

Standard Agreement for Purchases

THESE TERMS WERE LAST UPDATED ON **1 FEBRUARY 2022** AND APPLY FROM THAT DATE. PREVIOUS VERSIONS OF THESE TERMS CAN BE SEEN AT www.necsws.com/historic-standard-agreement-for-purchases.

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NEC



Agreement Documents

1. This agreement and any attachments (collectively, the "**Agreement**"), effective as of the date of acceptance by Supplier ("**Effective Date**"), form the sole and exclusive agreement between NEC Software Solutions UK Limited or relevant member of its group ("**NEC**") and the supplier to NEC ("**Supplier**") for the products ("**Products**") and Services ("**Services**") in this Agreement. The trading entities of the NEC Software Solutions group can be found at www.necsws.com/group-company-details/. No other document, including the Supplier's proposal, quotation or acknowledgement form (whenever received or circulated), will form part of this Agreement, unless specifically agreed to in writing by NEC. Any terms contained in the Supplier's response to, acknowledgement of, or acceptance of, this Agreement (whenever received or circulated) that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by NEC. NEC's offer to purchase as provided in this Agreement may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if this Agreement is deemed an acceptance by NEC of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of this Agreement, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that are not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

Prices

2. If the Agreement does not include pricing, the price for the Products or Services provided hereunder will be Supplier's lowest prevailing market price for such Products or Services. The Supplier shall use all reasonable endeavours during the Term to reduce its manufacturing, supply and other costs for the Products/Services, including implementing cost savings initiatives and seeking more competitive supplies of raw materials and equipment, and Supplier agrees that cost savings will be passed on to NEC by way of a reduction in pricing. Where prices are shown in this Agreement, the prices are fixed and are inclusive of any applicable sales tax. Unless specified in this Agreement, all prices include insurance, packaging, freight, delivery and any other cost associated with the supply of Products or Services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling this Agreement, except as otherwise agreed in writing by NEC.

Taxes

3. Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales of Products or Services, or sales, use, transfer, goods, and services or value added tax or any other duties or fees related to any payment by NEC to Supplier for Products and/or Services provided to NEC under or pursuant to this Agreement. If NEC provides a direct pay certificate, certification of an exemption from tax, or reduced rate of tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such tax unless and until the applicable taxing authority assesses such tax, at which time

Supplier shall invoice and NEC agrees to pay any such tax that is legally owed. NEC shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

Terms of Payment and Acceptance

4. Unless otherwise mandated by local law, the terms of payment are net sixty (60) days after either Supplier's valid invoice has been received and processed in NEC's systems or after receipt of the Products or Services, whichever is later. Unless otherwise agreed in writing by NEC, Supplier shall invoice NEC in NEC's local currency. Invoices will include the Supplier's full legal name along with any company number (or similar) and, if one has been issued by NEC, display NEC's purchase order number. NEC may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Supplier against any amounts payable by it to the Supplier. Payment will not be deemed acceptance of Products or Services, and such Products or Services will be subject to inspection, test, acceptance or rejection. At NEC's option, NEC may reject Products or Services that do not comply with NEC's acceptance criteria for a refund, or require Supplier to repair or replace such Products or re-perform such Services without charge and in a timely manner. NEC may return non-conforming Products to Supplier at Supplier's expense.

Termination

5. This Agreement may be terminated by NEC with or without cause. If NEC terminates without cause, NEC will pay Supplier for Supplier's actual and reasonable expenses for work that has been satisfactorily completed as of the date of termination, but in no event will such payment exceed the agreed upon prices. In the event that NEC has paid for any Products or Services in advance that have not, as at the date of termination, been satisfactorily completed, such sums will be paid back to NEC within 14 days of termination.
6. Those clauses and other parts of this Agreement that expressly state that they survive expiry or termination of this Agreement shall continue to have full force and effect, as shall any other clauses or other parts of this Agreement which from their context can reasonably be implied as surviving expiry or termination.
7. In the event of expiry or termination of this Agreement, the Supplier undertakes (if required) to co-operate with NEC for a reasonable period following expiry or termination to ensure an orderly transition of its obligations under this Agreement to NEC or a third party.

Imports and Exports

8. Supplier is the importer and exporter of record. Supplier will comply with all import and export laws and administrative requirements, including the payment of all associated duties, taxes and fees. Supplier will comply with all applicable laws, regulations, certifications, markings and registrations associated with the import or export of Supplier's products including but not limited to Product safety, electromagnetic compatibility, telecommunications, Product take-back/recycling and environmental requirements. Upon NEC's request, Supplier will promptly provide all

information necessary to export and import Products, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, certification and/or test results relating to the Products or Services and will notify NEC in writing of any changes to the information provided by Supplier to export and import Products. For Products that will be imported by NEC, Supplier will provide promptly any requisite information, documentation, certification and/or test results for NEC to comply with applicable import laws and administrative requirements.

Packages/Transportation

9. Supplier will comply with any and all of the following, as provided by NEC from time to time: (i) all country of origin marking instructions and all NEC instructions for exports to NEC; (ii) all packaging and labelling requirements; and (iii) the transportation routing guidelines.

Social and Environmental Management System

10. Supplier will comply with any social and environmental management system supplier requirements provided by NEC from time to time.

Risk of Loss; Delivery

11. Title and risk of loss remain with Supplier until Products purchased under this Agreement have been delivered to NEC at the location specified in the Agreement and accepted by NEC. For Supplier's delivery of Products, time is of the essence. If Supplier fails to deliver on time, NEC (i) shall be entitled to reject the Products and (ii) may purchase replacements elsewhere, and Supplier will be liable for actual and reasonable costs and damages NEC incurs. Supplier will promptly notify NEC if it is unable to comply with the delivery date specified in this Agreement.

Warranties

12. Supplier warrants that:
 - i. Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;
 - ii. the Products/Services will conform with all descriptions and specifications provided by NEC by the Supplier;
 - iii. Supplier has the right to enter into this Agreement;
 - iv. Supplier is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of Products and Services hereunder, including without limitation:
 - a. labour and employment laws;

- b. applicable export and import laws, regulations, orders, and policies including but not limited to:
 - i. securing all necessary clearance requirements, export and import licences and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non-U.S nationals of technology and software in the U.S., or outside the U.S, release of transfer of technology and software in the U.S., or outside the U.S. release or transfer of technology and software having U.S content or derived from U.S. origin software or technology.
 - ii. being knowledgeable with applicable supply chain security recommendations issues by applicable governments and industry standards organisations and making best efforts to comply with such recommendations;
 - iii. agreeing not to transfer to NEC any hardware, software, technical data or services controlled under U.S. International Traffic in Arms Regulations ("**ITAR**");
- c. environmental laws, regulations or ordinances governing Product environmental and energy characteristics, Product content prohibitions, Product end-of-life management/Product take-back, and/or Product safety related to NEC's transport, import, export, distribution, sale and/or use of Supplier's Products as, or as part of, an NEC product;
- v. Supplier shall have processes, policies and controls around Quality, Security, Environmental Management, Health and Safety, Service Management and Business Continuity/Disaster Recovery which are substantially aligned with or have achieved recognised standards such as ISO 9001, ISO 27001, Cyber Essentials (Plus), ISO14001, ISO45001, ISO20000-1 and ISO 22301 in accordance with its industry's best practices and legislative requirements and will provide evidence of such processes, policies and controls or compliance with the standards, as applicable, to NEC upon request;
- vi. Supplier shall deliver the Services in accordance with NEC's (a) Data Protection Policy, (b) Anti- Corruption Policy, and (c) Equality, Diversity and Dignity Policy – copies of which are available upon request;
- vii. Supplier shall comply with all applicable laws, statutes, regulations relating to anti-money laundering, counter terrorist financing, anti-bribery and anti-corruption ("**Relevant Requirements**");
- viii. Supplier is not identified as a, nor does it do business with any, party(ies) noted on any U.S., or other global sanctions list regarding anti-terrorist financing and asset control laws;
- ix. Supplier shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including:
 - a. if the UK Bribery Act 2010 applies, "adequate procedures" under that act (and, for the purposes of this clause, the meaning of "adequate procedures" shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act); and

- b. any such policies and procedures as required by any applicable anti-corruption or bribery laws,

to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- x. Supplier shall promptly report to NEC any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of this Agreement;
- xi. Supplier's execution of this Agreement will not result in a breach of any other agreements or contracts to which it is a party;
- xii. no claim, lien, or action exists or is threatened against Supplier that would interfere with NEC's rights under this Agreement;
- xiii. Products and Services do not infringe any privacy, publicity, reputation or IPR of a third party;
- xiv. Supplier:
 - a. has disclosed to NEC in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the Products or Services; and
 - b. it and the Products and Services fully comply with all licensing agreements applicable to such third party or open source code;
- xv. all authors have agreed not to assert their moral right in the Products and Services, to the extent permitted by law;
- xvi. Products are free from defects in design and free from defects in material and workmanship;
- xvii. Products are safe for use consistent with and will comply with the warranties, specifications and requirements of this Agreement;
- xviii. Products do not contain harmful code and Supplier will not engage in electronic self-help;
- xix. Products are new and do not contain used or reconditioned parts unless NEC agrees otherwise in writing;
- xx. Supplier will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by NEC or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorised by appropriate government license or regulations; and
- xxi. Supplier will not, nor will it authorise or permit Supplier Personnel to, disclose, export or re-export any of NEC's information, or any process, or Product that is produced under this Agreement, without prior notification and compliance with all applicable Federal, State and local laws, regulations and ordinances, including U.S. export control regulations.

Data Protection

13. The following definitions shall apply:

- i. Applicable Laws: (i) if the data processing concerned takes place in the European Union, the laws of any member of the European Union or the laws of the European Union applicable to the relevant party or (ii) otherwise, the laws applicable to the relevant party.
- ii. Controller: as defined in the UK Data Protection Act 2018 from time to time.
- iii. data subject: as defined in the UK Data Protection Act 2018 from time to time.
- iv. GDPR: the General Data Protection Regulation ((EU) 2016/679).
- v. Personal Data: as defined in the UK Data Protection Act 2018 from time to time.
- vi. process and processing: as defined in the UK Data Protection Act 2018 from time to time.
- vii. Processor: as defined in the UK Data Protection Act 2018 from time to time.
- viii. UK Data Protection Act 2018: shall include any successor legislation to the Data Protection Act 2018.

14. Supplier will comply with all applicable requirements of Applicable Laws as far as they relate to the processing and protection (or similar) of Personal Data.

15. Without prejudice to the generality of the foregoing, to the extent that Supplier is a Processor it shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Agreement:

- i. process that Personal Data only on the written instructions of NEC as Controller, including with regard to transfers of Personal Data to a third country or an international organisation, unless Supplier is required to do so by Applicable Laws. Where Supplier is relying on Applicable Laws as the basis for processing Personal Data, Supplier shall promptly notify NEC of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Supplier from so notifying NEC on important grounds of public interest;
- ii. ensure that all personnel authorised to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- iii. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, inter alia, as appropriate:
 - a. the pseudonymisation and encryption of Personal Data;
 - b. ensuring the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - c. ensuring that availability of and access to Personal Data can be restored in

- a timely manner in the event of a physical or technical incident;
- d. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- iv. not engage another Processor without prior specific written authorisation of NEC;
- v. not transfer Personal Data outside of the country in which NEC is registered without prior specific written authorisation of NEC;
- vi. if it engages another Processor for carrying out specific processing activities on behalf of NEC, impose (by way of a contract) the same obligations in respect of data processing as apply to it under this agreement, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Applicable Laws as far as they relate to the processing and protection (or similar) of Personal Data;
- vii. taking into account the nature of the processing, assist NEC by appropriate technical and organisational measures, insofar as this is possible, in NEC's fulfilment of its obligations to respond to requests for exercising of a data subject's rights in respect of:
 - a. information and access to personal data;
 - b. rectification and erasure (right to be forgotten);
 - c. restriction of processing;
 - d. data portability;
 - e. objection; and
 - f. in respect of automated decision-making and profiling;
- viii. taking into account the nature of processing and the information available to it, assist NEC in ensuring compliance with the obligations under the Applicable Laws relating to:
 - a. security of processing;
 - b. notification of a Personal Data breach to a relevant supervisory authority (including but not limited to the Information Commissioner's Office);
 - c. communication of a Personal Data breach to a data subject;
 - d. data protection impact assessments; and
 - e. prior consultation;
- ix. at the choice of NEC, delete or return all Personal Data to NEC after the end of the provision of services relating to the processing, and delete existing copies unless Applicable Laws require storage of the Personal Data;
- x. make available to NEC all information necessary to demonstrate compliance with the data processing obligations laid down in this Agreement and allow for and contribute

to audits, including inspections, conducted by NEC or another auditor mandated by NEC; and

- xi. immediately inform NEC if, in its opinion, an instruction of NEC in respect of any audit or inspection pursuant to clause 15(x) above infringes any Applicable Laws.

Compliance with anti-slavery and human trafficking laws and policies

16. In performing its obligations under the Agreement, the Supplier shall:

- i. comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force; and
- ii. have maintained throughout the term of this agreement its own policies and procedures to ensure its compliance; and
- iii. require that each of its subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force.

17. The Supplier warrants and represents on an ongoing basis that neither the Supplier nor any of its officers, employees, or other persons associated with it has been convicted of any offence involving, nor been the subject of an investigation, inquiry or enforcement proceedings in connection with, slavery and human trafficking.

Anti-facilitation of tax evasion

18. The Supplier shall:

- i. not engage in any activity, practice or conduct which would constitute either:
 - a. a UK tax evasion facilitation offence under section 45(5) of the UK Criminal Finances Act 2017;
 - b. a foreign tax evasion facilitation offence under section 46(6) of the UK Criminal Finances Act 2017; or
 - c. an offence under any equivalent legislation;
- ii. have and shall maintain in place throughout the term of this agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with this clause; and
- iii. promptly report to NEC any request or demand from a third party to facilitate the evasion of tax in connection with the performance of this Agreement.

19. The Supplier shall ensure that any person associated with the Supplier who is performing Services and/or providing Products in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause. The

Supplier shall be responsible for the observance and performance by such persons of those terms, and shall be directly liable to NEC for any breach by such persons of any of such terms.

- 20.** For the purposes of this clause, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the UK Criminal Finances Act 2017 and a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

Intellectual Property

- 21.** In this Agreement “**IPR**” means patents, trademarks, service marks, design rights, copyright, database rights, know-how, Internet domain names, web site addresses and other similar rights whether registrable or not in any country, together with associated goodwill.
- 22.** Any IPR in any equipment, software, goods or other materials (other than Products) used by either party in relation to this Agreement shall remain vested in the relevant party or a third party licensor.
- 23.** Unless specified to the contrary elsewhere in this Agreement, the Supplier hereby grants to NEC a perpetual irrevocable, non-exclusive, worldwide licence to use, copy, reproduce, sub-licence and distribute any software forming or incorporated into the Products/Services.
- 24.** To the extent that any IPR is created for or on behalf of NEC by the Supplier or other person acting on behalf of the Supplier under this Agreement, such IPR shall vest in NEC and the Supplier undertakes, and shall procure that any other person undertakes, to enter into such further agreements or assignments as may be necessary in order to assign or vest such IPR in NEC.

Personnel

- 25.** To the extent that any employees of the Supplier are required to work or attend at any premises of NEC, the Supplier shall procure that such employees shall:
- i. comply with all applicable NEC site regulations, processes and procedures including (by way of example) those relating to fire, environmental conditions, health and safety, building access and security standards. Copies of such regulations, processes and procedures available to the Supplier on request; and
 - ii. act in a polite and courteous manner towards NEC personnel and other third parties.

Indemnification

- 26.** Supplier agrees to defend, hold harmless, and indemnify NEC and its affiliates from all claims and all direct, indirect or consequential liabilities (including without limitation loss of profits, loss of business, depletion of goodwill and similar losses) costs, proceedings, damages and expenses (including without limitation, legal fees, and other professional fees and expenses) arising from (a) any alleged or actual infringement of any IPR, (b) the failure of Supplier to comply with its

warranties and obligations under this Agreement, (c) a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier, (d) a Security Incident, or (e) a breach of data protection, data processing or data security obligations. If a claim of infringement of IPR is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for NEC the rights granted under this Agreement; (ii) modify the Product so it is non-infringing and in compliance with this Agreement; (iii) replace the Product with non-infringing ones that comply with this Agreement; or (iv) accept the return or cancellation of the infringing Product and refund any amount paid.

Limitation of Liability

- 27.** To the extent permitted by local law, in no event will NEC or its affiliates be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. In no event shall NEC's liability to Supplier exceed the total amount of fees actually paid by NEC to Supplier hereunder in the 12 month period before the claim arose. Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, or fraudulent misrepresentation.

Assignment

- 28.** Supplier will not assign its rights or subcontract its duties without NEC's prior written consent. Any unauthorised assignment is void.

Exchange of Information

- 29.** Supplier will hold in confidence, use only for the purpose of providing NEC Products or Services under this Agreement, and avoid disclosure to any third party all NEC Confidential Information. "**NEC Confidential Information**" shall include all non-public information which NEC provides to Supplier under this Agreement or which is obtained or created by Supplier in the course of providing the Products or Services. Supplier will employ appropriate security procedures to ensure the non-disclosure of NEC Confidential Information. NEC Confidential Information does not include information which was already known to Supplier or which becomes publically available through no fault of Supplier. Upon NEC's request, Supplier will promptly return or destroy any NEC Confidential Information Supplier possesses in any form. All information provided by Supplier to NEC will be considered non-confidential. For any Personal Data relating to Supplier's personnel that Supplier provides to NEC, Supplier will obtain the informed consent of such personnel to release the information to NEC and to allow NEC to use, disclose, and transmit such information on a worldwide basis among NEC and its affiliates in connection with this Agreement.

Right to Audit

- 30.** NEC, its clients, or an independent auditor, as designated by NEC or its clients operating under a non-disclosure agreement reasonably acceptable to Supplier, may, on reasonable notice to Supplier, audit Supplier's books, ledgers, supporting

records/documentation and related procedures and controls, relating to any charges paid by NEC in connection with this Agreement and/or to ensure compliance with this Agreement and/or compliance with laws and may be subject to periodic vendor assessments.

Insurance

- 31.** Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and product, commercial general and liability insurance) in an amount consistent with Supplier's industry practice.

Applicable Laws

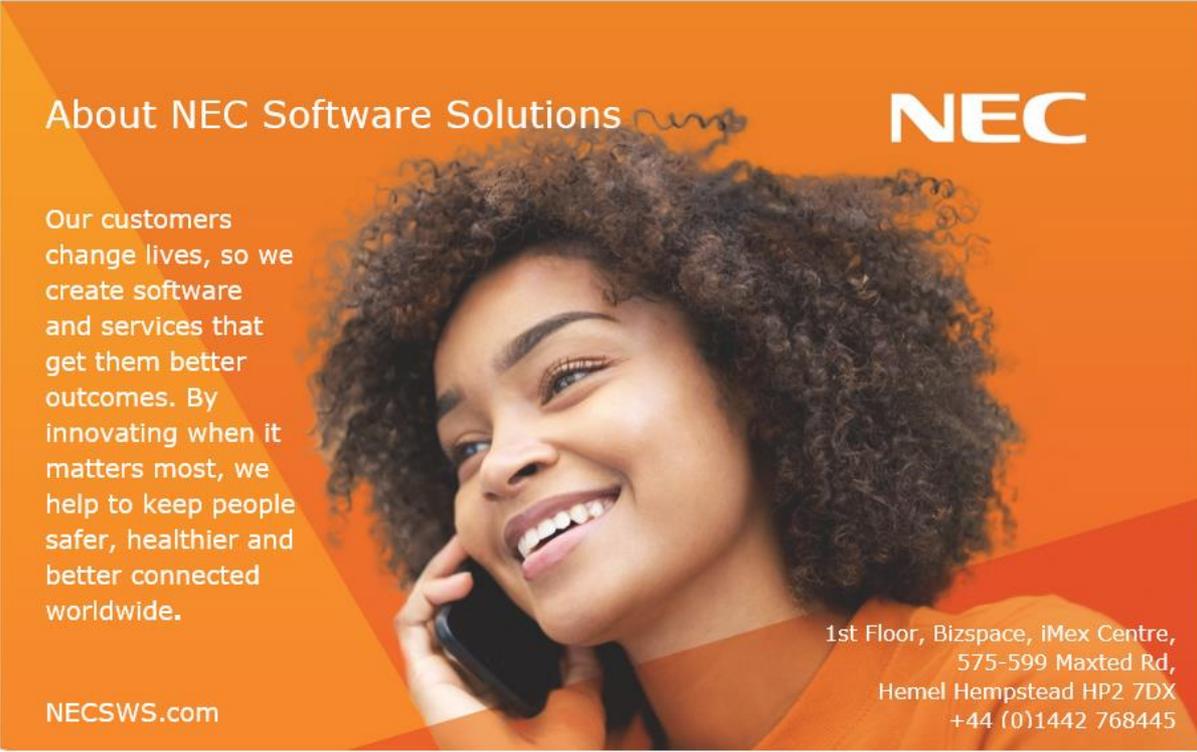
- 32.** This Agreement is governed by the laws of the country where the NEC Group entity receiving the Products or Services is registered, except: (i) in Australia, this Agreement will be governed by the laws of the State or Territory in which the transaction occurs; (ii) in the United Kingdom, this Agreement will be governed by the laws of England; (iii) in Canada, the laws of the Province of Ontario govern this Agreement.

General

- 33.** Any reproduction of this Agreement by reliable means will be considered an original of this Agreement.
- 34.** The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 35.** The parties expressly waive any right to a jury trial regarding disputes related to this Agreement.
- 36.** Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this Agreement introduced by Supplier must be commenced no later than two (2) years from the date on which the cause of action arose.
- 37.** No modification, amendment, supplement to, or waiver of this Agreement by NEC shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this Agreement.
- 38.** NEC's failure to exercise any right hereunder shall not operate as a waiver thereof.
- 39.** Both shrinkwrap and clickwrap licenses accompanying any Product consisting of software and online Terms of Use or Terms of Service relating to Services provided online are null and void, and the terms and conditions of this Agreement prevail.
- 40.** Any Services performed by Supplier shall be performed as an independent contractor, and Supplier is solely liable for applicable payroll or income taxes.
- 41.** Supplier shall not use the name or trademarks of NEC or its affiliates or refer to or identify

NEC or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of NEC.

- 42.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.



About NEC Software Solutions 

Our customers change lives, so we create software and services that get them better outcomes. By innovating when it matters most, we help to keep people safer, healthier and better connected worldwide.

NECSWS.com

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