

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**NEC CORPORATION OF AMERICA**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and NEC Corporation of America (hereinafter “Vendor”), with its principal place of business at 6535 North State Highway 161, Irving, Texas 75039.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-209, on December 6, 2013, for Data Communications and Networking Equipment and Related Services. DIR subsequently issued a BAFO opportunity on June 5, 2014. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-209 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Purchase Agreement; Appendix E, Maintenance Services Agreement; Appendix F, State of Work (SOW); Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-209, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-209, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) optional one-year terms.

Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

**3. Product and Service Offerings**

**A. Products**

Products available under this Contract are limited to networking products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

**B. Services**

Services available under this Contract are limited to related networking services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana L. Collins, CTPM, CTCM  
Manager, Contract and Vendor Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233

Facsimile: (512) 475-4759  
Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:  
Martyn Harsley  
NEC Corporation of America  
6535 N. State Highway 161  
Irving, TX 75039  
Phone: 832-917-4290  
Email: [martyn.harsley@necam.com](mailto:martyn.harsley@necam.com)

With a copy to  
NEC Corporation of America  
6535 N. State Highway 161  
Irving, Texas 75039  
Attn: Legal/Contracts Administration

**7. Purchase and Service Agreements**

**A. Purchase Agreement**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Purchase Agreement set forth in Appendix D of this Contract. No changes to the Purchase Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make the Purchase Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Purchase Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Purchase Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Purchase Agreement terms and conditions.

**B. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the**

**reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**C. Service Agreement**

Services provided under this Contract shall be in accordance with the Maintenance Service Agreement as set forth in Appendix E and the Statement of Work (SOW) as set forth in Appendix F of this Contract. No changes to either Appendix E or Appendix F terms and conditions may be made unless previously agreed to by Vendor and DIR.

**D. Conflicting or Additional Terms**

In the event of a conflict between the terms of the Vendor Software License Agreements, Service Agreements or linked or supplemental documents and the Contract which amend or diminish the rights of DIR Customers or the State provided for in the Contract, such conflicting terms shall not take precedence over the terms of this Contract. In no event will any linked document alter or override any term of the Contract, nor will it change fees, prices, or the method of computing any of the foregoing.

**8. Authorized Exceptions to Contract or any Appendices.**

**A. Appendix A, Section 5, Intellectual Property Matters** is hereby deleted and replaced in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated.

**B. Appendix A, Section 10, Vendor Responsibilities, N. Required Insurance Coverage, 1) Commercial General Liability** is hereby amended and replaced in its entirety as follows:

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer (or, if policies do not allow for such notification, notice is to be provided by Vendor); and

e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

**C. Appendix A, Section 10, Vendor Responsibilities, N. Required Insurance Coverage, 3) Business Automobile Liability Insurance** is hereby amended and replaced in its entirety as follows:

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination in favor of DIR and/or Customer (or, if policies do not allow for such notification, notice is to be provided by Vendor); and
- c) Additional Insured.

**(Remainder of page intentionally left blank)**

This Contract is executed to be effective as of the date of last signature.

**NEC CORPORATION OF AMERICA**

**Authorized By:** Signature on File

**Name:** Michael Dowling

**Title:** National Sales Director

**Date:** 3/3/15

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Dale Richardson

**Title:** Chief Operations Officer

**Date:** 3/10/15

**Office of General Counsel:** drb 3/9/15