

Terms of Engagement

This Terms of Engagement letter constitutes an Agreement made on [DATE] (the “Effective Date”) between Neo Code Software Ltd., whose principal place of business is at #540-425 Carrall Street, Vancouver, British Columbia, Canada V6B 6E3 (“Neo Code”), and [CLIENT], whose principal place of business is at [ADDRESS] (“CLIENT”).

(The capitalized terms used in this agreement, in addition to those above, are defined in the Definitions section.)

1. **Software Development Services.** Neo Code shall provide CLIENT with custom software and maintenance, training, and support services in connection with the custom software.

2. **Specifications.** Promptly after the Effective Date, and thereafter at any time when CLIENT requests additional software or services, Neo Code shall

2.1. consult with CLIENT, at CLIENT’s expense, to define the Specifications for the requested software and the schedule for its development and delivery, and

2.2. deliver to CLIENT a written copy of the Specifications for CLIENT’S written approval.

3. **Development.** For each custom software order, Neo Code shall, at CLIENT’s expense, prepare a Work Order based on the Specifications of the custom software order. Upon written authorization of the Work Order by CLIENT, Neo Code shall use reasonable efforts to design, develop, and implement the software according to the specifications of the Work Order.

4. **Delivery.** Upon receiving CLIENT’s final payment for the custom software, Neo Code shall make the software available in full to CLIENT, in either an electronic, downloadable format, or by other electronic means as necessary.

5. Acceptance and Rejection

5.1. **Inspection Period.** CLIENT will have 60 Business Days after Neo Code delivers the software to inspect and test the software to ensure it meets the Acceptance Criteria (the “Inspection Period”).

5.2. **Acceptance.** If, in CLIENT’s opinion, the software meets the Acceptance Criteria, CLIENT shall accept the software and notify Neo Code that it is accepting the software. Neo Code shall close the Work Order upon acceptance of the software.

5.7. **Acceptance Criteria.** “Acceptance Criteria” means the specifications that the software must meet, as listed in the Specifications for a specific software order.

5.3. **Deemed Acceptance.** CLIENT will be deemed to have accepted the software if

(a) CLIENT fails to notify Neo Code on or before the expiration of the Inspection Period, or

(b) if, during the Inspection Period, CLIENT sells or attempts to sell, runs, or otherwise uses the software beyond what is necessary for inspection and testing and in a way a reasonable person would consider consistent with CLIENT having accepting ownership of the software from Neo Code.

5.4. **Rejection.** If, in CLIENT's opinion, any software fails in a material way to meet the Specifications for a specific software project, CLIENT may reject the software by delivering to Neo Code a written list detailing each failure to satisfy the relevant Specifications.

5.5. **Opportunity to Remedy.** If CLIENT rejects the software, Neo Code will have 60 days remedy each failure in the software and re-deliver the software to CLIENT to re-inspect and test.

5.6. **Continued Failure to Cure.** If, in CLIENT's opinion, Neo Code's corrections fail to satisfy the Acceptance Criteria [3? 5?] times, CLIENT may terminate this agreement.

6. **Purchase Price.** For each custom software order, CLIENT shall pay Neo Code the Purchase Price (the "Purchase Price") as indicated by the Work Order. CLIENT acknowledges that the Purchase Price as stated in any Work Order is an estimate, subject to increase with acceptance by CLIENT of any necessary or desirable Change Orders. In no case, for any software order, will the final purchase price be less than the estimated Purchase Price stated in the Work Order.

7. **Billing.** For each outstanding Work Order or Change Order, Neo Code shall bill CLIENT based on hours of development work performed by Neo Code staff in semi-monthly periods. Work performed on-site at Neo Code's offices shall be billed in half-hour increments, and off-site or remote work shall be billed in two-hour increments. CLIENT may request a review of any billing invoice within 14 days of the invoice date.

7. **Payment.** For each Work Order, CLIENT shall pay the Purchase Price

7.1. in an initial down payment equivalent to the amount estimated to be due per semi-monthly billing period, due on upon receipt of invoice,

7.2. with the remaining portion of the estimated Purchase Price paid in twice-monthly installments due within 14 days of receipt of invoice,

7.3 with the specific amount owed per billing period varying based on hours billed during the period,

7.3. with all payments made in immediately available funds,

7.4. by providing Neo Code with a valid credit card number as a secondary method of collecting payment, and

7.5. with the understanding that, in the event of late or non-payment, software development work by Neo Code will immediately stop, and related hosting services, if any, will be suspended within 30 days.

8. Credits and Refunds. Issuance of payment credits is at the sole discretion of Neo Code. Neo Code does not issue refunds or offer product exchanges. All software sales are final.

8. Taxes. Payment amounts under this agreement do not include Taxes, and CLIENT shall pay all Taxes applicable to payments between the parties under this agreement.

9. Interest on Late Payments. Any amount not paid when due will bear interest from the due date until paid at a rate equal to 1.5% per month (19.56% annually) or the maximum allowed by Canadian Law, whichever is less.

10. Training and Support Services

10.1. Training. Neo Code shall, CLIENT's request and expense, provide CLIENT's employees with training services necessary and desirable to operate the software. The nature and extent of the training shall be specified in the Work Order for each custom software order.

10.2. Support

(a) Support. Neo Code shall, CLIENT's request and expense, provide CLIENT's employees with support. The nature and extent of the support shall be specified in the Work Order for each custom software order.

(b) Renewed Support. For each custom software order, after the initial support period expires, CLIENT may elect to renew Neo Code's support services for additional 3-month, 4-month, or 12-month period, at Neo Code's then-current service rates.

11. Additional Work. CLIENT may request that Neo Code develop additional software or provide additional hosting services unrelated to the scope of the original Work Order. Neo Code, in collaboration with CLIENT, will prepare new Specifications and a new Work Order for CLIENT'S written approval.

11. Changes to Work Orders

11.1. Changes. Work Orders, once signed by Neo Code and CLIENT, can not be modified. By request of either Neo Code or CLIENT, new Specifications and new Work Orders may be prepared to accommodate new or changed work requirements.

(a) CLIENT may elect to either

- (i) withdraw its proposed change, or**
- (ii) approve the new Work Order**

12. Term. This agreement begins on the Effective Date and shall continue until either Neo Code or CLIENT provides written notification to the other party indicating termination of the agreement.

13. Limited Warranty

13.1. **Service Warranty.** Neo Code will provide software and related support services in a professional manner consistent with general industry standards.

13.2. **Performance Warranty.** Neo Code warrants that the custom software will perform substantially in accordance with the Specifications of the specific software order.

13.3. **Warranty Disclaimer.** Neo Code does not guarantee that the software will be continuously error-free, virus-free, or uninterrupted. Neo Code will not be liable for any unauthorized alteration, theft, or destruction of any of CLIENT's data. Neo Code will not be liable for any unauthorized alterations to the custom software.

14. **No Infringement.** Neo Code hereby warrants that nothing in the software, nor CLIENT's use of the software, will infringe or constitute a misappropriation of the Intellectual Property rights of a third party.

15. **May contain Open Source.** Neo Code hereby warrants that the software may contain software, hardware, or other materials, components, or parts licensed under an open source license.

16. No Warranty

16.1. **"As-Is"**. Unless otherwise listed in this agreement, the software is provided "as is," with all faults, defects, bugs, and errors.

16.2. **No Warranty.** Unless otherwise listed in this agreement,

(a) Neo Code does not make any warranty regarding the software, which includes that:

Neo Code hereby disclaims to the fullest extent authorized by Law any and all other warranties, whether express or implied, including any implied warranties of title, non-infringement, integration, merchantability, or fitness for a particular purpose.

17. **Exclusions from Warranty.** Neo Code's warranties under this agreement exclude any claims by CLIENT based on defects in the software caused by CLIENT, or by third parties beyond Neo Code's control.

18. **Work for Hire.** Neo Code hereby acknowledges the parties' mutual intent that the software is a "work for hire" within the meaning of the U.S. Copyright Act of 1976, as amended, and is CLIENT's exclusive property.

19. **Assignment of Rights.** On CLIENT's acceptance of the software and payment of all compensation due to Neo Code, for each custom software order, Neo Code shall assign to CLIENT its entire interest in the software (including all Intellectual Property and other property rights).

20. Confidentiality Obligations. The parties shall continue to be bound by the terms of the Confidentiality Agreement between the parties, dated [DATE] and attached to this agreement.

21. Insurance

21.1. Insurance Requirement. Neo Code shall maintain the insurance necessary to cover its obligations and responsibilities under this agreement, or any amount required by Law, but in no case less than

Errors & Omissions and Cyber Insurance: \$100,000 (limit); \$200,000 (aggregate); \$250,000 (cyber limit)

Commercial General Liability Insurance: \$5,000,000 (limit); \$5,000,000 (aggregate)

21.2. Proof of Insurance. At CLIENT's request, Neo Code shall provide CLIENT with certificates or other acceptable proof of its insurance, describing the coverage of its insurance, and notice of any material change to its insurance.

21.3. Additional Insurance. CLIENT may require Neo Code to obtain a reasonable amount of additional insurance, by providing Neo Code with

(a) a good reason for the additional insurance, and

(b) requirements for the additional insurance.

21.5. No Contribution from Neo Code. Any insurance carried by CLIENT will not be subject to contribution.

22. Hosting / Delivery of Source Code

22.1. Delivery of Object Code. Neo Code will be required to provide software to CLIENT in object code form only.

22.2. Escrow of Source Code / Developer Full Access. Within 5 Business Days after Acceptance, Neo Code shall email or upload one copy, on CLIENT's behalf, of the software in source code with a hosting account.

22.3. Updates of Source Code. If Neo Code makes any updates, enhancements, or modifications to the software, for each custom software order, Neo Code shall promptly deposit one copy, on CLIENT's behalf, of that update, enhancement, or modification, and any documentation related to the update, enhancement, or modification, to the hosting account.

22.4. Upkeep of Hosting Account. CLIENT shall pay all fees necessary to establish and maintain the Hosting Account.

22.5. **Contingent License.** Neo Code hereby grants to CLIENT a contingent license to receive the source code from the hosting account and to use the source code to support its use of the custom software in machine-readable form if Neo Code

- (a) whether directly or through a successor or affiliate, ceases to be in the software business,
- (b) fails to fulfill its obligations to maintain the software as provided in this agreement,
- (c) becomes insolvent or admits insolvency or a general inability to pay its debts as they become due,
- (d) files a petition for protection under the Canadian Bankruptcy Code, or an involuntary petition is filed against it and is not dismissed within 60 Business Days, or
- (e) comes under the control of a competitor of CLIENT.

23. Termination

23.1. **Termination on Notice.** Either party may terminate this agreement for any reason on 14 Business Days' written notice to the other party.

23.2. **Termination for Material Breach.** Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if

- (a) the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and
- (b) the failure, inaccuracy, or breach continues for a period 14 Business Days after the injured party delivers notice to the breaching party reasonably detailing the breach.

23.3. **Termination for Insolvency.** If either party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate this agreement with immediate effect.

24. Effect of Termination

24.1. **Termination of Obligations.** Subject to Payment Obligations as defined in this agreement, on termination or expiration of agreement, each party's rights and obligations under this agreement will cease immediately.

24.2. **Payment Obligations.** Even after termination or expiration of this agreement, each party shall

- (a) pay any amounts it owes to the other party, including payment obligations for services already rendered, work already performed, goods already delivered, or expenses already incurred, and

(b) refund any payments received but not yet earned, including payments for services not rendered, work not performed, or goods not delivered.

24.3. No Further Liability. On termination or expiration of this agreement, neither party will be liable to the other party, except for liability

(a) that arose before the termination or expiration of this agreement, or

(b) arising after the termination or expiration of this agreement and in connection with the Confidentiality, Taxes, or Termination sections of the agreement.

25. Assignment of Property. On termination or expiration of this agreement, Neo Code shall, for any unfinished software projects, upon receiving final payment from CLIENT, provide CLIENT with both the object code produced prior to the date of termination and the full access password.

26. Indemnification

26.1. Indemnification by CLIENT. Neo Code (as an indemnifying party) shall indemnify CLIENT (as an indemnified party) against all losses and expenses arising out of any proceeding

(a) brought by either a third party, and

(b) arising out of a claim that the software infringes the third party's Intellectual Property rights.

26.2. Mutual Indemnification. Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses arising out of any proceeding

(a) brought by either a third party or an indemnified party, and

(b) arising out of the indemnifying party's willful misconduct or gross negligence.

26.3. Notice and Failure to Notify

(a) **Notice Requirement.** Before bringing a claim for indemnification, the indemnified party shall

(i) notify the indemnifying party of the indemnifiable proceeding, and

(ii) deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

(b) **Failure to Notify.** If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying party will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

26.4. Exclusive Remedy. The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this section ("Indemnification").

27. Mutual Limitation on Liability. Neither party will be liable for breach-of-contract damages that are remote or speculative, or that the breaching party could not reasonably have foreseen on entry into this agreement.

28. Definitions

“Business Day” means a day other than a Saturday, a Sunday, or nationally recognized Canadian holiday.

“Effective Date” is specified in the introduction to this agreement.

“Governmental Authority” means

- (a) any federal, state, local, or foreign government, and any political subdivision of any of them,
- (b) any agency or instrumentality of any such government or political subdivision,
- (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), or
- (d) any arbitrator, court, or tribunal of competent jurisdiction.

“Intellectual Property” means any and all of the following in any jurisdiction throughout the world

- (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
- (b) copyrights, including all applications and registrations related to the foregoing,
- (c) trade secrets and confidential know-how,
- (d) patents and patent applications,
- (e) websites and internet domain name registrations, and
- (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

“Law” means

- (a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
- (b) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

“Person” includes

- (a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and
- (b) any individual.

“Taxes” includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added, and all other taxes of any kind for which a party may have any liability imposed by any

Governmental Authority, whether disputed or not; any related charges, interest or penalties imposed by any Governmental Authority; and any liability for any other person as a transferee or successor by Law, contract or otherwise.

29. General Provisions

29.1. **Entire Agreement.** The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,

(a) represent the final expression of the parties' intent and agreement between the parties relating to the subject matter of this agreement,

(b) contain all the terms the parties agreed to relating to the subject matter, and

(c) replace all the parties' previous discussions, understandings, and agreements relating to the subject matter.

29.2. Counterparts

(a) **Signed in Counterparts.** This agreement may be signed in any number of counterparts.

(b) **All Counterparts Original.** Each counterpart is an original.

(c) **Counterparts Form One Document.** Together, all counterparts form one single document.

29.3. **Amendment.** This agreement can be amended only in writing with the signatures of both parties.

29.4. **Assignment.** Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.

29.5. **Binding Effect.** This agreement will benefit and bind the parties and their respective heirs, successors, and permitted assigns.

29.6. Notices

(a) **Method of Notice.** The parties shall give all notices and communications between the parties in writing either by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail (postage pre-paid), (iv) fax, or (v) electronic mail, to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

(b) **Receipt of Notice.** A notice given under this agreement will be effective on

(i) the other party's receipt of it, or

(ii) if mailed, the earlier of the other party's receipt of it and the fifth Business Day after mailing it.

29.8. **Governing Law and Consent to Jurisdiction and Venue**

(a) **Governing Law.** This agreement, and any dispute arising out of the agreement, shall be governed by laws of the Province of British Columbia, Canada.

(b) **Consent to Jurisdiction.** Each party hereby irrevocably consents to the non-exclusive jurisdiction and venue of any court located within Vancouver County, Province of British Columbia, Canada, in connection with any matter arising out of this agreement or the transactions contemplated under this agreement.

(c) **Consent to Service.** Each party hereby irrevocably

(i) agrees that process may be served on it in any manner authorized by the Laws of the Province of British Columbia for such Persons, and

(ii) waives any objection which it might otherwise have to service of process under the Laws of the Province of British Columbia.

29.9. **Force Majeure.** A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is

(a) beyond the reasonable control of a party,

(b) materially affects the performance of any of its obligations under this agreement, and

(c) could not reasonably have been foreseen or provided against, but

will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

29.10. **Waiver**

(a) **Affirmative Waivers.** Neither party's failure nor neglect to enforce any of rights under this agreement will be deemed to be a waiver of that party's rights.

(b) **Written Waivers.** A waiver or extension is only effective if it is in writing and signed by the party granting it.

(c) **No General Waivers.** A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

(d) **No Course of Dealing.** No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

29.11. **Severability.** If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

29.12. **Interpretation**

(a) **References to Specific Terms**

(i) **Accounting Principles.** Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the Accounting Standards for Private Enterprises (ASPE) in effect in Canada (“ASPE”).

(ii) **Currency.** Unless otherwise specified, all dollar amounts expressed in this agreement refer to Canadian currency.

(iii) **“Including.”** Where this agreement uses the word “including,” it means “including without limitation,” and where it uses the word “includes,” it means “includes without limitation.”

(iv) **“Knowledge.”** Where any representation, warranty, or other statement in this agreement, or in any other document entered into or delivered under this agreement, is expressed by a party to be “to its knowledge,” or is otherwise expressed to be limited in scope to facts or matters known to the party or of which the party is aware, it means:

(1) the then-current, actual knowledge of the directors and officers of that party, and

(2) the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.

(v) **Statutes, etc.** Unless specified otherwise, any reference in this agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.

(b) **Headings.** The headings used in this agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

(c) **Internal References.** References in this agreement to sections and other subdivisions are to those parts of this agreement.

(d) **Construction of Terms.** The parties have each participated in settling the terms of this agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this agreement.

(e) **Conflict of Terms.** If there is any inconsistency between the terms of this agreement and those in any schedule to this agreement or in any document entered into under this agreement, the terms of this agreement will prevail. The parties shall take all necessary steps to conform the inconsistent terms to the terms of this agreement.

This agreement has been signed by the parties.

Neo Code Software Ltd.

CLIENT

Name: Joshua Paul
Title: President

Name: [NAME]
Title: [TITLE]