

TERMS AND CONDITIONS OF PURCHASE OF NEC AUSTRALIA PTY. LTD.

APPLICATION: The following Terms & Conditions apply to Supplies purchased by NEC Australia Pty Ltd under a Purchase Order (“PO”), EXCEPT WHERE the PO refers to a separate /formal written agreement, in which case the terms of the formal written agreement will apply.

DEFINITIONS:

Agreement has the meaning set out in clause 1.2.

Business Day means any day other than a Saturday, Sunday or public holiday observed in the State of Victoria.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand.

Confidential Information means:

(a) information of a confidential nature relating to or developed in connection with the party’s business or affairs which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the other party;
(b) information designated by that party as confidential; or
(c) information about clients, customers, employees, or contractors of, or other persons doing business with, that party, but does not include information that:
(i) is or becomes generally available in the public domain or is rightfully received from a third person, other than through any breach of confidence; or
(ii) has been independently developed by the other party without using any other Confidential Information of the first party.

Consequential Loss means any Loss suffered or incurred by the other party in connection with this Agreement that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss. For the purpose of this Agreement, the

following are not Consequential Loss and are considered to be direct losses:

(a) costs of assessing, remedying, responding to or mitigating a Defect or a breach of this Agreement (including the costs of replacing, repairing or recreating any Supplies or other assets that have been lost, destroyed or damaged as a consequence of the breach);
(b) holding costs resulting from a breach of this Agreement;
(c) costs of notifying, communicating or compensating customers or other third parties affected by a breach of this Agreement;
(d) third party claims resulting from a breach of this Agreement;
(e) fines or penalties resulting from any breach of Law as a result of a breach of this Agreement;
(f) costs of any corrective action undertaken by a party further to a regulatory action or notice to comply as a result of a breach of this Agreement; or
(g) time and related expenses and overhead (including travel, lodging, wages) for Personnel who are working on corrective actions as a result of a breach of this agreement.

Data Breach has the meaning given in clause 8.7.

Delivery Point means the location(s) where the Supplies are to be delivered by the Supplier;

Developed Material means any Materials that are created by or on behalf of the Supplier under the Agreement in connection with the Supplies.

Disaster means the occurrence of one or more events which materially adversely affects the provision of Supplies.

Documentation means the written information including user manuals that will enable NEC to make full use of the Supplies;

Fees means the fees for the Supplies set out in the PO.

Hardware means the hardware described in the PO.

Insolvency Event, in relation to a party (Insolvent Party) means any one of the following:

- (a) the Insolvent Party ceases or takes steps to cease to conduct its business in the normal manner;
- (b) the Insolvent Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) the Insolvent Party is unable to pay its debts when they are due or is deemed under the Corporations Act 2001 (Cth) to be insolvent;
- (d) an administrator, liquidator or provisional liquidator is appointed to the Insolvent Party or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of the Insolvent Party;
- (e) an application or order is made or a resolution is passed for the winding up of the Insolvent Party; or
- (f) any act or event analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (f) of this definition.

IP Rights means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade secrets, know-how, confidential information, patents, invention and discoveries, moral rights,

and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Loss means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs.

Material means software, firmware, tools, documentation, reports, data, diagrams, procedures, plans and other materials

NEC Data means data of any kind of NEC or of any customer or supplier of NEC (other than the Supplier) that the Supplier accesses, stores or handles in the course of providing the Supplies, and includes all data that is: (a) Personal Information; (b) NEC's Confidential Information; or (c) corporate proprietary or financial information.

Personal Information means all personal information (as defined in the *Privacy Act 1988 (Cth)*) which is received or learnt by a party from any source as a consequence of or in the course of exercising or performing its rights and obligations under this agreement.

Personnel means a party's employees, secondees, directors, officers, contractors, professional advisers and agents.

Privacy Laws means the *Privacy Act 1988 (Cth)* and any other applicable Laws and binding industry codes and policies relating to the management of Personal Information applicable to the local jurisdiction in which the Supplies are received by NEC.

Software means the software described in the PO.

Specifications means the specifications for each of the Supplies set out in the PO and any Documentation.

Supplier Materials means all Materials provided by or on behalf of the Supplier in connection with this Agreement, other than the Third Party Materials and Developed Material, and includes any modifications and enhancements to these Materials

Supplies means the items, Hardware, Software, deliverables and/or services provided or to be provided by the Supplier to NEC as identified in the PO.

Third Party Materials means Materials provided by or on behalf of the Supplier in connection with the Agreement, the IP Rights in which are owned by a third party, including any modifications and enhancements to those Materials.

Warranty Period means unless otherwise specified in the PO or SOW, a period of 12 months from a) the date of delivery of the Supply or b) if the Supply is subject to an acceptance process, the date of acceptance of the Supply or first use by NEC. For supplies that are repaired or replaced during this period, the warranty period will continue for the longer of: (i) the remainder of the original warranty period for those Supplies; or (ii) 12 months from the date on which those Supplies were last repaired or replaced.

1. ORDERING SUPPLIES

1.1 NEC may order the Supplies by issuing a PO to the Supplier. The Supplier is not obliged to provide and must not charge NEC for, any Supplies until NEC has issued a PO for those Supplies.

1.2 The PO, together with these terms and conditions, form the binding agreement between the parties (“Agreement”)

1.3 The Supplier agrees that by supplying the Supplies to NEC it has accepted the terms of this Agreement

and that all other terms and conditions are excluded, including the Supplier’s own terms and conditions.

1.4 The Supplier acknowledges that (i) it is not an exclusive provider of the Supplies to NEC and (ii) NEC is under no obligation to meet any minimum volume commitment.

1.5 Where a PO refers to or attaches a Statement of Work (SOW), that SOW will form part of the Agreement,

1.6 If there is any inconsistency between one or more of the documents which constitute the Agreement, the order of precedence will be : (i) these terms and conditions (ii) the PO including a SOW (iii) a document expressly incorporated by reference in this Agreement (iv) a document expressly incorporated by reference in the PO or SOW.

2) TERM

2.1 This Agreement commences on the earlier of (i) the date set out in the first PO issued by NEC to Supplier or (ii) the date the Supplier commences providing the Supplies.

2.2 The Agreement will continue until the later of (i) any expiry date contained in the last PO issued by NEC to Supplier or (ii) until all Supplies have been provided under all PO’s.

3. FEES

3.1 The Fees for the Supplies specified in the PO shall be fixed and shall not be varied for any reason, except as otherwise provided in clause 4 or as otherwise agreed by NEC in writing.

3.2 The Fees include all costs of delivery to the Delivery Point as well as applicable taxes, duties or charges.

4. PAYMENT

4.1 Payment for the Supplies will be made by NEC unless otherwise agreed in writing within thirty (30) days from the

end of the month of receipt of Supplier's correctly rendered invoice.

4.2 If NEC reasonably disputes part or all of an invoice it may withhold payment of the disputed amount until the dispute is resolved

4.3 NEC reserves the right at any time to set off any amounts due or becoming due to Supplier against any amounts owed to NEC by Supplier.

5. CLAUSES APPLICABLE TO SUPPLY OF HARDWARE

Clause 5 will only apply where NEC purchases Hardware from the Supplier under a PO.

5.1 **Packing:** The Supplier must at its own expense, have the Hardware properly packed, marked and labelled so as to (i) prevent damage during handling, loading and unloading, transportation by sea, air or inland transport and (ii) to ensure the safe arrival of Hardware at the Delivery Point without any damage or deterioration.

5.2. **Damage to Hardware during Transit:** Should the Hardware be damaged or lost due to Supplier's improper packing and/or inadequate protective measures before shipment, Supplier will be liable for, at NEC's sole option, the repair or replacement of the Hardware or the payment of monetary damages.

5.3. **Documentation:** The Supplier must provide NEC with sufficient Documentation to enable NEC to make full and safe use of the Hardware. Supplier agrees that NEC may make a reasonable number of copies of the Documentation so it can make full use of the Hardware.

5.4. **Delivery:** The Supplier must deliver the Hardware to NEC at the Delivery Point (s) and by the dates and/or

milestones specified in the PO, or if there is no date specified, within 30 days of the PO issue date.

5.5. **Receipt of Delivery:** The Supplier must obtain a signed receipt of delivery from an authorized NEC representative and must not leave the Hardware unattended at the Delivery Point without NEC's prior consent.

5.6. **Delay in delivery:** If the Supplier becomes aware of any actual or likely delay in delivery, the Supplier must notify NEC as soon as practicable of the details of the delay, Hardware affected and any additional time reasonably required.

5.7. **Delay consequences:** The Supplier must take all reasonable steps to mitigate and minimize the effects of any delay. NEC may, at its discretion, extend the affected due date by a reasonable period.

5.8. **Delay costs:** If the Supplier is responsible for the delay, it will reimburse NEC for any additional substantiated costs incurred by NEC during any extension granted under clause 5.7.

5.9. **Failure to deliver:** If the Supplier fails to complete the delivery of Hardware within the time(s) specified in the PO, NEC reserves the right, without incurring any liability to Supplier, and without prejudice to any other rights and remedies that NEC may have, to do any or all of the following:

(i) to reject the Hardware (ii) to purchase similar Hardware elsewhere and/or (iii) to charge Supplier with any damages, loss, cost or expense incurred.

5.10. **Risk and title:** Risk in and title to the Hardware will pass to NEC free of any encumbrances upon receipt by NEC at the Delivery Point.

5.11. **Inspection:** The Hardware will be subject to inspection by NEC at the Delivery Point within a reasonable time

after arrival. NEC will have the right to reject all or part of the shipment of Hardware if it does not conform with the description in the PO.

5.12. Return of Hardware: Supplier will arrange at its own expense, for the return of the rejected Hardware. Supplier will give NEC a credit for Hardware rejected by NEC.

5.13. Warranties on Hardware:

Supplier warrants that all Hardware;

(i) will be of good quality, workmanship, material and design;

(ii) will conform fully to all applicable Specifications;

(iii) will be of merchantable quality and free from defects;

(iv) will be fit, sufficient and safe for the intended purpose of NEC and/or end users; and

(v) will, at the time of delivery, be free and clear of all claims, liens and other encumbrances of any kind.

5.14 Non compliant Hardware:

Where NEC finds that some or all of the shipment of Hardware does not conform to the warranties specified in this Clause 5 or fails in any other respect to conform to the requirements in the PO, NEC may:

- a) Accept the non-compliant Hardware, provided that the Supplier agrees to remedy (at Supplier's cost) the non-compliance within a timeframe agreed by the parties; or
- b) Reject any non-compliant Hardware but accept delivery of the remainder of Hardware ordered and either require re-delivery of the rejected Hardware or terminate this Agreement in respect of the rejected Hardware.
- c) For any Hardware that NEC rejects, (i) NEC will return the Hardware to the Supplier at the Supplier's cost and (ii) title to

and risk in the Hardware will revert to the Supplier when the Hardware is delivered to a carrier for return to the Supplier.

6 CLAUSES APPLICABLE TO SUPPLY OF SOFTWARE

Clause 6 will only apply where NEC purchases Software from the Supplier under a PO.

6.1. Supply: The Supplier must provide the Software and Documentation in the manner and by the delivery date specified in the PO.

6.2. Licence of Software: On and from the date on which the Supplier provides the Software and for the term specified in the PO (or if there is no term specified in the PO for a perpetual term), the Supplier grants to NEC a non-exclusive, royalty free licence to: a) use the Software and the Documentation for NEC's business purpose; and b) make a reasonable number of copies of the Software and Documentation for the purposes of backup, testing, disaster recovery, security and archiving at no additional charge.

6.3. Warranty on Software: Supplier warrants that the Software will perform in all material respects with the specifications for the Software for the Warranty Period. Where the Software does not perform in accordance with the specifications, Supplier will re-supply the Software at no cost to NEC.

6.4. Notices on Software: NEC will not remove or alter any of the Supplier's notices that appear on the Software or Documentation.

6.5. No rental or lease of Software: Except as permitted by this Agreement or any Law, NEC will not rent, lease,

reverse engineer, decompile or disassemble the Software.

6.6 Moving licences between machines: NEC may move or transfer licences to the Software between machines (including virtual machines) at no additional cost.

6.7. Fixed term licence: If the PO specifies that the licence to use the Software and Documentation is for a fixed term, NEC may retain and continue to use one copy of the Software and Documentation after the expiry of that term or earlier termination of this agreement for archival, regulatory compliance and audit purposes.

6.8. Changes in quantity: If the PO specifies that the licence to use the Software is restricted by quantity and NEC makes changes to the machines or platforms on which the Software is installed, for a grace period of 60 Business Days NEC may create and use such additional copies of the Software as necessary to effect such a change. The Supplier must not unreasonably refuse to extend that grace period.

6.9. Perpetual licence will not terminate: If the PO specifies that the licence to use the Software and Documentation is perpetual and NEC has paid all applicable licence fees in full, the licence granted does not terminate even if this Agreement expires or is terminated by either party.

7. CLAUSES APPLICABLE TO PROVISION OF SERVICES

Clause 7 will only apply where the Supplier provides Services to NEC under a PO.

7.1. Warranties on Services: Supplier warrants that the Services will be performed:

- (i) with all due care and skill and to the best of its knowledge and expertise;
- (ii) in accordance with any dates and timeframes contained in the PO; and
- (iii) in accordance with all applicable laws.

7.2. Service Levels: Where the PO contains Service Levels, Supplier warrants that it will meet or exceed those Service Levels.

7.3. Reporting on Service Levels: If required by NEC, Supplier will report on its performance against the Service Levels at the frequency requested by NEC.

7.4 Failure to meet Service Level: If the Supplier fails to meet a Service Level it will promptly:

- (i) investigate the underlying causes of the failure to meet the Service Level and use reasonable endeavours to preserve any data indicating the cause of the failure;
- (ii) take whatever action is reasonably necessary to minimise the impact of the failure and prevent it from recurring;
- (iii) advise NEC of the status of remedial efforts being undertaken with respect to the underlying cause of the failure; and
- (iv) unless the failure referred to in clause 7.4(i) is excused under this Agreement, Supplier will perform the actions under clause 7.4(i) at no additional cost to NEC.

7.5. Supplier failure caused by factors outside control of Supplier: Supplier will not be responsible for any failure to comply with any Service Level if such

failure is caused by factors beyond Supplier's reasonable control including any act or omission of NEC, telecommunications failure or fault, carriage failure or fault, defective network or internet connections, defective equipment used by NEC or incorrect operation by NEC of its own equipment and facilities.

GENERAL

8. CONFIDENTIALITY

8.1. Mutual obligation of

Confidentiality:

Each party must only use or copy the other party's Confidential Information for the purposes of the Agreement and must take all reasonable steps to:

- a) maintain the confidentiality of the other party's Confidential Information;
- (b) ensure that any person who has access to the other party's Confidential Information does not use, copy or disclose that information other than in accordance with this Agreement; and c)
- enforce the confidentiality obligations under this Agreement.

8.2. Return of confidential information

Each party, at the option of the other party will return, destroy or permanently de-identify all copies of the other party's Confidential Information upon the expiry or termination of this Agreement. If a party needs to retain the other party's Confidential Information for the purposes of internal compliance and record keeping policies, it may retain it and use it solely for this purpose.

8.3. Obligation of confidentiality to be imposed on subcontractors:

If Supplier subcontracts or otherwise delegates any duties under the PO to any third party, Supplier will impose on the third party the same obligations of

confidentiality as those contained in clause 8.1.

8.4. Mutual obligation of Privacy: If one party receives any Personal Information from the other party ("Receiving Party"), the Receiving Party must:

- (a) comply with all Privacy Laws as if it were an entity regulated under those Privacy Laws;
- (b) not do anything that would put the other party in breach of any Privacy Laws in relation to the Personal Information;
- (c) comply with all reasonable directions given by the other party, except to the extent that doing so would cause the Supplier to breach a Privacy Law;
- (d) only collect, store, use, disclose, or otherwise deal with Personal Information as required for the purposes of providing or receiving the Supplies or as otherwise expressly permitted under this Agreement;
- (e) take reasonable steps to: (i) ensure that the Personal Information it uses or discloses in providing or receiving the Supplies is up-to-date, complete and relevant having regard to the nature of the Supplies; and (ii) protect the Personal Information from misuse, interference and loss, and from unauthorised access, modification or disclosure; and
- (f) if the Receiving Party discloses any Personal Information to a third party (PI Recipient) as permitted under this Agreement: (i) ensure that the PI Recipient is aware of and complies with the Receiving Party's privacy obligations as if it was the Receiving Party; and (ii) accept responsibility for any act or omission by the PI Recipient in relation to the Personal Information as if it was an act or omission of the Receiving Party under this Agreement.

(g) The Supplier agrees that before it provides Personal Information to NEC as the Receiving Party, it will obtain consent from the parties or individuals to that disclosure, including but not limited to NEC transferring the Personal Information to NEC Japan, NEC Thailand and NEC Hong Kong.

8.5. Data Security Requirements: The Supplier must:

- (a) comply with all security policies, standards and procedures notified by NEC to the Supplier in relation to the NEC Data, including in relation to NEC Data encryption and other applicable NEC Policies;
- (b) implement, maintain and enforce appropriate and industry best practice security procedures and safeguards in order to protect NEC Data in the Supplier's possession and control against any misuse, loss, interference unauthorised access, modification or disclosure;
- (c) ensure that NEC has access at all times to NEC Data while it is in the Supplier's possession or control and provide that NEC Data to NEC upon request;
- (d) if any NEC Data is lost, damaged, corrupted or otherwise unable to be accessed, take all reasonably practicable measures available to the Supplier to recover and restore that NEC Data immediately (and such measures will be at Supplier's cost to the extent such loss, damage, corruption or loss of access is caused or contributed to by the Supplier or its Personnel);
- (e) immediately notify NEC if it becomes aware of any likely, suspected or actual misuse or loss of, interference with or unauthorised access to, modification of, or disclosure of, NEC Data, or breach of the Supplier's

obligations relating to NEC Data (a Data Breach), or is or may be required by Law to disclose any NEC Data or Data Breach (Notifiable Event);

(f) comply with any reasonable direction from NEC with respect to: (i) assessing, investigating, remedying and addressing a Data Breach; or (ii) a Notifiable Event, including providing information requested by NEC relevant to the Notifiable Event, and not otherwise disclosing to any third party the circumstances regarding the Notifiable Event without express prior written approval from NEC;

(g) inform and co-operate with NEC in the event of any breach or risk regarding the security of NEC Data;

(h) ensure that any person who is authorised by the Supplier to have access to NEC Data complies and agrees to comply with this clause to the same extent as the Supplier;

(i) comply with any additional data security requirements set out in the PO or SOW (in which case the parties agree that the more onerous requirement will take precedence to the extent of any inconsistency); and

(j) only disclose, store, transfer, and make accessible NEC Data within Australia, or as otherwise set out in the PO or SOW.

9. RISK ALLOCATION

9.1. Mutual Indemnities: Each party (Indemnifying Party) indemnifies the other party (Indemnified Party) and the Indemnified Party's Personnel (Indemnified Persons) against all Loss suffered or incurred by the Indemnified Persons arising in connection with:

- (a) any fraudulent or unlawful act or omission of the Indemnifying Party or its Personnel;

(b) any death or personal injury caused or contributed to by any act or omission of the Indemnifying Party or its Personnel;

(c) any damage to or loss or destruction of real or personal property caused or contributed to by any act or omission of the Indemnifying Party or its Personnel;

(d) any breach of confidentiality obligations by the Indemnifying Party or its Personnel; and

(e) where the Indemnifying Party is the Supplier, any breach of obligations relating to privacy by the Indemnifying Party or its Personnel except to the extent the Loss is attributable to the negligence or wrongful act or omission of the Indemnified Person.

9.2 Liability Cap:

Subject to clause 9.4, the aggregate liability of a party for Loss suffered or incurred by the other party arising out of NEC's Purchase Order in connection with this Agreement (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to 1.5 times the total amounts paid and payable to the Supplier under this Agreement.

9.3. Consequential loss exclusion:

Subject to clause 9.4, a party is not liable for any Consequential Loss suffered or incurred by the other party in connection with this Agreement.

9.4 Exception to limitations and exclusions:

The limitations and exclusions in clauses 9.2 and 9.3 do not apply to a party's liability for Loss covered by an indemnity under this Agreement.

9.5 Insurance:

The Supplier must at its cost maintain (and on request produce to NEC evidence of) valid and enforceable insurance policies for: (a) workers compensation in accordance with

applicable local Laws; (b) products liability with a minimum annual coverage of AUD\$5 million; (c) both public liability and professional indemnity, each with a minimum coverage of AUD\$10 million per claim; and (d) any other insurance requirements set out in the PO.

10. INTELLECTUAL PROPERTY

10.1. NEC IP:

NEC will own all IP Rights in and to the NEC Material and Developed Material and any other IP Rights made available to the Supplier by or on behalf of NEC (together NEC IP). The Supplier assigns to NEC all IP Rights in and to the Developed Material, and any modifications or enhancements to the NEC Material, made by or on behalf of the Supplier on and from creation. NEC grants the Supplier a non-exclusive, non-transferable, royalty free, personal licence during the Term to use (and to sub-license its Approved Subcontractors to use) the NEC IP solely to the extent directly necessary for the purpose of performing its obligations under the Agreement.

10.2 Supplier IP:

(a) The Supplier will own all IP Rights in and to the Supplier Materials and any other IP Rights made available to NEC by or on behalf of the Supplier (excluding Third Party Materials and any Developed Material) (together Supplier IP).

(b) To the extent it is not assigned to NEC or otherwise licenced under this Agreement the Supplier grants NEC a non-exclusive, perpetual, irrevocable, royalty free and worldwide licence to use, reproduce, modify, develop and

otherwise exploit the Supplier IP as required to receive, use and otherwise enjoy the full benefit of the Supplies. (c) For clarity, the licence in sub-clause 10.2 (b) does not apply to any Supplier IP that Supplier makes generally available under a standalone licence agreement.

10.3 Third Party IP:

To the extent that Third Party Materials are incorporated into the Supplies or are otherwise provided to NEC by the Supplier under this Agreement, the Supplier must procure for NEC : (a) rights in respect of the IP Rights in and to the Third Party Material (Third Party IP) no less extensive than the rights granted to NEC NEC in respect of the Supplier IP set out in clause 47; or (b) such other licence rights in respect of the Third Party IP as agreed in writing by the parties.

10.4 Infringement Claim:

If an Infringement Claim is made, the Supplier must: (a) without prejudice to NEC's other rights or remedies and at no additional cost to NEC:

(i) modify the affected Supplies in order to avoid any infringement without any adverse effects to the functionality, performance and quality of the Supplies; (ii) procure for NEC all rights required to continue using and exploiting the affected, unmodified Supplies in accordance with this Agreement; or (iii) procure for NEC non-infringing replacements for the affected Supplies equivalent in functionality, performance and quality; and (b) if the options in sub-clauses 10.4(i) to (iii) above are not possible, accept return of the affected Supplies or cease to provide or perform the affected Supplies (as applicable) and reimburse any Fees paid by NEC for those Supplies; and (c) indemnify NEC and its personnel for all Loss suffered or

incurred in connection with the Infringement Claim.

11. TERMINATION.

11.1 Termination without cause:

(a) NEC may terminate this Agreement in whole or in part (including any one or more POs) at any time by giving the Supplier the greater of: (i) 10 Business Days' notice; and (ii) any notice period set out in the PO. NEC will only exercise this right where it has a reasonable basis for doing so (for example, due to changes in its business requirements or budget).

(b) If NEC issues a notice of termination under clause 11.2, but the notice is not effective to terminate this Agreement, the notice will be deemed to be a notice of termination without cause under this clause 11.1, issued on the date of the notice.

11.2 Termination for cause: A party may terminate the Agreement in whole or in part (including any one or more POs) by notice to the other party if the other party: (a) commits a material breach of this Agreement that is capable of remedy and has not remedied that breach within 10 Business Days after receipt of notice of the breach; (b) commits a breach of this Agreement that is not capable of remedy; (c) suffers an Insolvency Event; or (d) has an administrator, receiver or scheme administrator appointed. A material breach of this agreement includes a material breach in respect of individual or particular Supplies or a particular PO.

11.3. Consequences of termination and expiry:

On expiry or termination (in whole or in part) of this Agreement for any reason, (a) NEC will only be liable to pay the Supplier for Supplies completed in accordance with the requirements of this

Agreement by the effective date of termination and may recover from the Supplier any money paid for Supplies not completed by that date;
(b) on request by NEC, the Supplier must remove from NEC's premises all of the Supplier's Personnel and equipment and provide any disengagement assistance reasonably specified by NEC ;
and
(c) On termination of this Agreement in whole or in part by NEC for cause, NEC may suspend making any payment to the Supplier under this Agreement.

12. COMPLIANCE WITH LAWS.

12.1 Compliance with Laws:

Supplier represents, warrants and undertakes that all Supplies will be furnished in compliance with all applicable laws, statues, regulations, orders, rules, subordinate legislation, guidelines or other document enforceable under any statute, regulation, order, rule or subordinate legislation whether or not existing at the time of entering into the PO or Agreement.

12.2. No illegal practices:

Supplier will not engage in any illegal, unfair, anti-competitive or deceptive trade practices or unethical business practices.

12.3. Obtaining permits:

Supplier will at its expense obtain any and all permits, licenses, authorizations, and/or certificates that may be required in any jurisdiction or by any regulatory or administrative agency in connection with its activities hereunder.

13. COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS, AND TRADE RESTRICTIONS.

13.1 Compliance with Export Control Laws:

Supplier will comply with all applicable export control laws and regulations of the countries having competent jurisdiction, including but not limited to the Export Administration Regulations ("EAR") of the U.S.A and will procure any export licenses required from the competent authorities to supply NEC with the Goods (including software) and/or technologies (hereinafter referred to as "Item").

13.2 Export Control documents:

If requested by NEC, Supplier will submit to NEC the export control documents on classification of the Item in accordance with the export control laws and regulations of the country in which Supplier is domiciled as well as under the U.S. export control laws and regulations and disclose the details of any encryption functionality of the Item.

13.3 Export Control classification:

The export control classification documents shall set out and contain the following information:

(i) terms and conditions of the individual license or license exception applicable to any Item which is subject to the U.S. export control regulations, such as the EAR and the International Traffic in Arms Regulations (ITAR), information of Export Control Classification Number (ECCN) on the Commerce Control List or Category of the U.S. Munitions List; and

(ii) state whether the Item is listed on the export control list of the country in which Supplier exists and, if listed, the export control classification number of the Item classified in accordance with the list.

13.4 Export Control Information Sheet

Where an Item is controlled under the EAR, Supplier will be required to fill in the Export Control Information Sheet

provided by NEC and to submit the completed and signed copy to NEC.

13.5 Re-submission of export control classification documents

If there are any changes to be made by the Supplier to the specification, materials or country of origin of the Item, Supplier will promptly notify and obtain NEC's written consent to such changes, and re-submit the revised export control classification documents to NEC reflecting such changes.

13.6 Additional Information required

Supplier will promptly submit to NEC any additional information related to export control classification in accordance with the latest laws and regulations and/or apply for necessary amendment to the (re-) export licenses issued by the U.S. authorities for the Supplies.

13.7 New import/ export laws affecting NEC's ability to perform

If, following the date of the PO (i) any new import, export or other restrictions on international trade or commerce are introduced or any new law regulation or order is enacted or issued and (ii) NEC's ability to perform the PO is adversely affected, or its underlying economic assumptions with respect to the PO become inaccurate in any respect, NEC will have the option either (a) to terminate the PO in whole or in part by written notice to Supplier, without incurring any liability to Supplier or (b) to require Supplier to renegotiate in good faith the terms and conditions.

14. MANAGEMENT OF RELATIONSHIP

14.1 Relationship of the parties:

The relationship between NEC and the Supplier is that of principal and independent contractor. The Supplier

and its personnel must not represent themselves as employees or agents of NEC.

14.2 Supplier Records

The Supplier must:

(a) keep and maintain proper, accurate, complete and reasonably detailed records and books of accounts (Records) relating to the performance of the Supplier's obligations under this Agreement and for all transactions related to this Agreement.

(b) If requested by NEC, Supplier must provide a copy of the Records to NEC so NEC can assess the Supplier's compliance with this Agreement.

14.3 Audit

If permitted under the PO or SOW or an NEC (or a third party nominated by NEC) may audit (at NEC's cost) the Supplier's compliance with its obligations relating to this Agreement including the Supplier's records referred to in clause 14.2a).

14.4 Subcontracting

The Supplier must not subcontract the provision of the Supplies without NEC's prior written consent, which will not be unreasonably withheld.

14.5 Dispute Resolution

If a dispute arises in connection with this Agreement (Dispute) either party may issue a notice to the other party, setting out reasonable details of the Dispute (Dispute Notice), following which the parties must promptly hold good faith discussions to attempt to resolve the Dispute. Neither party may commence legal proceedings in relation to the Dispute unless: (a) the purpose of the proceedings is to seek urgent injunctive or declaratory relief; or (b) the parties have been unable to resolve the Dispute within 20 Business Days of the applicable Dispute Notice being received.

15. GENERAL

15.1 No assignment:

Supplier will not assign any rights, or subcontract or otherwise delegate any duties, under the PO to any third party without the prior written consent of NEC, which consent will not be unreasonably withheld.

15.2 Entire Agreement:

This Agreement represents the entire agreement between the parties in relation to the Supplies and supersedes all prior discussions, negotiations, understandings and agreements, written or oral, in relation to those Supplies.

15.3 Amendments must be in writing:

A provision of this Agreement, or right, power or remedy created under them, may not be varied or waived except as agreed in writing.

15.4. Governing Law

This Agreement will be governed by the Laws of the State of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Victoria.

15.5.Exclusion of UN Convention:

Supplier and NEC expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to the sales covered by the PO.

15.6 Force Majeure

A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay is caused by a circumstance not within the reasonable control of the party and that could not have been reasonably avoided, prevented or circumvented by the party.

Execution:

Signed for and on behalf of)
)
 (Company Name and ABN) by its authorised)
 representative:)
)
)
)
 Signature of authorised representative)
)
)
)
 Name of authorised representative)
)
)

Date: