

PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”), under the terms and conditions of DIR Contract No. DIR-TSO-2689, is entered into as of **[Enter Date]** (the “Effective Date”) between **NEC Corporation of America**, a Nevada corporation, having its primary place of business at **6535 N. State Highway 161, Irving, TX 75039-2402** (“NEC”) and **[ENTER CUSTOMER’S FULL LEGAL NAME]**, having its primary place of business at **[Enter Customer’s primary business address]** (“Customer”) (collectively, the “Parties” or individually a “Party”) and is as follows:

1. DEFINITIONS:

- 1.1 **“Appendix”** means any document attached and incorporated into this Agreement or attached and incorporated into any Order, outlining supplemental terms and conditions specific to certain Equipment, Service(s) (e.g. software license agreements, specific Equipment and/or Service warranties, etc.) or to the Customer’s industry (e.g., HIPAA compliance, Gramm- Leach-Bliley, etc.), or to other aspects of an applicable Order, and duly executed by the Parties.
- 1.2 **“Equipment”** means both hardware products and Software sold or licensed to Customer by NEC hereunder.
- 1.3 **“NEC Affiliate”** means a corporation or other entity controlling, controlled by or under common control with NEC either now or in the future. For the purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities of such entity, by contract or otherwise.
- 1.4 **“Order(s)”** shall collectively and individually refer to a variety of documents addressing business terms related to NEC’s provisioning of Equipment and/or Services, including but not limited to service descriptions, Statement(s) of Work, Purchase Order(s), or other similar order forms, each of which, when duly accepted and executed by authorized representatives of both Parties, shall be deemed incorporated herein. In the event of a conflict between DIR Contract No. DIR-TSO-2689, the Order(s), and the terms of this Agreement, the terms of DIR Contract No. DIR-TSO-2689 shall prevail.
- 1.5 **“Purchase Order”** means a Customer-issued document used for ordering Equipment and/or Services under this Agreement. All Purchase Orders are subject to review and acceptance by an authorized representative of NEC. No preprinted Purchase Order terms shall be binding upon NEC, unless otherwise expressly agreed to in writing by an authorized representative of NEC.
- 1.6 **“Services”** means the installation, maintenance, technical or other related services performed for Customer by NEC hereunder.
- 1.7 **“Software”** means the machine-readable object code software programs licensed to Customer by NEC or its suppliers.
- 1.8 **“Statement of Work” or “SOW”** means a tasking document that specifies the Services to be performed by NEC for Customer with respect to a specific project or engagement. More specifically, a Statement of Work is intended to clearly define the basic requirements and objectives of a project, and set the scope and boundaries of such project, including but not limited to, what work will be done, when it will be performed and the roles and responsibilities of the Parties.

2. **GENERAL** DIR Contract No. DIR-TSO-2689 and this Agreement establishes the general terms and conditions under which NEC shall sell and/or license Equipment to, and/or perform Services for, Customer.
3. **TERM** The term of this Agreement shall commence on the Effective Date and shall continue for a period of **one (1)** year with three (3) one year options for DIR customer to renew. Upon expiration of the final term, the Agreement may be further renewed upon mutual written agreement of the Parties if terms or survivability allow.
4. **PAYMENT** Payments will be handled in accordance to Appendix A, Section 8.J. of DIR Contract No. DIR-TSO-2689.
5. **LIMITATION OF LIABILITY** Limitation of Liability will be handled in accordance to Appendix A, Section 10.K. of DIR Contract No. DIR-TSO-2689.
6. **LIMITED WARRANTY – EQUIPMENT** NEC represents and warrants that all Equipment manufactured by NEC, or an NEC Affiliate, will be free from defects in material and workmanship and will operate substantially in accordance with manufacturers' specifications for the period stated in the applicable Order. For Equipment not manufactured by NEC or an NEC Affiliate, NEC will pass the manufacturer's warranty through to Customer to the extent NEC is lawfully permitted to do so. Additional warranty terms may be included in an Equipment-specific Appendix to the applicable Order.

SERVICES NEC represents and warrants that all Services provided to Customer pursuant to any Order shall be performed by competent personnel, with professional diligence and skill, consistent with industry standards, and will conform in all material respects to the specifications and requirements set forth, and for the period stated or incorporated, in the applicable Order. Additional warranty terms may be included in a Service-specific Appendix to the applicable Order.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND THE APPLICABLE ORDER, NEC DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE EQUIPMENT AND/OR SERVICES COVERED HEREUNDER, AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND ALL WARRANTIES RELATED TO THIRD PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE NOT PROVIDED HEREUNDER ARE EXPRESSLY EXCLUDED.

7. LICENSES

In connection with the provision of Equipment hereunder, NEC may provide certain pre-existing materials, software components, and information proprietary to Vendor and commonly provided or used by NEC in the provision of Services, ("NEC Standard Materials"). Customer acknowledges that all right, title and interest in and to all NEC Standard Materials is and remains the exclusive property of NEC or its suppliers. Subject to Customer's payment of all undisputed fees under the applicable Statement of Work and/or Change Order, NEC hereby grants to Customer a non-exclusive and non-transferable (except as otherwise set forth in an applicable End User License Agreement) license to use the NEC Standard Materials solely for the internal business purposes of Customer. Customer will not, and will not allow any employee or third party to, copy, reverse engineer, modify, improve and/or create derivative works of, copy, reverse engineer, or retrieve or read all or any portion of the source code of the NEC Standard Materials, irrespective of the medium in which the NEC Standard Materials may be contained or embodied; provided, however, that Customer may copy NEC Standard Materials: (i) to a different format, if necessary, (ii) for purposes of backup, disaster recovery, and if required by law, records retention.

8. **INDEMNIFICATION** Indemnification will be handled in accordance to Appendix A, Section 10.A. of DIR Contract No. DIR-TSO-2689.

- 9. TERMINATION FOR DEFAULT** Termination will be handled in accordance to Appendix A, Section 11.B 4) of DIR Contract No. DIR-TSO-2689.
- 10. ASSIGNMENT** Assignments will be handled in accordance to Appendix A, Section 4.D. of DIR Contract No. DIR-TSO-2689.
- 11. IMPORT EXPORT CONTROLS** Customer hereby acknowledges that the Equipment supplied hereunder may be subject to export controls under the laws and regulations of the United States (U.S.). Customer shall comply with such laws and regulations and agrees not to export, re-export or transfer Equipment without first obtaining all required U.S. Government authorizations or licenses. NEC and Customer each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents.

Customer hereby certifies that the Equipment sold or licensed hereunder are sold or licensed to Customer as a final purchaser or licensee that is acquiring such Equipment for its own internal use and not for resale, remarketing or distribution. Customer further certifies none of the Equipment supplied to Customer hereunder will be exported, re-exported, or otherwise transferred by Customer:

- To a U.S. embargoed or highly restricted destination, (15 United States Code of Federal Regulations (“CFR”) Part 746)
- For use by or for any military end-user, or in any military end-use located in or operating under the authority of any country identified in Country Group D1 under 15 CFR, Supplement No. 1 to Part 740, (15 CFR Part 740)
- To, or made available by Customer for use by or for, any entity that is engaged in the design, development, production, stockpile or use of nuclear, biological or chemical weapons or missiles, (15 CFR Part 744)
- To parties on any of the following U.S. Government’s lists of denied persons, without first obtaining all required U.S. Government authorizations or licenses.

Denied parties List:

<http://www.bis.doc.gov/dpl/thedeniallist.asp>

Unverified List:

http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html

Entity List:

<http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf>

Specially Designated Nationals List;

<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

Debarred List:

<http://www.pmdtc.state.gov/compliance/debar.html>

Nonproliferation Sanctions: <http://www.state.gov/t/isn/c15231.htm#>

Customer’s obligation under this clause shall survive the expiration or termination of this Agreement. Customer agrees to maintain a record of exports, re-exports, and transfers of the Equipment for five years and to forward within that time period any required records to NEC or, at NEC’ request, to the U.S. Government. Customer agrees to permit audits by NEC or the

U.S. Government as required under the applicable regulations to ensure compliance with this Agreement.

12. **FORCE MAJEURE** Force Majeure will be handled in accordance with Appendix A, Section 11.C. of DIR Contract No. DIR-TSO-2689.
13. **ALTERNATIVE DISPUTE RESOLUTION** Dispute Resolution will be handled in accordance to Appendix A, Section 11.A. of DIR Contract No. DIR-TSO-2689.
14. **GOVERNING LAW** This Agreement will have been made, executed and delivered in the State of Texas and will be governed and construed for all purposes in accordance with the laws of the State of Texas without giving effect to conflict of laws provisions. The parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.
15. **CONFIDENTIALITY** To the extent allowable under the Texas Public Information Act, "Confidential Information" as used herein, means non-public information that is exchanged between the Parties, provided that such information is: (i) labeled or identified "Confidential" at the time it is provided by the disclosing Party, or (ii) disclosed under circumstances that would indicate to a reasonable person that the information should be treated as confidential by the Party receiving the information. If the disclosing Party fails to identify information as "Confidential Information" at the time of disclosure it may subsequently identify the information as "Confidential Information" by giving written notice to the other Party.

Notwithstanding the foregoing definition, the term Confidential Information does not include information which: (i) has been published by the disclosing Party or is otherwise in the public domain through no fault of the receiving Party; (ii) is properly within the legitimate possession of the receiving Party prior to its disclosure hereunder and without any obligation of confidence; (iii) is lawfully received by receiving Party from a third party who lawfully possesses the information and who is not restricted from disclosing the Confidential Information to the receiving Party; (iv) is independently developed by the receiving Party without use of the Confidential Information; or (v) is approved for disclosure by the disclosing Party, in writing, prior to its disclosure.

Each Party understands and agrees that in the performance of Services under this Agreement, or in contemplation thereof, that a Party may have access to Confidential Information of the other Party. The receiving Party agrees that all Confidential Information disclosed by the other Party shall be held in confidence and used only in performance of Services under this Agreement. The receiving Party shall exercise the same standard of care to protect such Confidential Information as is used to protect its own proprietary data, but in no event, less than a reasonable standard of care.

Confidential Information may be disclosed in response to a valid order of a court or other governmental body or as otherwise required by law.

16. **INTELLECTUAL PROPERTY** Intellectual Property will be handled in accordance with Appendix A, Section 5., of DIR Contract No. DIR-TSO-2689.
17. **RELATIONSHIP OF THE PARTIES** NEC undertakes performing its obligations pursuant to this Agreement as an independent contractor. Nothing contained herein or done pursuant to this Agreement shall make either Party or its agents or employees the legal representative, agent or employee of any other Party for any purpose whatsoever.
18. **RESTRICTIVE COVENANT** Each Party agrees that it shall not to actively solicit or hire any employees or contractors of the other Party who have directly been involved in the performance of Services under this Agreement without the prior written consent of such Party. Each Party's obligations under this Section shall continue for a period of one (1) year after completion of the

applicable Services without regard to conflict of law principles. Publically advertised employment does not apply to this provision.

19. SECTION HEADINGS The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

20. SEVERABILITY If any provision of DIR Contract No. DIR-TSO-2689 or this Agreement are for any reason held to be unenforceable, all other provisions will remain in full force and effect and the unenforceable provision shall be replaced by a mutually acceptable enforceable provision consistent with the Parties' original intent.

21. SURVIVAL OF OBLIGATIONS The respective obligations of Customer and NEC under this Agreement which by their nature would continue beyond the termination, cancellation or expiration of the Agreement, shall survive termination, cancellation or expiration.

22. WAIVER OF TERMS AND CONDITIONS Failure of either Party to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions, or of any other terms or conditions.

23. NOTICES Notices will be handled in accordance to Appendix A, Section 12.A. of DIR Contract No. DIR-TSO-2689.

24. COMPLETE AGREEMENT DIR Contract No. DIR-TSO-2689 and this Agreement including all Appendices are the complete agreement between the parties concerning the subject matter herein and supersedes any prior oral or written communications between the Parties with regard to the subject matter contained herein. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified or incorporated herein. DIR CONTRACT NO. DIR-TSO-2689 AND THIS AGREEMENT MAY NOT BE MODIFIED, CHANGED OR AMENDED EXCEPT BY A WRITTEN AMENDMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Agreement to be duly executed.

CUSTOMER

NEC CORPORATION OF AMERICA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____