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Date of Quotation: 2/18/2025
EXPIRATION DATE: 5/19/2025
Quote # 8453a

NEC Sales Person: Steven Nash (Steven.Nash@necam.com)

Quote Issued to: Adam Sommers
Fingerprint Technician
833 S. Akers Street
Visalia, CA 93277
ASommers@tularecounty.ca.gov

Tulare County Sheriff's Office - Ruggedized SmartScan Solution

Ruggedized SmartScan Solution - Qty. 1

(1) Ruggedized Cabinet Device Including:

PC, Monitor & Mouse
CrossMatch Guardian 200 Fingerprint Scanner
NEC Software License Including:
NEC SmartScan Fingerprint Client Application Software License
Third Party Software License

Professional Services

Installation & Configuration
On-Site Installation & Training
Documentation
Shipping and Handling
1-Year Warranty

Ruggedized SmartScan Solution - Qty. 1 Price:	\$18,975
Sales Tax 8.50%	\$1,613
Ruggedized SmartScan Solution - Qty. 1 Price after Sales Tax	\$20,588
Annual Remote 8x5 Maintenance and Support Price	\$3,416

Notes:

- RMA hardware replacement included in maintenance price if customer is under a valid maintenance contract or warranty.
- Training will be provided during SmartScan installation and setup.
- Training will cover operator and administrator usage.
- Training is for a single training session for up to 3 persons per workstation/kiosk.
- Custom TOT not included and is priced separately based on requirements.
- Hardware delivery dependent upon commercial availability of pertinent parts.
- Sales Tax is included as an estimate per the County's quote address.

Terms and Conditions of Sale:

This Quotation for the goods and services is governed, in NEC's discretion, by one of the following: (1) NEC's General Terms and Conditions of Quotations and Sale; or (2) a separate mutually agreed upon contract. Contract vehicles are determined based upon a number of factors, including but not limited to, complexity and associated dollar value. **Purchase Orders shall not be accepted by NEC until a mutually agreed upon contract has been executed between the parties.**

Validity of offer: 90 calendar days from date of quote.

Warranty and Maintenance: 1 Year Warranty. Annual 8x5 Remote Maintenance & Support

Payment Terms: 100% Due Upon Project Completion & Due 30 Days After Date of Invoice

Acceptance of Good and Services: Customer acceptance shall occur when NEC has completed the services and provided the deliverables to customer (Project Completion). Customer acceptance is irrevocable and final. Unless otherwise expressly agreed to by the parties, payments shall be due in accordance with Section 2 (Price, Taxes and Payment) of the General Terms and Conditions of Quotations and Sale. Quotation does not include provincial / federal taxes, which are the responsibility of the customer.

At any time before Acceptance, NEC reserves the right to add, delete, and/or substitute items of equipment and software ("Substitutions"), provided that such substitution will not adversely affect the functionality and performance of the deliverables. Substitutions do not adjust a fixed priced contract.

A quotation is not to be construed as an obligation, but merely an indication to supply the goods and services at a particular price and no contractual relationship shall arise from it until the customer's purchase order has been accepted by NEC.

In the case of any remote workstation quotes, the recipient of this quote is responsible for securing approval/permission from the AFIS/MBIS provider in respect to interfacing with and submitting fingerprint or other transactions to its system.

Integra-ID AFIS/MBIS Bandwidth Requirements

Introduction

AFIS/MBIS applications utilize bandwidth on an on-demand basis. Normal, idle operations require minimal bandwidth for connectivity checks to the central server, job queue updates, etc. Usage bandwidth is characterized by peaks of activity dependent upon the operation (scanning a tenprint card, viewing a list of candidates, etc.). Additional factors include fingerprint image resolution (500ppi vs. 1000ppi) and search throughput design.

Bandwidth Requirements

The following chart illustrates the bandwidth required along with illustrations of the necessary backbone type. Figures given are dedicated bandwidth allocations per device. These requirements are the minimum necessary bandwidth for a productive user experience; additional bandwidth will enhance performance accordingly.

Remote Product Type	500ppi	1000ppi
Fingerprint Workstation (Latent, Tenprint, Palm, Archive*)	1.5mb (T1)	4mb (Bonded T1, Fractional DS3)
IntegralID (AFIS to AFIS connection)	1.5mb (T1)	4mb (Bonded T1, Fractional DS3)

Central Site Product Type	500ppi	1000ppi
Fingerprint Workstation (Latent, Tenprint, Palm)	100mb Fast Ethernet	1gb Ethernet
Inter-AFIS server communication**	1gb Ethernet	1gb Ethernet
Central Site Remote Connection (inbound/outbound traffic to remotes***)	10mb (Bonded T1, Fractional DS3)	25mb (DS3/T3)

*Archive usage is based upon average document sizes of 700kb.

**Inter-AFIS server networking is provided by NEC; all other networking costs are the responsibility of the customer.

***We can support up to 12 workstations for the 10MB(500ppi)/25MB(1000ppi). If the device count exceeds that, the line speed needs to be increased in proportion with the # of workstations.

General Terms and Conditions of Quotations and Sale

1. GENERAL The General Terms and Conditions ("Agreement") contained herein shall apply to all quotations and offers made by and purchase orders accepted by NEC Corporation of America ("NEC"). These terms, including terms referenced in any Appendices and/or Exhibit, if any, apply to all NEC Products which customer acquires from NEC, except to the extent that terms conflict with an existing contract where those terms and conditions (signed by NEC and customer) shall take precedence over this document. As used herein, "NEC Product(s)" means any NEC equipment, software and/or services provided by NEC under this Agreement, including maintenance, professional, or other related services. Acceptance of customer's purchase order is conditioned upon customer's acceptance of the terms and conditions herein, irrespective of whether the customer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. NEC's failure to object to provisions contained in any communication from customer shall not be deemed a waiver of the provisions herein. Any changes in the terms contained herein, or any additional or different terms must specifically be agreed to in writing, and signed by an authorized representative of NEC before becoming binding on either party. For the purposes of this Agreement, an "Order(s)" means a written binding document outlining additional or different terms covering a specific transaction; such terms shall be contained in a Statement of Work ("SOW"), purchase order, NEC quotation or addendum (together, either collectively or individually), with this Agreement, referred to as an ("Order"). NEC reserves the right to reject any Order which is not credit-approved or does not conform to the provisions of this Agreement.

2. PRICE, TAXES AND PAYMENT Unless otherwise expressly agreed to by the parties in writing, all payments are due within thirty (30) calendar days from the date of an invoice. Unless otherwise agreed in writing, all payments are to be in United States dollars. If customer fails to pay the undisputed portion of any invoice within the time specified, NEC may charge customer interest equal to the lesser of 1.5% per month [eighteen percent (18%) per annum] or the maximum rate allowed by law on such undisputed portion. NEC's provision of products and services is subject to credit approval for each transaction. Customer understands that any information obtained by NEC from any third party credit bureau for the purpose of verifying customer's credit worthiness will be held in confidence and will remain the property of NEC, whether or not credit is extended. In the event that NEC is required to bring legal action to collect delinquent accounts, customer agrees to pay reasonable attorneys fees and costs of suit.

All prices are exclusive of any present or future sales or other tax applicable to the manufacture or sale of any product, if required to be collected or paid by NEC shall be paid by Buyer to NEC. Such taxes, when applicable, shall be paid by customer unless customer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by NEC are those current at the date of quotation and shall be subject to variation by NEC. Customer acknowledges that this purchase may constitute a bundled transaction or mixed transaction for sales tax purposes and, as such, may be fully subject to sales tax. If claiming a sales tax exemption, customer must provide NEC with valid resale certificate(s) for all jurisdictions where deliveries are made to End Users. Such certificates must be provided to and accepted by NEC prior to, or at the time of, NEC's receipt of the customer's Order. "Licensed Customer" and/or "End User" means an entity who has purchased and licensed, the NEC software product for its internal business purposes and not for resale.

3. LIMITATION OF LIABILITY EXCEPT AS AND TO THE EXTENT PROVIDED IN THIS AGREEMENT, NEITHER NEC NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES OR OWNERS WILL IN ANY CIRCUMSTANCES BE LIABLE FOR ANY OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS) ARISING OUT OF THE USE, OR SUPPLY OR NON-SUPPLY, OF THE NEC PRODUCT AND ANY ACCOMPANYING NEC TECHNICAL DATA REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF NEC, OR AN AUTHORIZED REPRESENTATIVE OF NEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEC'S TOTAL LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT AND/OR ORDER IS, IN ANY CASE, LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO NEC FOR THE NEC PRODUCT UNDER THE ORDER GIVING RISE TO THE CLAIM.

4. INDEMNITY NEC agrees to Indemnify, defend and hold harmless customer against all demands, claims, actions, proceedings, losses, damages, liabilities, cost and expenses (including reasonable attorneys' fees and expenses) directly arising from or relating to third party claims directly resulting from any actual or alleged infringement or misappropriation of any United States patent, copyright, or trademark arising from or in connection with the NEC Product(s) licensed and/or provided under this Agreement, provided that: (a) NEC is notified promptly in writing of the claim, (b) customer gives NEC (or the software manufacturer or service provider, as applicable) the sole right to defend and settle any suit, and (c) customer fully cooperates in the defense when and as requested by NEC. Should customer's continued use of equipment, software, and/or services be enjoined, NEC may at its option and expense, either: (a) if commercially reasonable, procure for customer the right to continue using the affected equipment, software and/or service(s),

(b) replace or modify the same so that infringement is eliminated, or (c) if none of these alternatives are commercially reasonable, either party may terminate this Agreement.

This indemnity shall not apply to any claims or suits concerning: (a) items manufactured by NEC at customer's request and according to customer's specifications, (b) use of the NEC Product(s) in a manner or for a purpose not contemplated by this Agreement, (c) NEC Product(s) used by customer in conjunction with the equipment, but which was not supplied by NEC, or (d) commercial merchandise available on the open market or its equivalent. The foregoing provisions state the entire liability and obligations of each party, and the exclusive remedy of the other, with respect to any alleged intellectual property infringement hereunder.

INDEMNIFICATION CUSTOMER OR ITS DESIGNEE SHALL INDEMNIFY, DEFEND AND HOLD NEC HARMLESS AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, DEMANDS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, INTEREST AND REASONABLE ATTORNEYS' FEES, ARISING OUT OF, RELATING TO, OR RESULTING FROM A CLAIM THAT CUSTOMER'S USE, MARKETING OR DISTRIBUTION OF ANY NEC PRODUCT ARE NOT IN COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND GOVERNMENTAL ORDERS.

5. 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 mutually agreed upon by the parties under a separate agreement.

SERVICES NEC represents and warrants that all services provided to customer 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 mutually agreed upon by the parties under a separate agreement.

SOFTWARE NEC DOES NOT WARRANT THAT ANY NEC SOFTWARE PRODUCT PROVIDED WILL MEET CUSTOMER AND/OR END USER'S REQUIREMENTS OR THAT OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. EACH NEC SOFTWARE PRODUCT IS PROVIDED BY NEC "AS IS". THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF EACH NEC SOFTWARE PRODUCT SHALL BE WITH CUSTOMER. EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR UNLESS OTHERWISE EXPRESSLY AGREED TO BY THE PARTIES, IN WRITING, NEC DISCLAIMS AND EXCLUDES TO THE FULL EXTENT PERMISSIBLE ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE SOFTWARE AND/OR SERVICES COVERED HEREUNDER. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NEC SHALL CREATE A WARRANTY AND CUSTOMER MAY NOT RELY UPON SUCH INFORMATION OR ADVICE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY AND NON-INFRINGEMENT. NEC PARTICULARLY DISCLAIMS 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. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT.

NO OTHER REPRESENTATIONS OR WARRANTIES; NON-RELIANCE EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS SECTION OF THIS AGREEMENT, (A) NEC, NOR ANY OTHER PERSON ON NEC'S BEHALF, HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY REGARDING THE NEC PRODUCTS, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE AND NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND FITNESS OF THE NEC PRODUCTS FOR USE IN COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS OR GOVERNMENTAL ORDERS GOVERNING OR RELATING TO SUCH USE, AND (B) CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY NEC, OR ANY OTHER PERSON ON NEC'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION OF THIS AGREEMENT.

6. SCOPE OF LICENSE With respect to any NEC software product licensed under this Agreement, customer is hereby granted a non-exclusive, non-transferrable license to (i) use each NEC software product specified in an Order, and only to the extent and purpose stated in the applicable NEC quotation ("Specified Purpose").

7. LICENSE RESTRICTIONS Except as expressly permitted under this Agreement, customer shall not have the right to sell, resell, distribute, license, sub-license, rent, lease, permit access to, or use of, or otherwise transfer any NEC software product to any other third-party and specifically agrees not to (a) provide usage of any NEC software product to any third parties; (b) generate income from any third parties' use of any NEC software product; or (c) generate income by acting as an agent for a third party and processing the business information of other third-parties. Except as otherwise expressly permitted under this Agreement, customer shall not have any rights to use any NEC software product, in whole or in part, for any other use or purpose whatsoever and any right not expressly provided to customer under this Agreement shall be reserved by NEC. Customer further agrees not to: (a) use, reproduce, modify, disclose, distribute, sublicense, lease, transfer, pledge, encumber or otherwise transfer the NEC program; (b) remove, cover, alter, or obfuscate any copyright notices or other proprietary rights notices placed on or in the NEC program; nor (c) take any action which will have the direct or indirect effect of causing the NEC program to become Publicly Available Software (hereinafter defined) or otherwise be subject to a Publicly Available Software license. The software will be used for identification and/or facial recognition purposes only and will not be used and implemented in direct connection with armed weapons. To ensure compliance with this Agreement, upon forty-five (45) days written notice, NEC shall have the right to audit customer's use of the software.

For the purposes of this Agreement, the term "Publicly Available Software" shall mean (a) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models; or (b) any software that requires, as a condition of use, modification and/or distribution of such software that such software or other software incorporated into, derived from or distributed with such software (i) be disclosed or distributed in source code form, (ii) be licensed for the purpose of making derivative works, or (iii) be redistributable at no charge.

8. Other Requirements for Distribution of NEC Product If permitted under the applicable Order, Customer shall solely distribute and license the NEC Product(s) to Licensed Customer under the terms of an End User License Agreement containing terms that are generally as protective of NEC as set forth herein. Customer shall make reasonable efforts to ensure that the form and provisions of customer's End User (Licensed Customer) License Agreement shall be enforceable and customer shall enforce such agreements to the full extent under applicable law. Customer's End User License Agreement shall include the following:

a) Licensed Customer shall not copy, reproduce, modify, reverse compile, disassemble or reverse engineer (except to the extent allowed by local law) the NEC program, provided that each such Licensed Customer may be permitted to make one (1) additional copy of the NEC program for back-up purposes only;

b) Licensed Customer shall not disclose or otherwise make available to any other person or entity any part of the NEC program;

c) Licensed Customer shall not remove any of NEC's copyright and proprietary notices that appear on any portion or copy of the NEC program furnished to it;

d) Licensed Customer shall use the NEC program only for Licensed Customer's own internal business use and not for the benefit of any third party such as use on an ASP basis, a timeshared basis or outsourcing basis;

e) No title to the NEC program shall be transferred to such Licensed Customer;

f) NEC and/or its licensors shall own all the intellectual property to the NEC program and any modifications, improvements or derivative works thereto.

g) The NEC program is provided with Restricted Rights. The use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this Agreement and in the applicable provisions of subparagraphs (b) (1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 CFR 12.212 (Computer Software) and 48 CFR 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 CFR 227.7202-3 of the DOD FAR Supplement ("DFAR") and its successors. The Software was developed entirely at private expense. The Software licensed under this Agreement is "commercial computer software" as the term is described in 48 CFR, 252.227-7014(a) (1). **Manufacturer: NEC Corporation of America, Biometrics Solutions Division, 10850 Gold Center Drive, Rancho Cordova, CA 95670.** The software will be used for identification and/or facial recognition purposes only and will not be used and implemented in direct connection with armed weapons.

9. TERMINATION

9.1 Termination for Default. In the event of any material default or failure on the part of a Party in the performance of any of its duties, obligations or responsibilities under this Agreement, that is susceptible to cure, the non-defaulting Party may terminate this Agreement provided that the defaulting Party had been given thirty (30) days prior written notice of the default and failed to cure the default within such thirty (30) day period.

9.2 License Termination Any license granted to use any NEC software product pursuant to an applicable Order may be terminated ("License Termination") for any of the following reasons: (i) by NEC for customer's failure to make monetary payment of any amount due to NEC under this Agreement for the NEC software product set forth in the Order by the date such payment is due (hereafter, a termination under this Subsection (i) shall be referred to as a ("Termination for Nonpayment"); or (ii) by either party upon written notice to the other party after the other party's breach of any material non-monetary provision of this Agreement (including, but not limited to, a breach of this Section 9.2) that is not cured within thirty (30) days of written notice of such breach to the breaching party (hereafter, a termination under this Subsection (ii) shall be referred to as a ("Termination for Breach").

9.3 Monetary Obligations Upon Early License Termination. In the case of a Termination for Nonpayment or a Termination for Breach resulting from the customer's breach, any unpaid payment obligations of customer shall survive and continue beyond termination and NEC shall be considered to have earned all fees set forth in the terminated Order and shall be entitled to retain any fees that have already been paid by customer and to collect the balance of any fees that remain unpaid by customer.

9.4 Other Obligations Upon License Termination. Upon a license termination for a license granted to use any NEC software product pursuant to an applicable Order, the following will occur: (i) if, pursuant to an Order, NEC is providing any services for or related to the NEC software product, NEC will immediately cease providing the services to the customer for the NEC software product; and (ii) customer shall promptly return or destroy all copies of NEC software product, and provide NEC with a certification that all copies and modifications in any form have been either returned or destroyed.

10. ASSIGNMENT NEC may assign this Agreement to any NEC Affiliate upon prior written notice to customer, otherwise, this Agreement may not be assigned by either party without the express written consent of the other party. No transfer or assignment of this Agreement, or of any interest hereunder, shall release either party from its obligations hereunder. Any assignment or attempted assignment in violation of this provision shall be null and void.

11. IMPORT EXPORT CONTROLS Customer hereby acknowledges that the NEC Product(s) supplied hereunder may be subject to export controls under the laws and regulations of the United States (U.S.) and or other countries. Customer shall comply with such laws and regulations and agrees not to export, re-export or transfer the products 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 further certifies none of the products 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.pmdotc.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 products 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 these Terms.

12. FORCE MAJEURE Except for the obligation to pay monies due and owing, neither party shall be responsible for any failure to perform or delay in performing any of its obligations hereunder where and to the extent that such failure or delay results from causes outside the reasonable control of the party, including but not limited to governmental actions, acts of terrorism, transportation or labor strikes, environmental conditions, fire, flood, riot, strike, life or health-threatening conditions.

13. GOVERNING LAW Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under 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.

14. COMPLIANCE WITH APPLICABLE LAWS Customer shall (a) comply with all applicable laws, regulations and governmental orders governing or relating to the use of the NEC Products, including, but without limitation, all applicable privacy and data protection laws, and (b) at its own expense, obtain and maintain in full force and effect throughout the continuance of this Agreement, all licenses, permits, authorizations, approvals and government filings and registrations necessary or appropriate for the exercise of its rights and the performance of its obligations under this Agreement and for use of the deliverables and services.

15. CONFIDENTIALITY "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; provided, however, that the receiving party first gives notice to the disclosing party and has, as appropriate: (i) fully cooperated in the disclosing party's attempt to obtain a "protective order" from the appropriate court or other governmental body, or (ii) attempted to classify the media containing the Confidential Information to prevent access by the public, in accordance with the provisions of the federal Freedom of Information Act ("FOIA") or similar state statutes.

16. INTELLECTUAL PROPERTY OWNERSHIP Customer acknowledges and agrees that the NEC Products may contain, embody or be based on, patented or patentable inventions, trade secrets, copyrights and other intellectual property rights (collectively, "Intellectual Property Rights") owned or controlled by NEC or the manufacturer or supplier, and that NEC or the manufacturer or supplier, respectively shall continue to be the sole owner of all Intellectual Property Rights in the NEC Products.

17. DELIVERY Unless otherwise agreed in writing, NEC Products shall delivered to the contact name specified in the applicable Order and shipped via F.O.B. origin. If applicable, NEC software products will be provided on a disk containing the software libraries that comprise the NEC software product, sample programs illustrating the use of the libraries and the NEC technical data. NEC will select the carrier for shipment and risk of loss shall pass to customer upon shipment. Subject to the applicable Order, title to the NEC equipment, which expressly excludes any NEC software products, shall pass upon shipment. NEC's period of performance shall commence no more than forty-five (45) days after NEC's acceptance of customer's purchase order or otherwise within a time period agreed by the parties.

18. SEVERABILITY If any provision of this Agreement is for any reason held to be unenforceable, all other provisions of this Agreement 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.

19. 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.

20. WAIVER OF TERMS AND CONDITIONS Failure of either party to enforce any of these terms or conditions shall not constitute a waiver of any such terms or conditions, or of any other terms or conditions.

21. NOTICES Any notice hereunder shall be deemed to have been given if contained in writing and delivered by hand, express or overnight mail, or by registered or certified mail, postage prepaid, return receipt requested to the party concerned at its last known address. Notice to NEC shall be to; **NEC Corporation of America, Attn: Legal Division – Contract Administration Department, 3929 W. John Carpenter Freeway, Irving, TX 75063.**

22. COMPLETE AGREEMENT Unless otherwise mutually agreed upon by the parties in an existing contract where those terms and conditions (signed by NEC and customer) shall take precedence over this document, this Agreement including all Appendices, if applicable, is 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. **THIS AGREEMENT MAY NOT BE MODIFIED, CHANGED OR AMENDED EXCEPT BY A WRITTEN AMENDMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY.**