains the terms and conditions that govern your access to and use of the Services. NEOED is an express beneficiary of this Agreement, and in acquiring a subscription to the Service, you expressly acknowledge and agree that NEOED shall have the right to enforce this Agreement against you and that this Agreement constitutes the entire agreement and supersedes any and all prior agreements between you and NEOED with regard to your subscription to the Services or your access to or use thereof under this Agreement and your agreement between you and the Reseller.

By accepting this Agreement, either by accessing or using a Services, or authorizing or permitting any Authorized User (as defined below) to access or use a Service, you agree to be bound by this Agreement as of the date of such access or use of the Services (the "Effective Date"). If you are entering into this Agreement on behalf of a company, organization or another legal entity (an "Entity"), you are agreeing to this Agreement for that Entity and representing to NEOED that you have the authority to bind such Entity and its affiliates to this Agreement, in which case the terms "Customer", "you," "your" or a related capitalized term herein shall refer to such Entity and its affiliates. If you do not have such authority, or if you do not agree with this Agreement, you must not use or authorize any use of the Services. "Agreement" or "Services Agreement" shall be used to collectively refer to this Services Agreement Applicable to Customers of NEOED Resellers and any documents incorporated herein including the applicable Exhibits.

1. <u>Provision of Services</u>. Subject to the terms of this Agreement and the Order Form executed by the Reseller managing your subscription to the Service (the "Order Form"), NEOED hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (defined below) included or ordered by Reseller in the applicable Order Form. Customer hereby acknowledges and agrees that NEOED's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the earlier of: (i) date of Reseller's signature on an applicable Order Form; or (ii) your use of the Services commences (the "Effective Date"). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.

2. <u>SaaS Subscription</u>.

    a) <u>Subscription Grant</u>. "SaaS Applications" means each proprietary NEOED web-based software-as-a-service application that may be set forth on an Order Form and subsequently made available by NEOED to Customer, and associated components as described in any written service specifications made available to Customer by NEOED (the "Service Specifications"). Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, NEOED hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (i) onboard, access and use, and to permit Authorized Users to onboard, access and use, the SaaS Applications specified in the Order Form solely for Customer's internal, non-commercial purposes; (ii) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (iii) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription"). "Authorized Users" means (1) Customer employees, agents, contractors, consultants ("Personnel") who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to the Reseller Agreement and (ii) for whom access to the Services has been purchased under a Reseller Agreement. You shall not exceed the usage limits (if any) as detailed in the user tier in the applicable Order Form. You may not access the SaaS Applications if you are a direct competitor of NEOED or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes. You shall be responsible for each Authorized User's access to and use of the SaaS Applications and compliance with applicable terms and conditions of this Agreement.

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b) **Subscription Term.** Unless otherwise specified in an applicable Order Form, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, SaaS Subscriptions shall automatically renew for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless Reseller delivers to NEOED, or NEOED delivers to Reseller, at least sixty (60) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew the SaaS Subscriptions, or unless terminated earlier in accordance with this Agreement or the Reseller Agreement. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule.

3. **Customer Responsibilities.**

   a) **Managing the Subscription.** Customer may use the Service in a manner consistent with the terms of this Agreement. Customer will provide NEOED all information needed to process the Order Form to activate the subscription and provision the Service to the Customer.

   b) **Managing Authorized Users.** Customer is responsible for managing the Authorized Users on its account on the Service.

      i) **Invitations and Permissions.** Customer is responsible for determining which persons to invite to join the Customer's account on the Service and for all actions by Authorized Users on Customer's account on the Service. Customer is solely in control of the individual permissions on the Customer's account.

      ii) **Customer Obligations.** Customer must: (A) obtain any rights, permissions, or consents that are necessary for the Authorized User's lawful use of Customer Data and the operation of the Service; (B) ensure that the transfer and processing of Customer Data under the Agreement is lawful; and (C) respond to and resolve any dispute with an Authorized User relating to or based on Customer Data, the Service, or Customer's failure to fulfill its obligations under the Agreement or applicable law. Customer will not, and will ensure its Authorized Users do not (a) make any of the Services available to anyone other than Authorized Users or use any Services for the benefit of anyone other than Customer and its Authorized Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other rights of any person or entity, (d) use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (e) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (f) attempt to gain unauthorized access to the Services or its related systems or networks, (g) disassemble, reverse engineer, or decompile the Services, or modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (h) remove the copyright, trademark, or any other proprietary rights or notices included within NEOED Intellectual Property and on and in any documentation or training materials, or (i) use the Services in a manner which violates the terms of this Agreement, any Order Form or any applicable laws.

4. **Professional Services.** "Professional Services" shall mean professional services purchased by Reseller as detailed in an applicable Order Form or NEOED Scope of Work (SOW) describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Professional Services may include training, set-up, implementation, and best practices of and concerning the SaaS Applications. Professional Services are subject to the terms of the Professional Services Addendum made available at https://www.NEOED.com/service-specifications (the "NEOED Site") and made a part hereof and may be subject to additional terms pursuant to an SOW and Service Specifications describing, if applicable, the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by Reseller before NEOED shall commence work. If Reseller does not execute a separate SOW, this Agreement and documents incorporated herein (including but not limited to the Professional Services Addendum) shall control in the event of a conflict with the terms of the SOW.

5. **Payment Terms.**

   a) **Reseller Fees.** Unless otherwise stated in an Order Form or Customer's agreement with Reseller, Customer shall pay all Subscription, Onboarding and Set-Up fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees", collectively the "Fees") within thirty (30) days of Customer's receipt of Reseller's invoice. If NEOED is notified by Reseller of your failure to pay amounts due to Reseller with respect to your Services; or Reseller fails to pay NEOED any amounts due under an Order Form within 30 days of receipt, NEOED may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full. Once placed the Order Form is non-cancellable and sums paid nonrefundable, and in the event of any nonpayment to Reseller, the parties agree that NEOED may pursue any

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remedies for such nonpayment on behalf of Reseller. If Subscription Fees are based upon the Authorized User or employee count as may be specified in an Order Form, Customer shall owe supplemental Subscription Fees to the extent Customer exceeds the number of Authorized Users or employees set forth in the Order Form. Except as otherwise specifically stated in the Order Form, NEOED may change the charges for the Services with effect from the start of each Renewal Term by Reseller providing Customer with new pricing at least thirty (30) day notice prior to commencement of a Renewal Term.

b) <u>Customer Purchase Orders</u>. Any reference to a purchase order is solely for Customer's convenience in record keeping, and no such reference or any delivery of services to Customer following receipt of any purchase order shall be deemed an acknowledgement of or an agreement to any terms or conditions referenced or included in any such purchase order or in any way be deemed to modify, alter, supersede or supplement any Order Form or this Agreement. .

6. <u>Term and Termination</u>.

a) <u>Term</u>. This Agreement shall commence on the Effective Date and shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services, unless it is terminated earlier in accordance with this Agreement.

b) <u>Termination for Cause; Effect of Termination</u>. NEOED may terminate the Services immediately if Customer is in material breach of this Agreement and such breach is not cured within thirty (30) days following NEOED's written specification of the breach. NEOED may suspend the Services or terminate the Services immediately in the event the Services or Customer's use of the Services provided hereunder pose a security risk to the Services, NEOED or any third party, or become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of the Services, Customer shall cease all use and refrain from all further use of the Services and other NEOED Intellectual Property. Unless otherwise specified, following 90 days after expiration or termination of the Agreement NEOED may remove Customer Data from NEOED Services and without Customer consent or notice.

7. <u>Audit Rights</u>. Upon reasonable notice, NEOED or its agent shall have the right to audit Customer's records relating to its compliance with this Agreement. Customer shall cooperate fully with this audit.

8. <u>Maintenance; Modifications; Support Services</u>.

a) <u>Maintenance, Updates, Upgrades</u>. NEOED maintains NEOED's hardware and software infrastructure for the Services and is responsible for maintaining the NEOED server operation and NEOED database security. NEOED may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOED software that NEOED makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost. "Upgrade" means any update of the Services or underlying NEOED software such as platform updates, and major product enhancements and/or new features that NEOED makes commercially available. NEOED shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOED shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

b) <u>Program Documentation; Training Materials</u>. "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOED or Reseller to Customer in connection with the Services. NEOED hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services. Primary training of NEOED Services is conducted by self-review of online materials. NEOED's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.

c) <u>Implementation</u>. For Services requiring implementation, NEOED implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Order Form. For an additional fee as detailed on an applicable Order Form, NEOED personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and use commercially reasonable efforts to ensure Authorized User Admins grasp the system. The length of the implementation time is dependent on the type of Service and the Customer's responsiveness. NEOED is not responsible or liable for any delay or failure to perform implementation caused in whole

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or in part by Customer's delay in performing its obligations hereunder and, in the event of any such delay, NEOED may, in its sole discretion, extend all performance dates as NEOED deems reasonably necessary.

d) <u>Support</u>. Phone support for the Services is available to Customer Monday through Friday, excluding NEOED holidays. Customer may submit a request for online support for the Services 24 hours a day, seven days a week, and the NEOED support desk will acknowledge receipt of the request within a reasonable time. The length of time for a resolution of any problem is dependent on the type of case.

e) <u>Limitations</u>. Unless otherwise specified in the Order Form, this Agreement does not obligate NEOED to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.

9. <u>NEOED Intellectual Property</u> <u>Rights</u>.

a) NEOED shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOED including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOED and all proprietary rights embodied therein (collectively, the "NEOED Intellectual Property"). This Agreement does not convey or transfer title or ownership of the NEOED Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOED. Other than recommendation use or as required by law, all use of NEOED trademarks must be pre-approved by NEOED prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.

b) Customer may, but is not obligated to, provide NEOED with suggestions, ideas, enhancement requests, or other feedback ("Feedback"). If Customer provides any such Feedback to NEOED, Customer hereby grants NEOED a nonexclusive, perpetual, irrevocable, royalty-free license to use all Feedback for any purpose. Feedback is provided to NEOED on an "as-is" basis without warranties of any kind.

10. <u>Data Processing and Privacy</u>.

a) <u>Customer Data</u>. "Customer Data" shall mean all data that is owned or developed by Customer, whether provided to NEOED by Customer or provided by a third party to NEOED in connection with NEOED's provision of Services to Customer, including Personnel data collected, loaded into, or located in Customer data files maintained by NEOED. NEOED Intellectual Property, including but not limited to the Services and all derivative works thereof, NEOED Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data". Customer exclusively owns all right, title, and interest in and to all Customer Data. Customer grants NEOED a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. NEOED reserves the right to delete or disable Customer Data stored, transmitted or published by Customer using the Services upon receipt of a bona fide notification that such content infringes upon the Intellectual Property Rights of others, or if NEOED otherwise reasonably believes any such content is in violation of this Agreement.

b) <u>Platform Data</u>. "Platform Data" shall mean any anonymized data reflecting the access to or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data, or other analysis, information, or data based on or derived from any of the foregoing. NEOED shall exclusively own all right, title and interest in and to all Platform Data. Customer acknowledges NEOED may compile Platform Data based on Customer Data input into the Services. Customer agrees that NEOED may use Platform Data to the extent and in the manner permitted under applicable law. Such anonymized data neither identifies Customer or its users, nor can Customer or any its users can be derived from such data.

c) <u>Data Processing Agreement</u>. The parties agree that the terms of the NEOED Data Processing Addendum ("DPA") made available on the NEOED Site is hereby incorporated herein by reference and made part of this Agreement and governs NEOED's processing of Personal Data.

d) <u>Data Responsibilities</u>.

i) NEOED will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards will include, but will not be limited

to, measures for preventing access, use, modification or disclosure of Customer Data by NEOED personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law, or (c) as Customer expressly permits in writing. Customer acknowledges and agrees that it is commercially reasonable for NEOED to rely upon the security processes and measures utilized by NEOED's cloud infrastructure providers.

    ii) Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data, including but not limited to compliance with applicable laws. NEOED will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Without limiting the foregoing, Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (a) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (b) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (c) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOED is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services. Customer shall provide and institute all appropriate tools and procedures required to ensure the security of its own information system and, more specifically, to prevent, detect and destroy the occurrence of any viruses.

e) <u>Breach Notice</u>. NEOED will notify Reseller or Customer of unauthorized access to, or unauthorized use, loss or disclosure of Customer Data within its custody and control (a "Security Breach") within 72 hours of NEOED's confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Breach. If applicable law or Customer's policies require notification of its Authorized Users or others of the Security Breach, Customer shall be responsible for such notification.

f) <u>Data Export, Retention and Destruction</u>. Customer may export or delete Customer Data from the Services at any time during a Subscription Term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on NEOED's systems using the then existing features and functionality of the Services, NEOED will, upon Customer's written request, make the Customer Data available for export by Customer or destroy the Customer Data. If Customer requires the Customer Data to be exported in a different format than provided by NEOED, such additional services will be subject to a separate agreement on a time and materials basis. Except as otherwise required by applicable law, NEOED will have no obligation to maintain or provide any Customer Data more than ninety (90) days after the expiration or termination of this Agreement. Customer acknowledges that it is solely responsible for determining any retention requirements with respect to the Customer Data as required by applicable law and NEOED disclaims all liability in connection with such determination. In addition, to the extent Customer requests that NEOED retain Customer Data beyond the expiration of the retention period required by applicable law, rule or regulation, NEOED disclaims all liability in in connection with retaining such Customer Data including but not limited to any claims related to loss or destruction of such Customer Data.

11. <u>Third Party Services</u>. The Services may permit Customer and its Authorized Users to access services or content provided by third parties through the Services ("Third Party Services"). Customer agrees that NEOED is not the original source and shall not be liable for any inaccuracies contained in any content provided in any of the Third Party Services. NEOED makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. NEOED may discontinue access to any Third Party Services through the Services if the relevant agreement with the applicable third party no longer permits NEOED to provide such access.

12. <u>Nondisclosure</u>.

a) <u>Definition of Confidential Information</u>. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes its Customer Data. NEOED Confidential Information includes the NEOED Intellectual Property and the Services. The Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party

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without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

b) <u>Obligations</u>. The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.

c) <u>Exceptions</u>. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

d) <u>Equitable Relief</u>. The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section 12, that such a breach would irreparably harm the Disclosing Party and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

13. <u>Representations, Warranties, and Disclaimers</u>.

a) <u>Mutual Representations</u>. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

b) Additional Customer Representations and Warranties. Customer hereby represents and warrants to NEOED that: (1) Customer and Authorized Users have all necessary rights and authority to upload Customer Data to the Service without violating any third party's proprietary or privacy rights, including intellectual property rights; (2) Customer Dats does not contain any viruses, worms, Trojan horses, or other harmful or destructive code or content; and (3) Customer will use the Service in compliance with all laws, rules, regulations, and this Agreement.

c) <u>Service Performance Warranty</u>. NEOED warrants that it provides the Services using a commercially reasonable level of care and skill and in a professional manner in accordance with generally recognized industry standards for similar services.

d) <u>No Other Warranty</u>. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES AND ANY OTHER INFORMATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOED DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOED DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

e) <u>Disclaimer of Actions Caused by and/or Under the Control of Third Parties</u>. NEOED DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOED SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOED WILL USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOED CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOED DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS OR WITH RESPECT TO ANY THIRD PARTY SERVICES.

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f) No Medical Advice. Through certain Services, NEOED may make certain telehealth related information available to Customer and/or facilitate user access to telemedicine, expert medical services, and/or emergency medical services. NEOED is independent from healthcare providers who provide telemedicine services and is not responsible for such healthcare providers' acts, omissions or for any content or communications made by them. The Services do not provide medical advice and do not create a healthcare provider/patient relationship between Customer and NEOED or otherwise. Any Services, or content accessed from the Services, are for informational purposes only and do not constitute medical advice. Customer should seek professional medical advice, diagnosis, and/or treatment for any and all medical conditions, whether as a result of using Services or otherwise. NEOED IS NOT RESPONSIBLE OR LIABLE FOR ANY ADVICE, COURSE OF TREATMENT, DIAGNOSIS OR ANY OTHER TREATMENT OR INFORMATION THAT CUSTOMER OR ITS USERS MAY OBTAIN THROUGH THE USE OF THE SERVICES.

14. Indemnification.

a) Customer Indemnity. To the extent permitted by applicable law, Customer will defend and indemnify NEOED from and against any claim, demand, suit or proceeding made or brought against NEOED (i) by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, (ii) in connection with Customer's violation of any applicable laws, or (iii) any claim or allegation by any third party resulting from or related to Customer's or any of its Authorized User's breach of Section 3 of this Agreement.

b) NEOED Indemnity. Subject to subsections 14(b)(i) through 14(b)(iii) and 14(c) of this Section, if a third party makes a claim against Customer that any NEOED intellectual property furnished by NEOED and used by Customer infringes a third party's intellectual property rights, NEOED will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOED.

   i) Alternative Resolution. If NEOED believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOED may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOED may end the subscription or license for the Services and refund to Reseller a pro-rata portion of any fees on the Order Form covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.

   ii) No Duty to Indemnify. NEOED will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOED will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOED. NEOED will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOED. NEOED will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.

   iii) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOED.

c) Indemnification Procedures. In order to receive the indemnities described hereunder, the indemnified party must: (i) promptly notify the indemnifying party, in writing, of any claim; (ii) cooperate reasonably with indemnifying party, at the indemnifying party's expense, in the defense and/or settlement thereof; and (iii) allow the indemnifying party to control the defense and/or settlement thereof except that the indemnifying party may not, without the indemnified party's prior written consent, enter into any settlement that does not unconditionally release the indemnified party from liability. The indemnified party shall have the right to participate in any defense of a claim and/or to be represented by counsel of its own choosing at its own expense, provided that ultimate control of such defense shall remain solely with the indemnifying party.

15. Limitations of Liability.

a) EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS

SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, INCLUDING FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b) <u>CAP ON MONETARY LIABILITY</u>. EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, OR , THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOED FROM RESELLER IN CONNECTION WITH YOUR SERVICES IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE FIRST EVENT INITIALLY GIVING RISE TO SUCH LIABILITY. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.

16. <u>Reimbursement of Costs in Third Party Litigation</u>. With respect to any litigation or other court proceeding involving Customer and a third party, if any subpoena or other legally binding request related to such litigation or court proceeding is served to NEOED requesting copies of documents maintained by NEOED or otherwise requesting NEOED to appear as a witness in any capacity or provide testimony with respect to Customer's documentation, Customer shall reimburse NEOED for its out-of-pocket costs associated with compliance with such request, including but not limited to NEOED's reasonable attorneys' fees.

17. <u>EOL Products</u>. NEOED may, in its discretion, at certain times elect to discontinue development, distribution and/or support of any Service or any elements or versions of any Service, and thereby designate such Service or elements or versions as end of life ("EOL"). In the event that NEOED elects to announce EOL for any Service, NEOED will provide six (6) months prior written notice, which may be by direct notice or posting on the NEOED website. Customer will have a period of six (6) months after receipt of such notice to upgrade to the last commercially available (non-EOL) version of the Service, if applicable, or otherwise following the expiration of such six (6) month period, the Service shall be deemed terminated without penalty and a pro rata refund shall be provided to Customer for the remaining term of the Service. During the 6-month notice period, Customer may continue exercising all of the rights set forth in this Agreement with respect to such EOL Service.

18. <u>Text Message Communications</u>. NEOED may offer Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOED may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOED shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOED cannot vouch for the technical capabilities of any third parties to receive such text messages. To the extent you utilize text messaging features, NEOED shall not be responsible for your use of such features, and you shall indemnify NEOED with respect to any damages resulting from your use including but not limited any violations of applicable law. NEOED MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (a) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (b) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (c) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.

19. <u>Publicity</u>. Unless otherwise provided in the applicable Order Form, NEOED may identify Customer as one of its licensees and use Customer's logo for such purposes, subject to any trademark usage requirements specified by Customer.

20. <u>Force Majeure</u>. Neither party shall be liable for any damages, costs, expenses or other consequences incurred by the other party or by any other person or entity for any act, circumstance, event, impediment or occurrence beyond such party's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, pandemic, military action or usurped power; (h) actions or failures to act on the part

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of a governmental authority; (i) internet service interruptions or slowdowns, vandalism or cyber-attacks, or (j) any other cause beyond the reasonable control of such party.

21. <u>Independent Contractor; No Third Party Beneficiary; Fulfillment Partners</u>. The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOED to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not; provided, however, to the extent the terms of this Agreement are incorporated into or otherwise made part of any agreement or purchase order between Reseller and Customer, NEOED shall be deemed to be third party beneficiary of such terms with the ability to enforce the terms as if it were a party thereto. NEOED may designate any third-party affiliate, or other agent or subcontractor (each a "Fulfillment Partner"), without notice to, or the consent of, Customer, to perform such tasks and functions to complete any Services.

22. <u>Entire Agreement; Amendment; Addendum</u>. This Services Agreement, the Exhibits hereto, each Addendum (as may be applicable pursuant to the terms therein) and documents incorporated herein, the applicable Order Form, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. Any Customer proposal for additional or different terms, or Customer attempt to vary in any degree any of the terms of this Agreement is hereby objected to and rejected but such proposal shall not operate as a rejection of this Agreement , and this Service Agreement shall be deemed accepted by the Customer without said additional or different terms. It is expressly agreed that the terms of this Agreement shall supersede the terms in any non-NEOED purchase order or other ordering document. This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the parties to be bound. If you are subscribing for the HRIS or PowerEngage Platform, you hereby specifically agree to the terms of the applicable Addendum set forth on the NEOED Site.

23. <u>General</u>.
    a) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of California, without giving effect to conflict of law rules. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Los Angeles, California.

    b) Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability, and others which by their nature are intended to survive.

    c) Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Order Form and (ii) NEOED at the address specified in the applicable Order Form.

    d) Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

    e) Electronic Delivery. Delivery of a copy of this Agreement or an Order Form bearing an original signature by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

    f) Assignment. Customer may not assign this Agreement without the express written approval of NEOED Any attempt at assignment in violation of this Section shall be null and void.

    g) Construction. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, addendum, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

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Exhibit A
Government Customer Addendum

If Customer is a Government Customer, the following Government Customer Addendum ("Government Addendum") forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this Addendum and any other provision of the Services Agreement, the terms of this Government Addendum shall control. For purposes hereof, a "Government Customer" means a Customer which is a (a) U.S. Federal agency, (b) state government, agency, department, or political subdivision (including a city, county or municipal corporation), or (c) instrumentality of any of the foregoing (including a municipal hospital or municipal hospital district, police or fire department, public library, park district, state college or university, Indian tribal economic development organization, or port authority).

1. **Applicability**. The provisions of this Addendum shall apply only if Customer is a Government Customer under the Services Agreement.

2. **Indemnification**. If Customer is prohibited by federal, state or local law from agreeing to hold harmless or indemnify third parties, Section 14(a) and the indemnification provision included in Section 17 of the Services Agreement shall not apply to Customer, to the extent disallowed by applicable law.

3. **Open Records**. If the Customer is subject to federal or state public records laws, including laws styled as open records, freedom of information, or sunshine laws ("Open Records Laws") the confidentiality requirements of Section 12 of the Services Agreement apply only to the extent permitted by Open Records Laws applicable to the Customer. This Section is not intended to be a waiver of any of the provisions of the applicable Open Records Laws, including, without limitation, the requirement for the Customer to provide notice and opportunity for NEOED to assert an exception to disclosure requirements in accordance with the applicable Open Records laws.

4. **Subcontractors**. For purposes of this Agreement, including any subsequent documentation requested by Customer pursuant to this Agreement, the term "subcontractors" shall exclude subcontractors (i) who perform routine software development and maintenance services which are not specific to the Customer, (ii) subcontractors who will not have any access to Customer Data, and (iii) subcontractors who have access to Customer Data solely within NEOED's or Customer's systems.

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Exhibit B
Integration Terms Addendum

NEOED offers integrations and platform APIs for integrations to third party systems ("Integration Services"). Customer may use only those Integration Services purchased or subscribed to as listed within the NEOED Order Form. The following terms (the "Integration Terms Addendum") shall apply to the extent that Customer utilizes a system integration between the Services and either: (a) an affiliated integrated service, including those found at https://api.NEOED.com/connect/marketplace.html and/or https://apidocs.powerdms.com ("Affiliated API") or to the extent that Customer utilizes a system integration between the Services and an unaffiliated third-party service ("Customer Application") integrated using NEOED's open API ("Open API"). Integration Services are not available for HRIS Services and this Exhibit B shall not apply to HRIS Services.

1. <u>Provision of Integrations</u>. Subject to and conditioned on compliance with all terms and conditions set forth in this Agreement, NEOED hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the applicable Term to use and/or access the Affiliated API as described in this Agreement, or the Open API for communication between Customer's human resource related third application(s) that will interoperate with NEOED Services (collectively these uses shall be referred to as the "API" or "Integration"). Customer acknowledges there are no implied licenses granted under this Agreement. NEOED reserves all rights that are not expressly granted. Customer may not use the API for any other purpose without our prior written consent. Customer may not share the API with any third party, must keep the API and all log-in information secure, and must use the API key as Customer sole means of accessing the API.

2. <u>Integration Intellectual Property</u>. All right, title, and interest in the API and any and all information, data, documents, materials, inventions, technologies, know-how, descriptions, requirements, plans, reports, works, intellectual property, software, hardware, systems, methods, processes, and inventions, customizations, enhancements, improvements and other modifications based on or derived from the API are and will remain, as appropriate, with NEOED. All right, title, and interest in and to the third-party materials, including all intellectual property rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any third-party materials except as expressly licensed under such third-party license agreements.

3. <u>Integration Terms of Use</u>. Except as expressly authorized under this Agreement, you may not remove any proprietary notices from the API; use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; combine or integrate the API with any software, technology, services, or materials not authorized by NEOED; design or permit Customer Application(s) to disable, override, or otherwise interfere with any NEOED-implemented communications to end users, consent screens, user settings, alerts, warning, or the like; use the API in any of Customer Application(s) to replicate or attempt to replace the user experience of the Services; or attempt to cloak or conceal Customer identity or the identity of Customer Application(s) when requesting authorization to use the API.

4. <u>Customer Integration Responsibilities</u>. Customer, Customer developed web or other software services or applications, and Customer third-party vendors that integrate with the API (collectively the "Customer Applications"), shall comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on https://api.NEOED.com/connect/index.html and/or https://apidocs.powerdms.com from time to time. In addition, Customer will not use the API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware, or other malicious programs or code, counterfeit goods, items subject to U.S. embargo, unsolicited mass distribution of email ("spam"), multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities.

5. <u>Cooperation</u>. If applicable, Customer shall timely provide such cooperation, assistance, and information as NEOED reasonably requests to enable the API. NEOED is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement. NEOED will provide Customer maintenance and support services for API issues arising from the information technology designed, developed, and under then current control of NEOED. NEOED shall have no obligation to provide maintenance or support for issues arising from the inaction or action of Customer or third parties of which are outside NEOED control.

6. <u>Provision of Open API</u>. In the event license fees or other payments are not due in exchange for the right to use and access the Open API, you acknowledge and agree that this arrangement is made in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein. Notwithstanding the foregoing, NEOED reserves the right to charge for access with effect from the start of each Renewal

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Term by giving Customer at least ninety (90) day notice prior to commencement of a Renewal Term.

7. <u>API Key</u>. In order to use and access the Open API, you must obtain an Open API key through the registration process. Customer agrees to monitor Customer Applications for any activity that violates applicable laws, rules and regulation, or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior. This Agreement does not entitle Customer to any support for the Open API. You acknowledge that NEOED may update or modify the Open API from time to time and at our sole discretion and may require you to obtain and use the most recent version(s). You are required to make any such changes to Customer Applications that are required for integration as a result of such Update at Customer sole cost and expense. Updates may adversely affect how Customer Applications communicate with the Services.

8. <u>Efficient Processing</u>. You must use efficient programming, which will not cause an overwhelming number of requests to be made in too short a period of time, as-determined solely by NEOED. If this occurs, NEOED reserves the right to throttle your API connections, or suspend or terminate your access to the Open API. NEOED shall use reasonable efforts to provide Customer notice and reasonable time to cure prior to taking such actions.

9. <u>Open API Limitations</u>. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL NEOED BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE OPEN API; OR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS, EVEN IF NEOED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR NEOED WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM.

10. <u>Open API Termination</u>. Notwithstanding the additional Termination rights herein, NEOED may immediately terminate or suspend Customer access to Open APIs in our sole discretion at any time and for any reason, with or without notice or cause. In addition, your Open API subscription will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.