

NEC
NEC Corporation of America
Biometrics Solutions Division

MAINTENANCE AGREEMENT

Customer: _____
Contract: _____

This Maintenance Agreement ("AGREEMENT") has been made by and between **NEC Corporation of America** (hereinafter referred to as "NEC") a Nevada Corporation with a location at 3929 W John Carpenter Freeway, Irving, Texas 75063, and the **Monterey County Sheriff's Office** (hereinafter referred to as "CUSTOMER") with a location at **1414 Natividad Road Salinas, CA 93906**.

1. SCOPE OF THE AGREEMENT

It is the intent of this AGREEMENT that NEC will maintain the hardware and software, if applicable, covered hereunder which is listed in Exhibit I hereto, (the "PRODUCTS") 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. As used herein, the "Principal Period of Maintenance Coverage" is the period between 8:00 A.M. and 5:00 P.M. (US Pacific time) Monday through Friday, excluding US holidays with next day response for each incident. As used herein, "Remedial Maintenance" shall mean

2. TERM OF AGREEMENT

This Agreement shall be effective from **July 1, 2017**, and shall continue for a period of one (1) year ("Initial Term"). 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 Term,) the AGREEMENT shall automatically renew thereafter for additional twelve (12) month terms, upon the same terms and conditions contained herein ("Renewal Term(s)"), except NEC may adjust its service rates to conform to NEC'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 NEC supplied PRODUCTS in good working order is eligible for inclusion under this AGREEMENT.
- 3.2 The CUSTOMER may, subject to written acceptance by NEC, add additional PRODUCTS under the terms and conditions of this AGREEMENT by executing an Addendum to this AGREEMENT. Upon NEC's written acceptance, the maintenance and support service charges will be adjusted and/or a CUSTOMER-issued purchase order will be provided to NEC for the additional PRODUCTS being requested. NEC maintenance prices then in effect shall apply and the term of such Addendum shall be the same as this AGREEMENT.

4. RESPONSIBILITIES OF NEC

- 4.1 For the charges stated herein, NEC shall maintain the covered PRODUCTS in compliance with manufacturing specifications by providing unscheduled, on-call emergency remedial maintenance as required during the Principal Period of Maintenance Coverage.
- 4.2 NEC will provide and bear the cost during the Principal Period of Maintenance Coverage of all labor.
- 4.3 NEC will install, without charge, during the Principal Period of Maintenance Coverage, all mandatory engineering changes and such other engineering changes that NEC deems necessary.

5. SERVICE LIMITATIONS

- 5.1 Charges for maintenance service resulting from CUSTOMER-Requested NEC performance outside the Principal Period of Maintenance Coverage or for reasons other than normal wear and tear, will be invoiced separate from the maintenance contract invoicing. Such charges will be invoiced at the current NEC Special Maintenance Service Rates as set forth in Exhibit II attached hereto. NEC 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 NEC personnel to repair, maintain, modify or move the PRODUCTS; catastrophe, accidents or acts of God; failure of equipment not maintained by NEC or failure due to use of non-NEC recommended supplies or media; fault or negligence of CUSTOMER; CUSTOMER error; improper use or misuse of the PRODUCTS; causes external to the PRODUCTS 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 of the PRODUCTS.
- 5.4 To permit continuity of service, the CUSTOMER shall give NEC at least thirty (30) days prior written notice of its intent to move and or re-configure the PRODUCTS listed herein. This provision expressly excludes re-configuration of any NEC provided software without NEC's express written consent in advance. In the event the new PRODUCTS location is more than ten (10) miles from the existing installation, NEC reserves the right to increase maintenance rates for the new location. Charges for services and material furnished by NEC to dismantle, prepare for shipment, and install PRODUCTS in the new location will be at the then current NEC Special Maintenance Service Rates. Shipment of PRODUCTS and associated cost is the responsibility of the CUSTOMER.

6. END OF LIFE

- 6.1 NEC will maintain the installed PRODUCTS for a minimum of one (1) years from the date of contract agreement between both parties. Maintenance beyond two (2) years may be extended annually, upon mutual written agreement by both parties. NEC 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 NEC, for reasons beyond NEC'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 NEC immediately of PRODUCTS failure and will allow NEC prompt and free access to the PRODUCTS. CUSTOMER agrees to allow NEC use of necessary data communication equipment at no charge subject only to CUSTOMER security regulations, which shall provided to NEC in advance for review.
- 7.2 The CUSTOMER will provide a single contact for all aspects of this engagement, including scheduling, defining and requirements and ensuring delivery of necessary information.
- 7.3 The CUSTOMER shall perform level one support on all related equipment which includes rebooting of servers, clearing of logs, maintaining Database queue sizes, stopping and starting of services and performing the role of smart hands when service is being performed.

8. CONFIDENTIALITY

- 8.1 CUSTOMER and NEC (each a "Recipient") shall protect and keep confidential all non-public information ("Confidential Information") disclosed by the other party (each a "Discloser"), whether or not it is marked or identified as "Confidential Information" by the Discloser, and shall not, except

for the purposes of performing the services defined in this AGREEMENT, use or disclose any such Confidential Information. Confidential Information shall include, without limitation, computer programs, code, algorithms, know-how, methodology, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, pricing and fee schedules, financial and product development plans, customer lists, information regarding distribution channels, forecasts, and strategies.

- 8.2 Upon termination or expiration of this AGREEMENT, at Discloser's request Recipient shall return to Discloser all written materials that contain any Confidential Information. The obligations of confidentiality shall not apply to any information which: (i) was previously known to Recipient; (ii) is or becomes publicly available, through no fault of Recipient; (iii) is disclosed to Recipient by a third party having no obligation of confidentiality to Discloser; (iv) is independently developed by Recipient; or (v) is required to be disclosed as a matter of law.

9. HARDWARE AND SOFTWARE SUPPORT AND MAINTENANCE

- 9.1 NEC shall support all hardware and software licensed to CUSTOMER for use with NEC equipment in accordance with NEC's standard hardware and Software support procedures.
- 9.2 NEC hardware and software support and maintenance provided under this AGREEMENT is contingent upon the CUSTOMER maintaining all files at revision levels prescribed by NEC and upon the CUSTOMER fully protecting all NEC proprietary or confidential information.
- 9.3 CUSTOMER agrees not to (i) rent, lease, or loan the maintenance and support services or any part thereof, or provide or use the maintenance and support services on a third party's behalf; (ii) permit third parties to benefit from the use of the maintenance and support services; (iii) reverse engineer, decompile, or disassemble any NEC provided software that provides the maintenance and support services, or otherwise attempt to derive the source code of such software; or (iv) download, export, or re-export any NEC provided software or technical data received hereunder, regardless of the manner in which received, without all required United States and foreign government licenses.

10. CHARGES

- 10.1 Under the terms of this AGREEMENT, CUSTOMER will pay NEC as set forth in 11.1 below, for maintenance and support 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 (II).
- 10.3 NEC may change the monthly charges after the Initial Term or at the end of any Renewal Term by giving the CUSTOMER ninety (90) days prior written notice. The increased charges shall not exceed NEC's established charges for maintenance and support services or three (3%) percent annually, from the effective date of the adjustment. The charges for additional PRODUCTS added by CUSTOMER to this AGREEMENT will be the current established rates at the time the PRODUCTS is added.
- 10.4 In addition to the charges due under this AGREEMENT, the CUSTOMER agrees to pay or reimburse NEC any taxes or charges resulting from this AGREEMENT which are levied by a taxing authority, except for taxes based upon NEC net income. If claiming a sales tax or similar exemption, CUSTOMER must provide NEC with tax exemption certificates where deliveries are to be made or services performed.

11. METHOD OF PAYMENT

- 11.1 Invoice documentation furnished by NEC under this AGREEMENT, unless advance payment is requested, shall be invoiced in arrears.

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

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

\$9,912.00 for each annual 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, NEC reserves the right to suspend maintenance and support 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 NEC. No preprinted Purchase Order terms shall be binding upon NEC, unless otherwise expressly agreed to in writing by an authorized representative of NEC.
- 11.6 Remittance shall be sent to the following address unless otherwise directed by written instruction:

NEC Corporation of America
Lock Box 22529
22529 Network Place
Chicago, IL 60673-1225

12. LIMITATION OF LIABILITY

- 12.1 THE MAXIMUM LIABILITY OF NEC 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 NEC BY REASON OF THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS FOR PERSONAL INJURY SHOWN TO HAVE BEEN CAUSED DIRECTLY BY NEC'S GROSS NEGLIGENCE.

NEITHER NEC 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 NEC BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES OR EXPENSES DIRECTLY OR INDIRECTLY ARISING OR RESULTING FROM LOSS OF USE, DATA OR PROFITS OR A THIRD PARTY'S UNAUTHORIZED USE OF THE PRODUCTS OR ITS COMPONENTS, EITHER SEPARATELY OR IN COMBINATION WITH OTHER EQUIPMENT.

THE FOREGOING COVENANTS AND SERVICE COMMITMENTS ARE EXCLUSIVE AS TO BOTH PRODUCTS OR SERVICES PROVIDED HEREUNDER. NEC EXTENDS NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO CUSTOMER FOR THE SERVICES PROVIDED BY THIS AGREEMENT.

13. FORCE MAJEURE

13.1 It is expressly agreed that NEC 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 NEC's reasonable control.

14. INSURANCE

14.1 NEC 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 NEC, its agents, representatives, or employees.

14.2 NEC 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 Michigan and employers Liability limits of \$1,000,000 per accident.
- (e) Umbrella Liability of \$1,000,000.

14.3 CUSTOMER (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 directly arising out of the operations performed by or on behalf of the named insured, NEC, 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 NEC 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:

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 sixty (60) 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:

County of Monterey
1414 Natividad Road
Salinas, CA 93906
Attn: Jennifer Claudel
Phone: 831 759 7253
Email: ClaudelJ@co.monterey.ca.us

Notices to NEC shall be addressed to:

NEC Corporation of America
10850 Gold Center Drive, Suite 200
Rancho Cordova, CA 95670
Attn: Cindy Taylor – Administrative Support Specialist
Email: Cindy.Taylor@necam.com
Phone: (319) 463-7070

With a Copy to:

NEC Corporation of America
3929 W John Carpenter Freeway
Irving, TX 75063
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. NEC 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 NEC 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 NEC.

WITNESSETH

CUSTOMER agrees to purchase, and CONTRACTOR agrees to provide the maintenance and support 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 NEC on the commencement date of this AGREEMENT.

CUSTOMER

NEC CORPORATION OF AMERICA

By: _____

By: Gregory T. Uher
Gregory T. Uher (Jun 14, 2017)

Title: _____

Title: Director, CS&S

Date: _____

Date: Jun 14, 2017

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 |