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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

**PLAINTIFF AND COUNTER-  
DEFENDANT NEO4J SWEDEN AB'S  
ANSWER TO DEFENDANTS  
PURETHINK LLC, IGOV, INC. AND  
JOHN MARK SUHY'S SECOND  
AMENDED COUNTERCLAIM**

## **DEMAND FOR JURY TRIAL**

V.

17

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

20 | Defendants.

## AND RELATED COUNTERCLAIMS.

1 Plaintiff and Counter-Defendant Neo4j Sweden AB (“Neo4j Sweden”) responds to  
 2 Defendants and Counterclaimants PureThink, LLC (“PureThink”), iGov, Inc. (“iGov”) and John  
 3 Mark Suhy (“Suhy”) (collectively, “Counterclaimants”) Second Amended Counterclaim, Dkt.  
 4 No. 72 (the “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 Sweden denies the allegations contained in  
 9 this paragraph.

10 **II. Parties**

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

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

15 4. Neo4j Sweden admits that John Mark Suhy is an individual and admits the Second  
 16 Amended Counterclaim is the operative counterclaim.

17 5. On information and belief, Neo4j Sweden admits that Neo4j, Inc. is a Delaware  
 18 corporation.

19 6. Neo4j Sweden admits that it is a Swedish corporation.

20 **III. Introduction**

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

28 ///

1       8.     Neo4j Sweden admits that Github.com is an open source software repository. The  
 2 allegations in Paragraph 8 lack specificity and are vague as to the particular software and version  
 3 thereof referenced as “Neo4j open source software,” and on that basis Neo4j Sweden denies the  
 4 allegations related thereto in Paragraph 8. Except as expressly admitted, Neo4j Sweden denies  
 5 the remaining allegations contained in Paragraph 8.

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

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

16      11.    Neo4j Sweden denies the allegations contained in Paragraph 11.

17      12.    Neo4j Sweden denies the allegations contained in Paragraph 12.

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

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

25      15.    On information and belief, Neo4j Sweden admits that Neo4j USA signed a  
 26 NEO4J® Solution Partner Agreement with Neo Technology, Inc., effective 9-30-2014. On  
 27 information and belief, Neo4j Sweden admits that Exhibit B appears to be a copy of the NEO4J®  
 28 Solution Partner Agreement, which Counterclaimants attached to their Counterclaim in complete

1 disregard and breach of the confidentiality provision contained therein.

2 16. On information and belief, Neo4j Sweden admits that John Mark Suhy had  
 3 discussions with Lars Nordwall concerning obtaining business with entities within the United  
 4 State Government. Neo4j Sweden denies the remaining allegations in Paragraph 16.

5 17. Neo4j Sweden denies the allegations in Paragraph 17.

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

11 19. Neo4j Sweden denies the allegations contained in Paragraph 19.

12 20. On information and belief, Neo4j Sweden admits that PureThink breached the  
 13 NEO4J® Solution Partner Agreement in conjunction with PureThink's dealings with IRS. Neo4j  
 14 Sweden denies the remaining allegations in Paragraph 20.

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

21 **IV. Counterclaims**

22 **First Cause of Action**

23 **Interference With Prospective Economic Advantage**

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

25 22. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 26 response is required. To the extent that any response is required, however, Neo4j Sweden  
 27 incorporates by reference its responses to Paragraphs 1 through 21 of the Counterclaims as  
 28 though fully set forth herein.

1       23. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 2 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 3 the allegations contained in this paragraph.

4       24. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 5 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 6 the allegations contained in this paragraph.

7       25. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 8 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 9 the allegations contained in this paragraph.

10       26. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 11 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 12 the allegations contained in this paragraph.

13       27. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 14 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 15 the allegations contained in this paragraph.

16       28. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 17 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 18 the allegations contained in this paragraph.

19       29. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 20 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 21 the allegations contained in this paragraph.

22       30. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 23 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 24 the allegations contained in this paragraph.

25       31. This cause of action is not asserted against Neo4j Sweden, and therefore no  
 26 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
 27 the allegations contained in this paragraph.

28

32. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

33. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

34. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

## Second Cause of Action

## Interference With Contract

## (Against NEO4J, Inc.)

35. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden incorporates by reference its responses to Paragraphs 1 through 34 of the Counterclaims as though fully set forth herein.

36. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

37. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

38. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

39. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph

40. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

41. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

42. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

43. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

### **Third Cause of Action**

## Breach of Contract

## (Against NEO4J, Inc.)

44. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden incorporates by reference its responses to Paragraphs 1 through 43 of the Counterclaims as though fully set forth herein.

45. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

46. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

47. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph

## **Fourth Cause of Action**

# **Breach of Exclusive Contract to Government (Against NEO4J, Inc.)**

48. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden incorporates by reference its responses to Paragraphs 1 through 47 of the Counterclaims as though fully set forth herein.

49. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

50. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

51. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

52. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

53. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden denies the allegations contained in this paragraph.

## **Fifth Cause of Action**

## Declaratory Relief

### **(Void Restrictions)**

## (Against NEO4J, Inc.)

54. This cause of action is not asserted against Neo4j Sweden, and therefore no response is required. To the extent that any response is required, however, Neo4j Sweden

1 incorporates by reference its responses to Paragraphs 1 through 53 of the Counterclaims as  
2 though fully set forth herein.

3        55. This cause of action is not asserted against Neo4j Sweden, and therefore no  
4 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
5 the allegations contained in this paragraph.

6        56.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
7 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
8 the allegations contained in this paragraph.

9        57. This cause of action is not asserted against Neo4j Sweden, and therefore no  
10      response is required. To the extent that any response is required, however, Neo4j Sweden denies  
11      the allegations contained in this paragraph.

## Sixth Cause of Action

## Declaratory Relief

## **(Restrictions Violate AGPL License)**

## (Against NEO4J, Inc.)

16        58. This cause of action is not asserted against Neo4j Sweden, and therefore no  
17 response is required. To the extent that any response is required, however, Neo4j Sweden  
18 incorporates by reference its responses to Paragraphs 1 through 57 of the Counterclaims as  
19 though fully set forth herein.

20        59. This cause of action is not asserted against Neo4j Sweden, and therefore no  
21 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
22 the allegations contained in this paragraph.

23 60. This cause of action is not asserted against Neo4j Sweden, and therefore no  
24 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
25 the allegations contained in this paragraph.

26        61.      This cause of action is not asserted against Neo4j Sweden, and therefore no  
27 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
28 the allegations contained in this paragraph.

## **Seventh Cause of Action**

## Declaratory Relief

**(Commons Clause in AGPL is void)**

## (Against NEO4J SWEDEN AB)

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

63. Neo4j Sweden 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 Sweden 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 Sweden 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 Sweden 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 Sweden 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 Sweden 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 Sweden 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 Sweden denies the allegations contained in this paragraph.

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

71. Neo4j Sweden 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 Sweden denies the remaining allegations contained in this paragraph.

72. Neo4j Sweden 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 Sweden 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 Sweden denies the allegations contained in this paragraph.

74. The allegations in Paragraph 74 call for a legal conclusion; therefore no response is required. Neo4j Sweden 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 Sweden denies the allegations contained in this paragraph.

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

77. The allegations in Paragraph 77 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j Sweden denies the allegations contained in this 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)**

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

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

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

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

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

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

## **Tenth Cause of Action**

## Declaratory Relief

## **(Abandonment of Trademark)**

(Against NEO4J USA)

8        84. This cause of action is not asserted against Neo4j Sweden, and therefore no  
9 response is required. To the extent that any response is required, however, Neo4j Sweden  
10 incorporates by reference its responses to Paragraphs 1 through 83 of the Counterclaims as  
11 though fully set forth herein.

12        85.      This cause of action is not asserted against Neo4j Sweden, and therefore no  
13 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
14 the allegations contained in this paragraph.

15 86. This cause of action is not asserted against Neo4j Sweden, and therefore no  
16 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
17 the allegations contained in this paragraph.

18        87. This cause of action is not asserted against Neo4j Sweden, and therefore no  
19 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
20 the allegations contained in this paragraph.

21       88.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
22 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
23 the allegations contained in this paragraph.

24        89. This cause of action is not asserted against Neo4j Sweden, and therefore no  
25 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
26 the allegations contained in this paragraph.

27 | / / /

28 | //

1       90.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
2 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
3 the allegations contained in this paragraph.

4       91.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
5 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
6 the allegations contained in this paragraph.

7       92.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
8 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
9 the allegations contained in this paragraph.

10      93.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
11 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
12 the allegations contained in this paragraph.

13      94.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
14 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
15 the allegations contained in this paragraph.

16      95.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
17 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
18 the allegations contained in this paragraph.

19      96.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
20 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
21 the allegations contained in this paragraph.

22      97.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
23 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
24 the allegations contained in this paragraph.

25      98.     This cause of action is not asserted against Neo4j Sweden, and therefore no  
26 response is required. To the extent that any response is required, however, Neo4j Sweden denies  
27 the allegations contained in this paragraph.

28      ///

## **Eleventh Cause of Action**

No response required as the claim was dismissed with prejudice (Dkt. No. 70), and thus omitted by Counterclaimants.

## Twelfth Cause of Action

## Unfair Business Practices

## **(Against NEO4J SWEDEN and NEO4J USA)**

99. Neo4j Sweden incorporates by reference its responses to Paragraphs 1 through 98 of the Counterclaims as though fully set forth herein.

100. Neo4j Sweden denies the allegations contained in Paragraph 100.

101. Neo4j Sweden denies the allegations contained in Paragraph 101.

102. It is unclear what Counterclaimants mean by “people who contributed to the development of the Neo4J open source software” and “there have been 183 contributors to Neo4J” as alleged in this paragraph, and on that basis Neo4j Sweden denies the allegations contained in Paragraph 102.

103. Neo4j Sweden denies the allegations contained in Paragraph 103.

104. Neo4j Sweden denies the allegations contained in Paragraph 104.

105. The allegations in Paragraph 105 call for a legal conclusion; therefore no response is required. To the extent an answer is required, Neo4j Sweden denies the allegations contained in this paragraph.

106. The allegations in Paragraph 106 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 Sweden denies the allegations in this paragraph.

107. Neo4j Sweden admits the allegations contained in Paragraph 107.

108. Neo4j Sweden denies the allegations contained in Paragraph 108.

109. Neo4j Sweden denies the allegations contained in Paragraph 109.

110. Neo4j Sweden lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 110 and on that basis denies them.

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

1           112. Neo4j Sweden denies the allegations contained in Paragraph 112.

2           113. Neo4j Sweden lacks knowledge or information sufficient to form a belief about the  
3 truth of the allegations in Paragraph 113 and on that basis denies them.

4           114. The allegations in Paragraph 114 are unintelligible, and therefore Neo4j Sweden  
5 cannot form a belief about the truth of the allegations in this paragraph and on that basis denies  
6 them. To the extent an answer is required, Neo4j Sweden denies the allegations contained in this  
7 paragraph.

8           115. The allegations in Paragraph 115 lack specificity and are vague as to whether it is  
9 referring to Neo4j USA or Neo4j Sweden in reference to user preferences, and on that basis  
10 Neo4j Sweden denies such allegations. Neo4j Sweden lacks knowledge or information sufficient  
11 to form a belief about the truth of the remaining allegations in Paragraph 115 and on that basis  
12 denies them.

13           116. Neo4j Sweden denies the allegations contained in Paragraph 116.

14           117. Neo4j Sweden denies the allegations contained in Paragraph 117.

15           118. Neo4j Sweden lacks knowledge or information sufficient to form a belief about the  
16 truth of the remaining allegations in Paragraph 118.

17           119. The allegations in Paragraph 119 are unintelligible, and therefore Neo4j cannot  
18 form a belief about the truth of the allegations in this paragraph and on that basis denies them. To  
19 the extent an answer is required, Neo4j Sweden denies the allegations contained in this paragraph.

20           120. Neo4j Sweden denies the allegations contained in Paragraph 120.

21           121. Neo4j Sweden denies the allegations contained in Paragraph 121.

22           122. Neo4j Sweden denies the allegations contained in Paragraph 122.

23           123. Neo4j Sweden denies the allegations contained in Paragraph 123.

24           124. Neo4j Sweden denies the allegations contained in Paragraph 124.

25           125. Neo4j Sweden denies the allegations contained in Paragraph 125.

26           126. Neo4j Sweden denies the allegations contained in Paragraph 126.

27           127. Neo4j Sweden denies that Counterclaimants are entitled to the injunctive relief  
28 requested in Paragraph 127 and 127(a) (i)-(iv) inclusive therein.

128. Neo4j Sweden denies that Counterclaimants are entitled to the relief and remedy requested in Paragraph 128.

## V. Prayer for Relief

Neo4j Sweden 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 Sweden prays for relief, as follows:

9           1.    That Counterclaimants take nothing by the Counterclaims;

10          2.    To the extent there is any bases for declaratory relief, a declaratory judgment in

11 favor of Neo4j Sweden; and

12          3.    For such other and further relief as the Court deems just and proper.

## **AFFIRMATIVE DEFENSES**

Neo4j Sweden 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 and/or a copyright owned by a third party.

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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 Sweden 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  
 7 Sweden well before the filing of the Counterclaim in this action, but unreasonably delayed in  
 8 bringing said claims and severely prejudiced Neo4j Sweden 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. Finally, Counterclaimants are estopped from asserting that any provision in  
 18 the NEO4J® Partner Solution Agreement allegedly violates Bus. & Prof. Code § 16600 as they  
 19 were fully advised of the nature of the transaction and with full knowledge thereof voluntarily  
 20 participated in said transaction and agreed to the terms thereof, and as such Counterclaimants are  
 21 estopped from obtaining the relief prayed for in the Counterclaims.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Licensee Estoppel)**

24 The claims as alleged in the Counterclaim are barred, in whole or in part, by the doctrine  
 25 of licensee estoppel. In particular, Counterclaimants' trademark abandonment claim is based  
 26 upon alleged naked licensing that occurred while the NEO4J® Partner Solution Agreement,  
 27 which contained a trademark license, was in effect. As a result, Counterclaimants are estopped  
 28 from claiming any alleged naked licensing occurred before and up to the time Neo4j USA

1 terminated that agreement and the underlying trademark license.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 **(Unclean Hands)**

4 Neo4j Sweden alleges that any recovery on the claims asserted in the Counterclaims is  
 5 barred by reason of Counterclaimants' unclean hands based on their wrongdoing as set forth in  
 6 Neo4j's Sweden Second Amended Complaint, which Neo4j Sweden incorporates herein by  
 7 reference.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 **(Waiver)**

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

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 **(Negligence)**

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

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 **(Set-Off)**

19 To the extent Counterclaimants have suffered any alleged damages, which Neo4j Sweden  
 20 specifically denies, any alleged damages suffered by Counterclaimants must be set-off by (1) the  
 21 amounts Counterclaimants are wrongfully withholding from Neo4j Sweden; (2)  
 22 Counterclaimants' ill-gotten gains from their wrongful conduct; and/or (3) the damages suffered  
 23 by Neo4j Sweden as a result of Counterclaimants' acts and/or omissions as alleged in the  
 24 Complaint.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 **(Unjust Enrichment)**

27 Neo4j Sweden alleges that the causes of action alleged in the Counterclaim are barred, in  
 28 whole or in part, as Counterclaimants would be unjustly enriched if allowed to recover any of the

1 sums alleged in the Counterclaim because they have wrongfully withheld funds and/or payments  
 2 due and owing to Neo4j USA under the NEO4J® Partner Solution Agreement, as well as profited  
 3 off the infringement of Neo4j USA's trademark and goodwill and from removing Neo4j  
 4 Sweden's copyright management information from copies of Neo4j Sweden's copyrighted  
 5 software. Counterclaimants have wrongfully withheld payments from Neo4j USA in amounts  
 6 similar to what they have claimed as their alleged damages. As a result, Counterclaimants  
 7 suffered no damages and would be unjustly enriched if they were to recover on their  
 8 counterclaims.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 **(Performance of Contract Excused)**

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

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 **(Privilege/Justification)**

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

26 **TWENTIETH AFFIRMATIVE DEFENSE**

27 **(First Amendment Freedom of Petition)**

28 The claims as alleged in the Counterclaim are based, in whole or in part, on acts that are

1 and were subject to Neo4j Sweden's constitutional right of freedom to petition under the First  
 2 Amendment, U.S. Const. amend. I, and the *Noerr-Pennington* doctrine based thereon, and,  
 3 therefore, not actionable.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 **(Speculative Damages)**

6 Neo4j Sweden alleges that the purported causes of action in the Counterclaim are barred,  
 7 in whole or in part, because the Counterclaimants' purported damages are speculative and  
 8 uncertain and there is no reasonable basis to assume any of the alleged prospective economic  
 9 relationships were allegedly disrupted by Neo4j USA and/or would otherwise been consummated.  
 10 Counterclaimants' damages theories also fail because they are based upon uncertain future  
 11 benefits that are too speculative to be ascertainable.

12 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

13 **(Extent of Punitive Damages)**

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

19 **JURY DEMAND**

21 Neo4j Sweden demands a jury trial on all issues related to these counterclaims that are  
 22 triable by jury.

23 Dated: June 19, 2020

HOPKINS & CARLEY  
 24 A Law Corporation

25 By: /s/ Cary Chien

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 27 Jeffrey M. Ratinoff  
 Cary Chien  
 28 Attorneys for Plaintiffs and  
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 NEO4J, INC. and NEO4J SWEDEN AB