

NEC
NEC Corporation of America
Identification Solutions Division

MAINTENANCE AGREEMENT

Customer: 1000005338

Contract: _____

This Agreement ("AGREEMENT" has been made by and between **NEC Corporation of America** (hereinafter referred to as "CONTRACTOR") a Nevada Corporation with a location at 6535 N. State Hwy 161, Irving, Texas 75039, and the **County of El Dorado** (hereinafter referred to as "CUSTOMER") with a location at **471 Pierroz Road, Placerville, CA 95667**.

1. SCOPE OF THE AGREEMENT

It is the intent of this AGREEMENT that CONTRACTOR will maintain the equipment covered hereunder which is listed in Exhibit I hereto, (the "EQUIPMENT") in good working condition, furnish Remedial Maintenance during the Principal Period of Maintenance Coverage and be responsible to the maintenance needs of the CUSTOMER subject to the conditions herein. The Principal Period of Maintenance Coverage is the period between 8:00 A.M. and 5:00 P.M. (Local time) Monday through Friday, excluding local holidays with response time of no more than next day for equipment located within fifty (50) miles of a CONTRACTOR Service Location.

2. TERM OF AGREEMENT

This Agreement shall be effective from **August 5, 2013**, and shall continue for an initial term of one (1) year. Unless one party notifies the other of its intent to terminate the AGREEMENT at least thirty (30) days prior to the expiration of the initial term (or at the end of any one-year renewal of the initial term,) the AGREEMENT shall automatically renew thereafter for additional twelve (12) month terms, upon the same terms and conditions contained herein, except CONTRACTOR may adjust its service rates to conform to CONTRACTOR's prevailing local service rates for the renewal term. After the initial term, either party may terminate this AGREEMENT at any time upon ninety (90) days written notice.

3. ELIGIBLE EQUIPMENT

- 3.1 CONTRACTOR supplied EQUIPMENT in good working order is eligible for inclusion under this AGREEMENT.
- 3.2 The CUSTOMER may, subject to written acceptance by CONTRACTOR, add additional EQUIPMENT under the terms and conditions of this AGREEMENT by executing an Addendum to this AGREEMENT. CONTRACTOR maintenance prices then in effect shall apply and the term of such Addendum shall be the same as this AGREEMENT.

4. RESPONSIBILITIES OF CONTRACTOR

- 4.1 For the charges stated herein, CONTRACTOR shall maintain the covered EQUIPMENT in compliance with manufacturing specifications by providing unscheduled, on-call emergency remedial maintenance as required during the Principal Period of Maintenance Coverage.
- 4.2 CONTRACTOR will provide and bear the cost during the Period of Maintenance Coverage of all labor, parts and travel. All parts will be furnished on an exchange basis and will meet CONTRACTOR factory specifications. All parts removed for replacement become the property of CONTRACTOR.

- 4.3 CONTRACTOR will install, without charge, during the Principal Period of Maintenance Coverage, all mandatory engineering changes and such other engineering changes that CONTRACTOR deems necessary.

5. SERVICE LIMITATIONS

- 5.1 Charges for maintenance service resulting from CUSTOMER-Requested CONTRACTOR performance outside the Principal Period of Maintenance Coverage or for reasons other than normal wear and tear, will be invoiced. Such charges will be invoiced at the current CONTRACTOR Special Maintenance Service Rates. CONTRACTOR Special Maintenance Service Rates are subject to change without prior notice. CUSTOMER agrees to pay for such services within thirty (30) days after invoice date.
- 5.2 The following are examples of causes other than normal wear and tear: unauthorized attempts by other than CONTRACTOR personnel to repair, maintain, modify or move the EQUIPMENT; catastrophe, accidents or acts of God; failure of equipment not maintained by CONTRACTOR or failure due to use of non-CONTRACTOR recommended supplies or media; fault or negligence of CUSTOMER; CUSTOMER error; improper use or misuse of the EQUIPMENT; causes external to the EQUIPMENT such as, but not limited to, fluctuations or failure of electrical power, air conditioning, or humidity control.
- 5.3 Maintenance services does not include (1) operating supplies or accessories, cleaning supplies necessary for CUSTOMER preventive maintenance, paint for refinishing the EQUIPMENT or furnishing materials for this purpose, (2) electrical work external to the EQUIPMENT or maintenance of accessories, alterations, attachments or service to other devices not furnished by CONTRACTOR.
- 5.4 To permit continuity of service, the CUSTOMER shall give CONTRACTOR at least thirty (30) days prior written notice of its intent to move and or re-configure the EQUIPMENT listed herein. In the event the new EQUIPMENT location is more than ten (10) miles from the existing installation, CONTRACTOR reserves the right to increase maintenance rates for the new location. Charges for services and material furnished by CONTRACTOR to dismantle, prepare for shipment, and install EQUIPMENT in the new location will be at the then current CONTRACTOR Special Maintenance Service Rates. Shipment of EQUIPMENT and associated cost is the responsibility of the CUSTOMER.

6. END OF LIFE

- 6.1 Contractor will maintain the installed equipment for a minimum of five (5) years from the date of installation. Maintenance beyond five (5) years may be extended annually, upon mutual written agreement by both parties. Contractor will use discretion in selection of substitute part or parts if exact duplicate is not available. Both parties agree to consult in good faith with each other in order to obtain a mutually acceptable solution, in case Contractor, for reasons beyond Contractor's control, is unable to obtain any suitable parts for or maintain equipment during either period of time.

7. RESPONSIBILITIES OF CUSTOMER

- 7.1 The CUSTOMER shall notify CONTRACTOR immediately of EQUIPMENT failure and will allow CONTRACTOR prompt and free access to the EQUIPMENT. CUSTOMER agrees to allow CONTRACTOR use of necessary AFIS data communication equipment at no charge subject only to CUSTOMER security regulations.
- 7.2 The CUSTOMER shall perform operator maintenance and cleaning of the AFIS EQUIPMENT in accordance with the written instructions and schedule prepared for the CUSTOMER by CONTRACTOR.

- 7.3 The CUSTOMER will be responsible for AFIS EQUIPMENT expendables such as ribbons, paper, and magnetic media.

8. TRAINING

- 8.1 CONTRACTOR or designated representative shall provide initial training in the operation, care, and operator maintenance of the EQUIPMENT.

9. SOFTWARE SUPPORT AND MAINTENANCE

- 9.1 CONTRACTOR shall support all AFIS software licensed to CUSTOMER for use with AFIS EQUIPMENT in accordance with CONTRACTOR's standard AFIS software support procedures.

- 9.2 Software support and maintenance provided under this AGREEMENT is contingent upon the CUSTOMER maintaining all files at revision levels prescribed by CONTRACTOR and upon the CUSTOMER fully protecting all CONTRACTOR proprietary or confidential information.

10. CHARGES

- 10.1 Under the terms of this AGREEMENT, CUSTOMER will pay CONTRACTOR as set forth in 11.1 below, for maintenance services covered under this AGREEMENT. CUSTOMER will pay CONTRACTOR for services rendered prior to the execution of this AGREEMENT within thirty (30) days of execution thereof.

- 10.2 The monthly charge for Preventive and Repair Maintenance Services shall be as specified in Exhibit (I) and Exhibit (II).

- 10.3 CONTRACTOR may change the monthly charges after the initial twelve month AGREEMENT period or at the end of any subsequent twelve (12) month term by giving the CUSTOMER ninety (90) days prior written notice. The changes shall not exceed CONTRACTOR established charges for maintenance service on the effective date of the adjustment. The charges for EQUIPMENT added to this AGREEMENT will be the current established rates at the time the EQUIPMENT is added.

- 10.4 In addition to the charges due under this AGREEMENT, the CUSTOMER agrees to pay or reimburse CONTRACTOR any taxes or charges resulting from this AGREEMENT which are levied by a taxing authority, except for taxes based upon CONTRACTOR net income. If claiming a sales tax or similar exemption, CUSTOMER must provide CONTRACTOR with tax exemption certificates where deliveries are to be made or services performed.

11. METHOD OF PAYMENT

- 11.1 Invoice documentation furnished by CONTRACTOR under this AGREEMENT must be in a form acceptable to CUSTOMER and unless advance payment is requested, shall be invoiced in arrears. All amounts paid shall be subject to audit by CUSTOMER.

- 11.2 Payment for maintenance services shall be made (choose one from below) by remittance to the account of CONTRACTOR in a bank designated by CONTRACTOR.

Customer shall make payment of the fees in advance, at the rate of:

- ☐ \$3708.00 for each annual period during the term of this Agreement
☐ \$927.00 for each quarterly period during the term of this Agreement
☐ \$309.00 for each monthly period during the term of this Agreement

- 11.3 Monthly charges for fractional parts of a calendar month shall be computed at the rate of one thirtieth (1/30) of the monthly rate for each day or fraction thereof.
- 11.4 Payment is due within thirty (30) days from the date of invoice. Any invoices not paid within sixty (60) days shall incur a service charge of one and one-half percent (1 1/2%) per month on any outstanding, overdue balance. If payment is not made within sixty (60) days, CONTRACTOR reserves the right to suspend maintenance services until such invoices are paid.
- 11.5 Purchase Order means a CUSTOMER-issued document used for ordering Services under this Agreement. All Purchase Orders are subject to review and acceptance by an authorized representative of CONTRACTOR. No preprinted Purchase Order terms shall be binding upon CONTRACTOR, unless otherwise expressly agreed to in writing by an authorized representative of CONTRACTOR.

12. LIMITATION OF LIABILITY

- 12.1 NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, THE MAXIMUM LIABILITY OF CONTRACTOR TO THE CUSTOMER OR ANY PERSON WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SALE, SERVICE OR USE OR OTHER EMPLOYMENT OF ANY PRODUCT UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT OR OTHERWISE, SHALL IN NO CASE EXCEED THE ACTUAL AMOUNT PAID TO CONTRACTOR BY REASON OF THIS SERVICE AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS FOR PERSONAL INJURY SHOWN TO HAVE BEEN CAUSED BY CONTRACTOR NEGLIGENCE.

NEITHER CONTRACTOR NOR CUSTOMER SHALL INSTITUTE ANY ACTION IN ANY FORM ARISING OUT OF THIS AGREEMENT MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN, OR IN THE CASE OF NON-PAYMENT, MORE THAN EIGHTEEN (18) MONTHS FROM THE DATE OF LAST PAYMENT OR PROMISE TO PAY. THIS LIMITATION DOES NOT APPLY TO ANY ACTION FOR NON-PAYMENT OF TAXES.

IN NO EVENT SHALL CONTRACTOR BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA OR PROFITS.

THE FOREGOING COVENANTS AND SERVICE COMMITMENTS ARE EXCLUSIVE AS TO BOTH SUPPLIES OR SERVICES PROVIDED HEREUNDER AND ARE IN LIEU OF ANY EXPRESS, STATUTORY, OR IMPLIED WARRANTY OF QUALITY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

13. FORCE MAJEURE

- 13.1 It is expressly agreed that CONTRACTOR shall not be liable for any loss or damage resulting from delays in performance or from failure to perform due in whole or in part to insurrection, civil war, revolutions, war (declared or undeclared), any Governmental Act, fires, floods, epidemics, embargoes, lockouts, strikes and for any other cause beyond CONTRACTOR reasonable control.

14. INSURANCE

- 14.1 The CONTRACTOR shall have and maintain in full force and effect for the duration of this AGREEMENT insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the CONTRACTOR, its agents, representatives, or employees.

14.2 CONTRACTOR shall maintain coverage and limits no less than:

- (a) Comprehensive General Liability of \$1,000,000 per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, and \$2,000,000 in aggregate.
- (b) Comprehensive Automobile Liability (any auto) of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- (c) Professional Liability of \$1,000,000 limit for claims arising out of professional services caused by the CONTRACTOR's errors, omissions, or negligent acts.
- (d) Workers' Compensation limits as required by the State of California and employers Liability limits of \$1,000,000 per accident.
- (e) Umbrella Liability of \$1,000,000.

14.3 El Dorado County (and any applicable Authority) shall be made an additional insured on General Liability Auto Liability and Umbrella Liability policies.

14.4 With respect to "bodily injury" or "property damage" claims arising out of the operations performed by or on behalf of the named insured, CONTRACTOR, such insurance as is afforded by these policies is primary and is not additional to or contributing with any other insurance carried by or for the benefit of the additional insured, CUSTOMER, provided claims that give rise are from the Named Insured's negligence and arising out of operations for the CUSTOMER.

14.5 CONTRACTOR agrees to waive all rights of subrogation, except for commercial general liability, against the CUSTOMER, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the CONTRACTOR for the CUSTOMER.

14.6 Certificates of Insurance, and any subsequent renewals, must reference specific bid/contract by project name and project/bid number.

14.7 Certificate Holder shall read:

Lori Lucius
El Dorado County Sheriff
471 Pierroz Road
530-621-6045

15. **GENERAL**

15.1 If either party neglects to perform any of its obligations under this AGREEMENT, and such failure continues for a period of thirty (30) days after written notice thereof, the other party shall have the right to terminate this AGREEMENT. Non-payment of duly presented invoices shall constitute a material breach and shall give rise to a unilateral cancellation forty-five (45) days after the invoice date.

15.2 Either party's failure to enforce any provisions of this AGREEMENT will not be deemed a waiver of that provision or of the right to enforce it in the future.

15.3 This AGREEMENT shall be governed by the laws of the State of California.

- 15.4 Any notice required or authorized by this AGREEMENT shall be given by first-class mail, addressed to NEC Corporation of America, at the address set forth or addressed to the CUSTOMER at its address set forth.

Notices to CUSTOMER shall be addressed to:

Lori Lucius
El Dorado County Sheriff
471 Pierroz Road
530-621-6045

Notices to CONTRACTOR shall be addressed to:

NEC Corporation of America
6535 N. State Hwy 161
Irving, TX 75039
Attn: Barbara McKennan - Support Services Specialist
Email: barbara.mckennan@necam.com

With a Copy to:

NEC Corporation of America
6535 N. State Hwy 161
Irving, TX 75039
Attn: Legal Division - Contract Administration Department
Email: necamcontracts@necam.com

- 15.5 This AGREEMENT may be amended only expressly and in writing signed by an authorized representative of both parties.
- 15.6 This AGREEMENT, including the attached Exhibit (I) and Exhibit (II), contains the entire AGREEMENT and only understanding between the parties and supersedes all prior agreements either written or oral relating to the subject matter hereof. CONTRACTOR hereby gives notice of objection to any additional or inconsistent terms set forth in any Purchase Order or other document issued by CUSTOMER and CUSTOMER agrees that any work done by CONTRACTOR shall be governed exclusively by the terms and conditions of this AGREEMENT. No modifications of this AGREEMENT will be binding on either party, unless made in writing and signed by persons authorized to sign agreements on behalf of CUSTOMER and CONTRACTOR.

WITNESSETH

CUSTOMER agrees to purchase, and CONTRACTOR agrees to provide the maintenance services in accordance with the terms and conditions set forth herein and per any referenced attachments, for the initial term hereof, at the prices set for by CONTRACTOR on the commencement date of this AGREEMENT. CUSTOMER represents that he (she) has read this AGREEMENT including the terms and conditions, understands it, and agrees to be bound thereby.

EL DORADO COUNTY

NEC CORPORATION OF AMERICA

By: Norma Santiago

By: [Signature]

Title: Chairman, Board of Supervisors

Title: VP SERVICE DELIVERY

Date: 2/4/14

Date: 12/19/13

ATTEST: JAMES S. MITRISIN, CLERK OF THE
BOARD

By: Marcie MacFarland
Deputy Clerk



NEC Corporation of America
Identification Solutions Division

EXHIBIT I:

El Dorado County Sheriff Cust: 1000005338

Bill To (Customer)
County of El Dorado 300 Fair Lane Placerville CA 95667
Attention: Accounts Payable Telephone: 530-621-6045

Product Location (Customer)
El Dorado County Sheriff 471 Pierroz Road Placerville CA 95667
Attention: Lori Lucius Telephone: 530-621-6045

Equipment Type	Model	Serial Number or Service Tag #	Equipment Description	Qty	Annual Price
GWS-L	WS0761				\$3708.00
Workstation	Optiplex 990	4WXGLS1		1	Included
	Expresscode	10698249025	Processor, I5-2400, 3.1, 4C, SNB, D2, L	1	Included
			Dual In-line Memory Module, 4G	2	Included
			Hard Drive, 250GB, 7.2, 3.5" Form Factor	2	Included
Dell Monitor	P2412H	CN-0KG49T-74261-217-0KHU	Dell 24in monitor	1	Included
HP printer	P3015	VNBCCD51NX	HP B&W lazer printer	1	Included
Camera Adapter	DC-700	T108211		1	Included
Camera	Sony XC-ST50	1000041		1	Included
Axeon Interface card	dPict Axeon Pci			1	Included
Fibre Lite	MI-150DG	5036863		1	Included
VGA Card	NVIDIA GeForce	7300LE		1	Included
Software			Windows XP Profesional SP3	1	Included
			Aware AccuPrint MS-IE Plug-in	1	Included
			LEXS	1	Included
			ULW	1	Included
			GWS-L Core Application Finger & Palm)	1	Included
			Oracle 9i Client	1	Included
			Total List Price:		\$3708.00
			Net Price:		\$3708.00
			TOTAL PRICE:		\$3708.00

EXHIBIT II

SPECIAL MAINTENANCE SERVICE CHARGES

The charge for Special Maintenance Services shall be computed as follows:

$S = (WH + TH) \times \text{Current Hourly Rate} + SP$ where:

S = Special Maintenance Charge

WH = Working hours spent on maintenance

TH = Round trip traveling hours between Contractor's service location and the site.

SP = Spare parts cost at the then-current price.

Special Maintenance Charges Hourly Rates:

	PPM	After Hours
Hourly Rate	\$240.00	\$360.00
Minimum Charge	2 Hours	2 Hours