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NEO4J, INC. and NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

14 NEO4J, INC., a Delaware corporation,
NEO4J SWEDEN, AB,

CASE NO. 5:18-cv-07182-EJD

**PLAINTIFFS AND COUNTER-
DEFENDANTS NEO4J, INC. AND NEO4J
SWEDEN AB'S ANSWER TO FIRST
AMENDED COUNTERCLAIM**

DEMAND FOR JURY TRIAL

15 Plaintiffs,
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Y.

17 PURETHINK LLC, a Delaware limited
18 liability company, IGOV INC., a Virginia
19 corporation, and JOHN MARK SUHY, an
 individual.

20 | Defendants.

AND RELATED COUNTERCLAIMS

1 Plaintiffs and Counter-Defendants Neo4j, Inc. (“Neo4j USA”) and Neo4j Sweden AB
 2 (“Neo4j Sweden”) respond to Defendants and Counterclaimants PureThink, LLC (“PureThink”)
 3 and iGov, Inc. (“iGov”) (collectively, “Counterclaimants”) First Amended Counterclaim, Dkt.
 4 No. 55 (the “Amended Counterclaims”), as follows:

5 **ANSWER TO COUNTERCLAIM**

6 **I. Jurisdiction**

7 1. The allegations in Paragraph 1 call for a legal conclusion; therefore no response is
 8 required. To the extent an answer is required, Neo4j USA and Neo4j Sweden (collectively,
 9 “Counter-Defendants” or “Neo4j”) deny the allegations contained in this paragraph.

10 **II. Parties**

11 2. Neo4j lacks knowledge or information sufficient to form a belief about the truth of
 12 the allegations in Paragraph 2 and on that basis denies them.

13 3. Neo4j lacks knowledge or information sufficient to form a belief about the truth of
 14 the allegations in Paragraph 3 and on that basis denies them.

15 4. Neo4j admits that John Mark Suhy is an individual.

16 5. Neo4j admits that Neo4j, Inc. is a Delaware corporation.

17 6. Neo4j admits that Neo4j Sweden AB is a Swedish corporation.

18 **III. Introduction**

19 7. Neo4j admits that the GNU General Public License “GPL” license has several
 20 distinct versions. Neo4j further admits that GNU Affero General Public License “AGPL” license
 21 has several distinct versions. The remaining allegations lack specificity and are vague as to the
 22 particular software and version thereof, as well as which particular license applies a particular
 23 version of software, and on that basis Neo4j denies the allegations in Paragraph 7. Except as
 24 expressly admitted, Neo4j denies the remaining allegations contained in Paragraph 7.

25 8. Neo4j admits that Github.com is an open source software repository. The
 26 allegations in Paragraph 8 lack specificity and are vague as to the particular software and version
 27 thereof referenced as “Neo4j open source software,” and on that basis Neo4j denies the

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PLAINTIFFS AND COUNTER-DEFENDANTS NEO4J, INC. AND NEO4J SWEDEN AB'S ANSWER TO
 FIRST AMENDED COUNTERCLAIM

1 allegations related thereto in Paragraph 8. Except as expressly admitted, Neo4j denies the
 2 remaining allegations contained in Paragraph 8.

3 9. The allegations in Paragraph 9 lack specificity and are vague as to which version
 4 or versions of the GPL and/or AGPL license, as well as which version or versions of “the Neo4j
 5 source code” and “source code” are referred to therein, and on that basis Neo4j denies the
 6 allegations related thereto in Paragraph 9. Neo4j lacks knowledge or information sufficient to
 7 form a belief about the truth of the remaining allegations in this paragraph and on that basis
 8 denies them.

9 10. The allegations in Paragraph 10 lack specificity and are vague as to which version
 10 or versions of the NEO4J® software and GPL and AGPL licenses are being referred to, and on
 11 that basis Neo4j denies the allegations related thereto in Paragraph 10. Neo4j denies the
 12 remaining allegations contained in Paragraph 10.

13 11. Neo4j denies the allegations contained in Paragraph 11.

14 12. Neo4j denies the allegations contained in Paragraph 12.

15 13. The allegations in Paragraph 13 call for a legal conclusion; therefore no response
 16 is required. To the extent any further answer is required, however, Neo4j denies the allegations
 17 contained in Paragraph 13.

18 14. Neo4j admits that during 2014 Neo4j USA was in discussions with the Maryland
 19 Procurement Office (MPO) about NEO4J® software products. Neo4j lacks knowledge or
 20 information sufficient to form a belief about the truth of the remaining allegations in Paragraph 14
 21 and on that basis denies them.

22 15. Neo4j admits that it signed a NEO4J® Solution Partner Agreement with Neo
 23 Technology, Inc., effective 9-30-2014. Neo4j admits that Exhibit B appears to be a copy of the
 24 NEO4J® Solution Partner Agreement, which Counterclaimants attached to their Counterclaim in
 25 complete disregard and breach of the confidentiality provision contained therein.

26 16. Neo4j admits that John Mark Suhy had discussions with Lars Nordwall concerning
 27 obtaining business with entities within the United State Government. Neo4j denies the remaining
 28 allegations in Paragraph 16.

17. Neo4j denies the allegations in Paragraph 17.

18. Neo4j admits that PureThink provided NEO4J® Enterprise Edition subscriptions to the Maryland Procurement Office, Sandia National Laboratories, and the FBI at one time with Neo4j USA's approval. Based on public filings, it appears that PureThink provided NEO4J® Enterprise Edition subscriptions to the IRS without the authorization of Neo4j. Neo4j denies the remaining allegations in Paragraph 18.

19. Neo4j denies the allegations contained in Paragraph 19.

20. Neo4j admits that PureThink breached the NEO4J® Solution Partner Agreement in conjunction with PureThink's dealings with IRS. Neo4j denies the remaining allegations in Paragraph 20.

21. Neo4j admits that John Mark Suhy and PureThink formed iGov to evade PureThink's obligations under the NEO4J® Solution Partner Agreement. Neo4j admits that Exhibit D appears to contain, in part, a July 11, 2017 email sent by Jason Zagalsky of Neo4j USA to Michael Dunn of the IRS that speaks for itself. Neo4j denies Counterclaimants' interpretation thereof and denies the remaining allegations in Paragraph 21.

IV. Counterclaims

First Cause of Action

Interference With Prospective Economic Advantage

(Against NEO4J, Inc.)

22. Neo4j incorporates by reference its responses to Paragraphs 1 through 21 of the Counterclaims as though fully set forth herein.

23. Neo4j denies the allegations in Paragraph 23.

24. Neo4j lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 24 and on that basis denies them.

25. Neo4j lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25 and on that basis denies them.

26. Neo4j denies the allegations contained in Paragraph 26.

27. Neo4j denies the allegations contained in Paragraph 27.

28. Neo4j denies the allegations contained in Paragraph 28.

29. The allegations in Paragraph 29 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations in Paragraph 29.

30. The allegations in Paragraph 30 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations in Paragraph 30.

31. Neo4j denies the allegations contained in Paragraph 31.

32. Neo4j denies the allegations contained in Paragraph 32.

33. Neo4j denies the allegations contained in Paragraph 33.

34. The allegations in Paragraph 32 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations in Paragraph 34.

Second Cause of Action

Interference With Contracts

(Against NEO4J, Inc.)

35. Neo4j incorporates by reference its responses to Paragraphs 1 through 34 of the Counterclaims as though fully set forth herein.

36. The allegations in Paragraph 36 lack specificity and are vague as to which versions of NEO4J® software and the AGPL license are being referred to therein, and on that basis Neo4j denies the allegations in Paragraph 36.

37. Neo4j lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 37 and on that basis denies them.

38. The allegations in Paragraph 38 lack specificity and are vague as to which versions of NEO4J® software and the AGPL license are being referred to therein, and on that basis Neo4j denies such allegations. Neo4j denies the remaining allegations contained in Paragraph 38.

39. The allegations in Paragraph 39 lack specificity and are vague as to which versions of NEO4J® software and the AGPL license are being referred to therein, and on that basis Neo4j denies such allegations. The remaining allegations in Paragraph 39 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies such allegations contained in Paragraph 39.

- 1 40. Neo4j denies the allegations contained in Paragraph 40.
- 2 41. Neo4j denies the allegations contained in Paragraph 41.
- 3 42. Neo4j denies the allegations contained in Paragraph 42.
- 4 43. Neo4j denies the allegations contained in Paragraph 43.

5 **Third Cause of Action**

6 **Breach of Contract**

7 **(Against NEO4J, Inc.)**

- 8 44. Neo4j incorporates by reference its responses to Paragraphs 1 through 43 of the
- 9 Counterclaims as though fully set forth herein.
- 10 45. Neo4j admits the allegations contained in Paragraph 45.
- 11 46. Neo4j denies the allegations contained in Paragraph 46.
- 12 47. Neo4j denies the allegations contained in Paragraph 47.
- 13 48. Neo4j denies the allegations contained in Paragraph 48.

14 **Fourth Cause of Action**

15 **Breach of Exclusive Contract to Government**

16 **(Against NEO4J, Inc.)**

- 17 49. Neo4j incorporates by reference its responses to Paragraphs 1 through 48 of the
- 18 Counterclaims as though fully set forth herein.
- 19 50. Neo4j denies the allegations contained in Paragraph 50.
- 20 51. Neo4j denies the allegations contained in Paragraph 51.
- 21 52. Neo4j denies the allegations contained in Paragraph 52.
- 22 53. Neo4j denies the allegations contained in Paragraph 53.

23 **Fifth Cause of Action**

24 **Declaratory Relief**

25 **(Void Restrictions)**

26 **(Against NEO4J, Inc.)**

- 27 54. Neo4j incorporates by reference its responses to Paragraphs 1 through 53 of the
- 28 Counterclaims as though fully set forth herein.

1 55. Neo4j denies that there is a present controversy regarding Section 4.3.2 of the
2 NEO4J® Partner Solution Agreement. No further response is required as Partner Agreement
3 speaks for itself. To the extent an answer is required, Neo4j denies the allegations contained in
4 Paragraph 55.

5 56. The allegations in Paragraph 56 call for a legal conclusion; therefore no response
6 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
7 paragraph.

8 57. The allegations in Paragraph 57 call for a legal conclusion; therefore no response
9 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
10 paragraph.

Sixth Cause of Action

Declaratory Relief

(Restrictions Violate AGPL License)

(Against NEO4J, Inc.)

15 58. Neo4j incorporates by reference its responses to Paragraphs 1 through 57 of the
16 Counterclaims as though fully set forth herein.

17 59. Neo4j denies that there is a present controversy regarding Section 4.3.1 and 4.3.2
18 of the NEO4J® Partner Solution Agreement. To the extent an answer is required, Neo4j denies
19 the allegations contained in this paragraph.

20 60. The allegations in Paragraph 60 call for a legal conclusion; therefore no response
21 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
22 paragraph.

23 61. The allegations in Paragraph 61 call for a legal conclusion; therefore no response
24 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
25 paragraph.

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Seventh Cause of Action

Declaratory Relief

(Commons Clause in AGPL is void)

(Against NEO4J SWEDEN AB)

62. Neo4j incorporates by reference its responses to Paragraphs 1 through 61 of the Counterclaims as though fully set forth herein.

63. Neo4j denies that there is a present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek declaratory relief based thereon. To the extent an answer is required, Neo4j denies the remaining allegations contained in this paragraph.

64. The Commons Clause License Condition to the license governing certain NEOJ4® software speaks for itself. To the extent an answer is required, Neo4j denies the remaining allegations contained in this paragraph.

65. The allegations in Paragraph 65 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

66. The allegations in Paragraph 66 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

67. The allegations in Paragraph 67 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

68. The allegations in Paragraph 68 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

69. The allegations in Paragraph 69 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

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Eighth Cause of Action**Declaratory Relief****(The Commons Clause in AGPL does not apply to Professional****Services for the open source versions of Neo4j)****(Against NEO4J SWEDEN AB)**

70. Neo4j incorporates by reference its responses to Paragraphs 1 through 69 of the Counterclaims as though fully set forth herein.

71. Neo4j denies that there is a present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek declaratory relief based thereon. To the extent an answer is required, Neo4j denies the remaining allegations contained in this paragraph.

72. Neo4j denies that there is a present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek declaratory relief based thereon. To the extent an answer is required, Neo4j denies the remaining allegations contained in this paragraph.

73. The allegations in Paragraph 73 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

74. The allegations in Paragraph 74 call for a legal conclusion; therefore no response is required. Neo4j is also unable to verify the source or authenticity of the contents of this paragraph from the allegations made therein, and it does not appear that the statements referred to therein were made on behalf of either Neo4j USA or Neo4j Sweden. It also does not appear that the cited statement is not in reference to the specific license or licenses identified in this cause of action. Therefore Neo4j, denies the allegations contained in this paragraph.

75. The allegations in Paragraph 75 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

76. The allegations in Paragraph 76 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

1 77. The allegations in Paragraph 77 call for a legal conclusion; therefore no response
2 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
3 paragraph.

Ninth Cause of Action

Declaratory Relief

(Users may use a fork content NEO4J SWEDEN put on a public GitHub repository)
(Against NEO4J SWEDEN AB)

8 78. Neo4j incorporates by reference its responses to Paragraphs 1 through 77 of the
9 Counterclaims as though fully set forth herein.

10 79. Neo4j denies that there is a present controversy as alleged in this paragraph and
11 that Counterclaimants lack standing to seek declaratory relief based thereon. To the extent an
12 answer is required, Neo4j denies the remaining allegations contained in this paragraph.

13 80. The allegations in Paragraph 80 call for a legal conclusion; therefore no response
14 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
15 paragraph.

16 81. The allegations in Paragraph 81 call for a legal conclusion; therefore no response
17 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
18 paragraph.

19 82. The allegations in Paragraph 82 call for a legal conclusion; therefore no response
20 is required. Neo4j is also unable to verify the source or authenticity of the contents of this
21 paragraph from the allegations made therein, and it does not appear that the statements referred to
22 therein were made on behalf of either Neo4j USA or Neo4j Sweden. Therefore Neo4j, denies the
23 allegations contained in this paragraph

24 83. The allegations in Paragraph 83 call for a legal conclusion; therefore no response
25 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
26 paragraph.

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Tenth Cause of Action

Declaratory Relief

(Abandonment of Trademark)

(Against NEO4J USA)

84. Neo4j incorporates by reference its responses to Paragraphs 1 through 83 of the Counterclaims as though fully set forth herein.

85. Neo4j denies that there is a present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek declaratory relief based thereon. To the extent an answer is required, Neo4j denies the remaining allegations contained in this paragraph.

86. The allegations in Paragraph 86 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

Eleventh Cause of Action

Cancellation of Trademark 15 U.S.C. §1119

(Against Neo4j, Inc.)

87. Neo4j incorporates by reference its responses to Paragraphs 1 through 86 of the Counterclaims as though fully set forth herein.

88. Neo4j denies the allegations contained in Paragraph 88.

89. Neo4j denies the allegations contained in Paragraph 89.

90. Neo4j denies the allegations contained in Paragraph 90.

91. Neo4j admits that Neo Technologies, Inc. was incorporated in Delaware on July 7, 2011 and changed its name to Neo4j, Inc. on August 7, 2017. Neo4j denies the remaining allegations contained in this paragraph.

92. The allegations in Paragraph 92 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

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Twelfth Cause of Action

Unfair Business Practices

(Against NEO4J SWEDEN and NEO4J USA)

93. Neo4j incorporates by reference its responses to Paragraphs 1 through 92 of the Counterclaims as though fully set forth herein.

94. Neo4j denies the allegations contained in Paragraph 94.

95. Neo4j denies the allegations contained in Paragraph 95.

8 96. It is unclear what Counterclaimants mean by “people who contributed to the
9 development of the Neo4J open source software” and “there have been 183 contributors to
10 Neo4J” as alleged in this paragraph, and on that basis Neo4j denies the allegations contained in
11 Paragraph 96.

97. Neo4j denies the allegations contained in Paragraph 97.

98. Neo4j denies the allegations contained in Paragraph 98.

14 99. The allegations in Paragraph 99 call for a legal conclusion; therefore no response
15 is required. To the extent an answer is required, Neo4j denies the allegations contained in this
16 paragraph.

17 100. The allegations in Paragraph 100 lack specificity and are vague as to which
18 versions of NEO4J® software and the AGPL license are being referred to therein, and on that
19 basis Neo4j denies the allegations in this paragraph.

20 || 101. Neo4j admits the allegations contained in Paragraph 101.

21 ||| 102. Neo4j denies the allegations contained in Paragraph 102.

22 || 103. Neo4j denies the allegations contained in Paragraph 103.

23 104. Neo4j lacks knowledge or information sufficient to form a belief about the truth of
24 the allegations in Paragraph 104 and on that basis denies them.

25 || 105. Neo4j denies the allegations contained in Paragraph 105.

26 || 106. Neo4j denies the allegations contained in Paragraph 106.

27 107. Neo4j lacks knowledge or information sufficient to form a belief about the truth of
28 the allegations in Paragraph 107 and on that basis denies them.

1 108. The allegations in Paragraph 108 are unintelligible, and therefore Neo4j cannot
 2 form a belief about the truth of the allegations in this paragraph and on that basis denies them. To
 3 the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

4 109. The allegations in Paragraph 109 lack specificity and are vague as to whether it is
 5 referring to Neo4j USA or Neo4j Sweden in reference to user preferences, and on that basis
 6 Neo4j denies such allegations. Neo4j lacks knowledge or information sufficient to form a belief
 7 about the truth of the remaining allegations in Paragraph 109 and on that basis denies them.

8 110. Neo4j denies the allegations contained in Paragraph 110.

9 111. Neo4j denies the allegations contained in Paragraph 111.

10 112. Neo4j admits that in early 2017 Neo4j USA provided the IRS with an explanation
 11 as to the then-applicable licensing models and policies with various offerings of the NEO4J®
 12 software. Neo4j denies the remaining allegations contained in Paragraph 112.

13 113. The allegations in Paragraph 113 are unintelligible, and therefore Neo4j cannot
 14 form a belief about the truth of the allegations in this paragraph and on that basis denies them. To
 15 the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

16 114. Neo4j denies the allegations contained in Paragraph 114.

17 115. Neo4j denies the allegations contained in Paragraph 115.

18 116. Neo4j denies the allegations contained in Paragraph 116.

19 117. Neo4j denies the allegations contained in Paragraph 117.

20 118. Neo4j denies the allegations contained in Paragraph 118.

21 119. Neo4j denies the allegations contained in Paragraph 119.

22 120. Neo4j denies the allegations contained in Paragraph 120.

23 121. Neo4j denies that Counterclaimants are entitled to the injunctive relief requested in
 24 Paragraph 121 and 121(a) (i)-(iv) inclusive therein.

25 122. Neo4j denies that Counterclaimants are entitled to the relief and remedy requested
 26 in Paragraph 122.

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V. Prayer for Relief

Neo4j denies that Counterclaimants are entitled to any relief as to any claim or counterclaim, and specifically denies any and all allegations and prayers for relief contained in Paragraphs 1 through 7 (and sub-paragraphs therein) of the “Prayer for Relief” section of the Counterclaims.

WHEREFORE, Neo4j prays for relief, as follows:

1. That Counterclaimants take nothing by the Counterclaims;
 2. To the extent there is any bases for declaratory relief, a declaratory judgment in favor of Neo4j; and
 3. For such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

Neo4j alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Counterclaims fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Lack of Jurisdiction)

The Court lacks subject matter jurisdiction over Counterclaimants' causes of action for Declaratory Judgement as there is no actual case and controversy.

THIRD AFFIRMATIVE DEFENSE

(Lack of Standing re AGPL version 3)

Counterclaimants' declaratory relief claim relating to the AGPL version 3 is barred, in whole or in part, on the grounds that they lack standing to create a justiciable controversy over a third party license agreement.

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FOURTH AFFIRMATIVE DEFENSE**(Lack of Standing re GitHub Terms of Service)**

Counterclaimants' declaratory relief claim relating to GitHub's terms of service is barred, in whole or in part, on the grounds that they lack standing to create a justiciable controversy over a third party agreement.

FIFTH AFFIRMATIVE DEFENSE**(Lack of Standing re Partner Solution Agreement)**

To the extent iGov claims that it is not subject to the NEO4J® Partner Solution Agreement, it lacks standing to assert the causes of action contained in the Counterclaim.

SIXTH AFFIRMATIVE DEFENSE**(Lack of Privity re Partner Solution Agreement)**

To the extent iGov claims that it is not subject to the NEO4J® Partner Solution Agreement, it lacks privity to assert the causes of action contained in the Counterclaim.

SEVENTH AFFIRMATIVE DEFENSE**(Statute of Limitations)**

The claims as alleged in the Counterclaim are barred by the applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE**(Failure to Mitigate)**

Counterclaimants have unreasonably failed to mitigate, prevent and/or or reduce their alleged damages and injuries, if any of which Neo4j denies.

NINTH AFFIRMATIVE DEFENSE**(Intervening Cause/Lack of Causation)**

The damages claimed in the Counterclaim, if any be found, are barred by the reason of the acts of others which proximately caused said damages. Counterclaimants cannot demonstrate that they suffered any losses as a result of any alleged wrongful conduct. Further, any injuries sustained by Counterclaimants were the results of its own acts or omissions and/or the acts or omissions of its agents, employees, managers, officers and directors, as well as any number of

1 intervening and superseding causes, including the acts of Counterclaimants' agents, employees,
 2 managers, officers and directors.

3 **TENTH AFFIRMATIVE DEFENSE**

4 **(Laches)**

5 The claims as alleged in the Counterclaim are barred by the doctrine of laches in that
 6 Counterclaimants either knew or should have known about the alleged wrongdoing by Neo4j well
 7 before the filing of the Counterclaim in this action, but unreasonably delayed in bringing said
 8 claims and severely prejudiced Neo4j by doing so.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(Estoppel)**

11 The claims as alleged in the Counterclaim are barred by the doctrine of estoppel. In
 12 particular, Counterclaimants' claims are based upon a failure to comply with their obligations
 13 under the NEO4J® Partner Solution Agreement and their attempts to circumvent the licensing
 14 restrictions on certain NEO4J® software, and thus are estopped from claiming any alleged
 15 damages resulting therefrom. Further, Counterclaimants are estopped from asserting their claims
 16 because they have wrongfully withheld monies due and owing under the NEO4J® Partner
 17 Solution Agreement.

18 Finally, Counterclaimants are estopped from asserting that any provision in the NEO4J®
 19 Partner Solution Agreement allegedly violates Bus. & Prof. Code § 16600 as they were fully
 20 advised of the nature of the transaction and with full knowledge thereof voluntarily participated in
 21 said transaction and agreed to the terms thereof, and as such Counterclaimants are estopped from
 22 obtaining the relief prayed for in the Counterclaims.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 **(Unclean Hands)**

25 Neo4j alleges that any recovery on the claims asserted in the Counterclaims is barred by
 26 reason of Counterclaimants' unclean hands based on their wrongdoing as set forth in Neo4j's
 27 Complaint.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

The claims as alleged in the Counterclaim are barred by the doctrine of waiver, as alleged in the foregoing affirmative defenses and incorporated herein by reference.

FOURTEENTH AFFIRMATIVE DEFENSE

(Negligence)

Neo4j alleges that Counterclaimants were careless and negligent in and about the matters referred to in the Counterclaim and that such negligence and carelessness on the part of Counterclaimants proximately caused and contributed to the damages complained of, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

(Set-Off)

To the extent Counterclaimants have suffered any alleged damages, which Neo4j specifically denies, any alleged damages suffered by Counterclaimants must be set-off by (1) the amounts Counterclaimants are wrongfully withholding from Neo4j USA; and/or (2) the damages suffered by Neo4j as a result of Counterclaimants' acts and/or omissions as alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Neo4j alleges that the causes of action alleged in the Counterclaim are barred, in whole or in part, as Counterclaimants would be unjustly enriched if allowed to recover any of the sums alleged in the Counterclaim because they have wrongfully withheld funds and/or payments due and owing to Neo4j USA under the NEO4J® Partner Solution Agreement, as well as profited off the infringement of Neo4j’s trademark and goodwill. Counterclaimants have wrongfully withheld payments from Neo4j USA in amounts similar to what they have claimed as their alleged damages. As a result, Counterclaimants suffered no damages and would be unjustly enriched if they were to recover on their counterclaims against Neo4j.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Performance of Contract Excused)

Neo4j alleges that its performance under the NEO4J® Partner Solution Agreement was excused and/or prevented by the acts and omissions of Counterclaimants, their non-performance under the NEO4J® Partner Solution Agreement, and Counterclaimant's material breaches thereof as alleged in the Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Privilege/Justification)

The claims as alleged in the Counterclaim are based, in whole or in part, on acts that are and were privileged and/or justified, and, therefore, not actionable. In particular, to the extent Neo4j purportedly interfered Counterclaimants' alleged prospective economic relationships, which Neo4j specifically denies, there can be no intentional interference therewith because Neo4j acted only to protect its legitimate business and financial interests, and/or in furtherance of lawful competition. Likewise, to the extent Neo4j purportedly interfered Counterclaimants' contractual relationships, which Neo4j specifically denies, there was no intentional interference therewith because Neo4j acted only to protect its legitimate business and financial interests, and/or in furtherance of lawful competition.

NINETEENTH AFFIRMATIVE DEFENSE

(First Amendment Freedom of Petition)

The claims as alleged in the Counterclaim are based, in whole or in part, on acts that are and were subject to Neo4j's constitutional right of freedom to petition under the First Amendment, U.S. Const. amend. I, and the *Noerr-Pennington* doctrine based thereon, and, therefore, not actionable.

TWENTIETH AFFIRMATIVE DEFENSE

(Speculative Damages)

Neo4j alleges that the purported causes of action in the Counterclaim are barred, in whole or in part, because the Counterclaimants' purported damages are speculative and uncertain and there is no reasonable basis to assume any of the alleged prospective economic relationships were

1 allegedly disrupted by Neo4j and/or would otherwise been consummated. Counterclaimants'
 2 damages theories also fail because they are based upon uncertain future benefits that are too
 3 speculative to be ascertainable.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 **(Extent of Punitive Damages)**

6 The Counterclaim fails to state a cause of action for recovery or punitive damages. To the
 7 extent the amount of punitive damages sought by Counterclaimants is unconstitutionally
 8 excessive under the United States Constitution, it violates Excessive Fines Clause of the Eighth
 9 Amendment, U.S. Const. amend. VIII, and the Due Process Clause of the Fourteenth
 10 Amendment, U.S. Const. amend. XIV, Section 1.

11 **JURY DEMAND**

12 Neo4j demands a jury trial on all issues related to these counterclaims that are triable by
 13 jury.

14 Dated: December 23, 2019

15 **HOPKINS & CARLEY**
 16 A Law Corporation

17 By: /s/ Jeffrey M. Ratinoff

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