INTEGRATION AGREEMENT
FOR
SAPD - ANNUAL CONTRACT FOR THE NEC AUTOMATED FINGERPRINT
IDENTIFICATION SYSTEM (AFIS) UPGRADE, MAINTENANCE & HOSTING

REQUEST FOR OFFER ("RFO") NO. 6100016536

This Agreement is entered into by and between the **City of San Antonio**, Texas, a home-rule municipal corporation ("City") acting by and through its Director of Finance or said Director's designee ("Director"), pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____ and **NEC Corporation of America** ("NEC" or "Vendor"). City and NEC may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

ARTICLE 1
CONTRACT DOCUMENTS

The terms and conditions for performance and payment of compensation for this Agreement are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes, and shall be interpreted in the order of priority as appears below:

a. This Integration Agreement;
b. City's RFO No. 6100016536, including all exhibits, attachments and addendums thereto (**Exhibit A**), however, excluding any supplemental or general terms and conditions not expressly outlined herein;
c. Vendor's Attachment B - Price Schedule submitted in response to RFO No. 6100016536 (the "Price Schedule") (**Exhibit B**);
d. NEC Managed Hosting Services (Azure Hosted) Terms & Conditions, as revised (**Exhibit C**), including all exhibits and attachments;
e. Vendor's Proposal submitted in response to RFO No. 6100016536, excluding any exceptions and clarifications not specifically included in this Integration Agreement ("Vendor's Proposal") (**Exhibit D**); and
f. Vendor's AFIS Upgrade SOW Version 3.2 Dated 11/22/2022 ("SOW") (**Exhibit E**).

ARTICLE 2
TERM

2.1   Contract Term. This contract shall begin upon the effective date of the ordinance awarding the contract. This contract shall remain in full force and effect for a (4) four-year period ("Term"), unless sooner terminated in accordance with the provisions of this Agreement. The (4) four-year period consists of a (1) one year implementation period followed by (3) three additional years of maintenance.

2.2   <u>Renewals</u>. At City's option, this contract may be renewed under the same terms and conditions for three (3) additional, one (1) year periods ("Renewal Term"). Renewals shall be in writing and signed by the Director, without additional City Council approval, subject to and contingent upon appropriation of funding therefor.

ARTICLE 3
SPECIFICATIONS / SCOPE OF SERVICES

3.1   RFO Section 004 – Specifications / Scope of Services is deleted in its entirety and replaced with the following:

<u>Specifications / Scope of Services</u>. NEC shall provide all services set forth in **Exhibit E**, AFIS Upgrade Statement of Work (SOW) Version 3.2, dated 11/22/2022, attached hereto and incorporated by reference herein as described in **Article I**, Contract Documents. NEC understands and agrees that **Exhibit E** is a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by NEC as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this Agreement.

<u>Clarification on Workstation Responsibilities</u>. The following obligations, conditions, tasks, products, and representations, in question and response format are hereby added:

1) **QUESTION:** For computers (desktops and laptops), City's ITSD is requesting NEC provide CITY recommended devices, which are specific Dell computer models, so that CITY can image those devices using City standard imaging for Public Safety. NEC will then install its software.

   NEC RESPONSE: <u>Dell model and specifications</u>. IBW's require a minimum spec (iCore 7, 16GB memory, 250GB hard drive).

DELL MODEL / SPECS:

Model:	Optiplex 500 Micro	Precision Tower 3460	Precision Tower 3660	Precision Tower 5820
Processor	i7	i7	i7	Xeon 2245w
Memory	16GB	16GB	16GB	32GB
RAM	256GB SSD	256GB SSD	256GB SSD	256GB SSD + 2TB SATA
Included in Quote	KB813 Smart Card Keyboard; MS116 Wired Mouse	T1000 4GB Graphics Card; KB813 Smart Card Keyboard; MS116 Wired Mouse, Optical Drive	Radeon 4GB Graphics Card; KB813 Smart Card Keyboard; MS116 Wired Mouse; Optical Drive	Radeon 4GB Graphics Card; KB813 Smart Card Keyboard; MS116 Wired Mouse; Optical Drive
Cost	$904.78	$1,473.12	$1,688.22	$2,440.33

NEC Response: During the Requirements phase of the project, the City can request that NEC's standard PC configuration be replaced with the models and specification listed in the table above. NEC will then confirm if the models and specifications are compatible with NEC's system. If the models and specifications are compatible, NEC will issue a change order documenting the change, including any additional costs required.

Question: Dell also provides software and version they will include as part of their image as follows:

DELL IMAGE DETAILS

WebEx	41.8.8.15
WebEx Productivity Tool	41.6.1.4
Mainframe	4.2.2
Mark43	shortcut
Office 365	
Cisco Jabber	Version 14.1.2.57135 Build 307135
Google Chrome	Version 109.0.5414.75
Mozilla Firefox	7.3.6.9345 (64-bit)
Google Earth	7.3.6.9345 (64-bit)
File-On-Q	v8
VLC player	3.0.16
redbook	shortcut
Windows Mobile Device center	
Evidence Upload XT	1.1.32
Axon View	1.15.5
Sync	3.16.17
Roxio	10.3
Enterprise Vault	12.5.1221
Adobe Reader	22.003.20310.0
Cisco AnyConnect	4.10.00093
VMware Horizon	5.3.0 build-15208953
Coban	4.6.1007
Central square Mobile	21.102.245.11
SAPD WEB	shortcut
TEXAS.GOV	shortcut
File-On-Q Webview	shortcut
CRASH	shortcut
SAP	760
RMS	
TEAMS	
oracle12c 32 bit and 64bit	
Zoom	
JAVA	

NEC RESPONSE: The response and pricing as proposed, provide for NEC to provide the workstations, imaged with the most recent OS patches and NEC's IBW software. If City would need to install software or services to manage the workstations, the details can be analyzed during the Requirements phase of the project.

2) **QUESTION:** City would provide necessary Microsoft OS patching, and anti-virus software updates, while NEC would provide support and maintenance for their software. Is NEC in agreement with this?

   NEC RESPONSE: The response and pricing as proposed, provides for NEC to provide the workstations, imaged with the most recent OS patches and NEC's IBW software and for NEC to manage and monitor the workstations.

3) **QUESTION:** What is NEC's workstations end of life term?

   NEC RESPONSE: NEC will replace components of the workstation as they fail, when the component is no longer compatible with the NEC software, or when the manufacturer of the component can no longer provide support / replacements, or security patches. Also, please see definition of Evergreen Program in the SOW.   Section 9.2: Summary of System Components and Services

   - Microsoft continually refreshes the underlying cloud hardware platforms, ensuring the base infrastructure never reaches end of life while leveraging the performance improvements available with each new generation.
   - Continual application of security patches and version updates ensure CJIS security compatibility of operating systems, databases, and application servers.
   - Includes NEC Integra-ID software fixes and replacements if necessary, releases, and major upgrades as defined in NEC' s Software Release policy.
   - Includes maintenance for core NEC Applications – AIM, IPC, IBW, Archive, SmartScan live scan
   - Includes maintenance and replacement if necessary for IBW workstation hardware – PC's, printers, scanners and cameras. Hardware replacement will be done to maintain performance and reliability within SLA parameters.
   - Server and backend hardware maintenance – Microsoft Azure Government cloud
   - Third party software for core NEC applications, workstation, and backend servers

4) **QUESTION**: Regarding vulnerability management and lifecycle management for items 4, 5, 6, and 11 on the Price Schedule. Can NEC elaborate what happens when the computers are at end of life?

   NEC RESPONSE: 4 and 5 are the IBW software application. NEC will replace this software when it reaches end of life at no additional cost to the City. 6 is the IBW hardware and 11 is the SmartScan hardware, which is addressed in bullet #3 above.

5) **QUESTION**: When will they need to be upgraded or replaced? Please confirm if it just an upgrade or complete replacement.

   NEC RESPONSE: See responses to #3 and #4 above.

6) **QUESTION**: Will SAPD need to buy new workstations from NEC or does NEC provide the updated workstation?

   NEC RESPONSE: If the IBW workstation or Operating Systems are approaching EOL, NEC will provide the workstation components at no additional cost to the City.

7) **QUESTION**: NEC will need to patch and maintain the OS and software on those devices. In NEC's response to our Security Questionnaire, NEC only explicitly mentions the system in AWS, not the workstations they're providing as part of this contract. Please confirm how this will be supported or where it is listed in the SOW.

   NEC RESPONSE: The two Security Questionnaires provided were Cloud focused, the workstations are on premises and are not deployed in the Cloud. However, per NEC's response to requirement 5.9.0 in the Requirements Traceability Matrix in the SOW: "NEC will ensure the Integra-ID MBIS and associated components are updated with appropriate and latest software patches and fixes." The workstations are considered part of the Integra-ID MBIS. Also, please note NEC is deploying to Microsoft Azure…not AWS.

ARTICLE 4
SOFTWARE LICENSE GRANT

4.1   Description of Services. Throughout the Term and at all times in connection with its actual or required performance under this Agreement, Vendor shall, in accordance with all terms and conditions set forth in this Agreement, provide to City the NEC Automated Fingerprint Identification System (AFIS), and provide the City and its authorized users access to the AFIS System offerings and service maintenance and the support services ("Services") and upgrade as described in **Exhibit D**, Vendor's Proposal and **Exhibit E**, SOW.

4.2   Access and Use. Subject to the other applicable provisions in this Agreement, including but not limited to the payment of fees, licensing term, and capacity and usage, Vendor hereby grants to City, exercisable by and through its authorized users, a paid-up, non-exclusive, non-transferable license to install and use (in object code form only) the Vendor Software for use of the Services, including in operation with other software, hardware, systems, networks, and services for City's business purposes in accordance with **Exhibit C**.

4.3   Support and Maintenance / Service Level Agreement. Vendor shall provide maintenance and support for the Services, including defect repair, programming corrections, and remedial programming, in accordance with the provisions of this Agreement and as described in **Exhibit D**, Vendor's Proposal, and **Exhibit E**, SOW including the service levels indicated therein. The City is entitled to software updates as defined in **Exhibit E**, SOW Section 14 Service Level Agreement. The support and maintenance services are included in Price Schedule in **Exhibit B** and Vendor shall not assess any additional fees, costs, or charges for such support services. Vendor is responsible for keeping the system live and functional 24/7/365 and maintained in accordance with industry standards and, at minimum, an uptime rating of at least 99.9%. City shall not be required to sign a separate maintenance and support / Service Level agreement.

ARTICLE 5
INTELLECTUAL PROPERTY

RFO Section 005 Supplemental Terms and Conditions, Intellectual Property, is revised as follows:

5.1   Vendor shall pay all royalties and licensing fees. Vendor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, United States patents, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Vendor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

5.2   Upon receipt of notification that a third-party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States patent, copyright or trademark, Vendor shall, at its election and expense, promptly:

1. Obtain, at Vendor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be, or

2. procure the right to an element, which performs the same function without any material loss of functionality; or

3. Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated and still performs the same function without any material loss of functionality and shall make every reasonable effort to correct the situation with minimal effect upon the operations of City.

5.3   Should none of the above options be commercially reasonable for the Vendor, the Vendor shall promptly notify City and City and Vendor shall each have the right to immediately terminate this Agreement. Vendor shall reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending. In no event shall the expenses incurred exceed the total cost that the City paid to Vendor for the applicable programs, hardware, or both the programs and hardware or any other intellectual property that caused the infringement claim. This states the entire liability and obligations of each party, and the exclusive remedy of the other, with respect to any alleged intellectual property infringement hereunder.

5.4   Vendor further agrees to

assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement,

assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

indemnify the City against any monetary damages and/or costs awarded in such suit;

provided that

Vendor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Vendor agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

the Software or the equipment is used by the City in the form, state, or condition as delivered by Vendor or as modified without the permission of Vendor, so long as such modification is not the source of the infringement claim,

the liability claimed shall not have arisen out of the City's negligent act or omission, and

the City promptly provide Vendor with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Vendor assumes responsibility under this section.

ARTICLE 6
NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Police Department
P.O. Box 839966
San Antonio, Texas 78283-3966

With copy to:

City of San Antonio
Finance Department, Purchasing Division
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Vendor, to:

NEC Corporation of America
Corporate Contracts Department
3929 W. John Carpenter Freeway
Irving, Texas 75063

ARTICLE 7
TERMINATION

RFO Section 006 - General Terms & Conditions, Termination, is revised as follows:

7.1   Termination-Breach. Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this contract, or violate any of the material terms of this contract, City shall have the right to terminate the contract in whole or in part. Notice of termination shall be provided in writing to Vendor, effective upon the date set forth in the notice. City may provide an opportunity for Vendor to cure the default. City shall provide notice to Vendor specifying the matters in default and the cure period, which shall be no less than ten (10) business days. If Vendor fails to cure the default within the cure period, City shall have the right, without further notice, to terminate the contract in whole or in part. Such termination shall not relieve Vendor of any liability to City for Court determined damages sustained by virtue of any breach by Vendor.

7.2   Termination-Notice. City may terminate this contract, in whole or in part, without cause. City shall be required to give Vendor notice thirty (30) days prior to the date of termination of the contract without cause. If City terminates for convenience prior to Switchover, City will pay the Vendor for any completed milestones/deliverables and a prorated amount for any partially completed milestone/deliverable through the effective date of termination. Upon termination, City will discontinue use of the AFIS.

7.3   Termination-Funding. City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best effort attempt by City to obtain and appropriate funds for payment of any debt due by City herein. Vendor shall be entitled to payment for any completed milestones/deliverables and a prorated amount for any partially completed milestone/deliverable through the effective date of termination. Upon termination, City will discontinue use of the Solution.

7.4   Termination by City may be effected by Director, without further action by the San Antonio City Council.

ARTICLE 8
INDEMNIFICATION

RFO Section 006 - General Terms & Conditions, Indemnification, is revised as follows:

8.1   **VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature brought by a third party, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly arising out of, directly resulting from or directly related to VENDOR'S performance of its obligations under this Agreement, including any negligent acts or willful misconduct of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and**

representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, Vendor agrees to indemnify, defend, and hold City harmless from any claim involving United States patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

8.2   Vendor further agrees to

> assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement,

> assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

> indemnify the City against any monetary damages and/or costs awarded in such suit;

provided that

> Vendor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Vendor agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

> the Software or the equipment is used by the City in the form, state, or condition as delivered by Vendor or as modified without the permission of Vendor, so long as such modification is not the source of the infringement claim,

> the liability claimed shall not have arisen out of the City's negligent act or omission, and

> the City promptly provide Vendor with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Vendor assumes responsibility under this section.

8.3   This indemnity shall not apply to any claims or suits concerning: (a) use of Software, Equipment, and/or Services in a manner or for a purpose not contemplated by this Agreement, (b) equipment or software used by City which was not supplied by Vendor, or (c) commercial merchandise available on the open market or its equivalent which was not supplied by Vendor.

8.4   The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not

intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise CITY in writing within 24 hours of any claim or demand against CITY or VENDOR known to VENDOR related to or arising out of VENDOR's performance of its obligations under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph. Should City's continued use of Software, Equipment, and/or Services be enjoined, Vendor may at its option and expense, either: (a) if commercially reasonable, procure for City the right to continue using the affected Software, Equipment, and/or Service(s), (b) replace or modify the same so that infringement is eliminated, or (c) if none of these alternatives are commercially reasonable, either party may terminate this Agreement and Vendor shall issue a pro -rata refund of the licensing fee.

ARTICLE 8A
LIMITATION ON LIABILITY

RFO Section 006 - General Terms & Conditions is amended to include Article 8A Limitation on Liability as follows:

In no event shall either party be liable to the other for any consequential, incidental, indirect, special, punitive or exemplary damages (including lost profits and lost savings) suffered or incurred by such other party in connection with the services, or any other matter covered by this Agreement, regardless of the form or theory of the action, (including negligence), even if such other party has been advised of the possibility of such damages. NEC's maximum liability to City in connection with this Agreement shall not exceed the total value of the Agreement. The above limitations, however, do not apply to damages to NEC caused by City's breach of the license limitations or use of the Solution in violation of applicable laws, rules, or regulations, City's violation of such applicable, laws or regulations or willful or intentional torts of City, including its gross negligence or their willful misconduct nor do the above limitations apply to damages to City caused by NEC's willful or intentional torts of NEC, including their gross negligence or their willful misconduct, NEC's failure to comply with any applicable laws or regulations, NEC's intentional breach of contract, NEC's breach of confidential information, claims arising from NEC's indemnification relating to Intellectual Property (IP) infringement and liability for indemnification arising from IP infringement.

ARTICLE 9
COMPLIANCE WITH LAW

9.1   Vendor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

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

ARTICLE 10
EFFECT OF TERMINATION; DATA RETENTION

10.1   "City Data" means any and all information, data, materials, works, expressions, or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of City or any Authorized User for Processing by or through the Services or (b) collected, downloaded, or otherwise received by Vendor for City or any Authorized User pursuant to this contract. For the avoidance of doubt, City Data includes all User Data and personal information but does not include any Vendor materials.

10.2   "User Data" means any and all information reflecting the access or use of the Services by or on behalf of City or any Authorized User, including any end user profile-, visit-, session-, impression-, click through-, or click stream-data, and any statistical or other analysis, information, or data based on or derived from any of the foregoing.

10.3   Upon and after the termination or expiration of this contract or for any or no reason, Vendor shall, at City's option and upon its written request: (A) promptly return or destroy and erase from all systems it directly or indirectly uses or controls all originals and copies of all documents, materials, and other embodiments and expressions in any form or medium that contain, reflect, incorporate, or are based on City Data, in whole or in part, or solely such specific databases or other collections or articles of City Data as City may request, and (B) provide a written statement to City certifying that it has complied with the requirements of this, if requested by City. Notwithstanding the foregoing, either party, if required to do so by controlling law and with notice to the other party, securely sequester archival copies of confidential and proprietary information for record-keeping purposes.

10.4   At City's option and upon its written request, Vendor shall: (A) continue to retain the City Data, or solely such specific databases or other collections or articles of City Data as City may request, as though this Agreement were still in force, for a period to be agreed to by the parties in writing, but that in no event will be shorter than 45 days or longer than 180 days after the effective date of such expiration or termination, as applicable, provided that City pays in full all undisputed fees due Vendor as of the effective date of such expiration or termination and pays monthly data storage fees to Vendor for its retention of such City Data pursuant to Vendor's standard rates for such data storage in effect at the time, or if such standard rates are not in effect, such reasonable prevailing industry rates as may be agreed to by the parties in writing.

ARTICLE 11
INSURANCE

11.1   Prior to the commencement of any work under this Agreement, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY's Police Department. The certificate must be:
    • clearly labeled with the legal name of the event in the Description of Operations block;
    • completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and
    • properly endorsed and have the agent's signature, and phone number.

11.2   Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Police Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

11.3   If the City does not receive copies of insurance endorsement, then by executing this Agreement, CONTRACTOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this contract.

11.4   The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

11.5   CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, at CONTRACTOR'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the CONTRACTOR claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

INSURANCE TYPE	LIMITS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000

3. Commercial General Liability Insurance to include coverage for the following:
        a. Premises/Operations
        b. Products/Completed Operations
        c. Personal/Advertising Injury
        d. Contractual Liability
        e. Independent Contractors
	For Bodily Injury and Property Damage $1,000,000 per occurrence;
	$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage is on a per occurrence basis.

4. Business Automobile Liability
    a. Owned/leased vehicles
    b. Non-owned vehicles
    c. Hired Vehicles
	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

5. Professional Liability	$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
6. Cyber Liability	$1,000,000 per claim $,1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

11.6   CONTRACTOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONTRACTOR and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. CONTRACTOR shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

11.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of all endorsements. CONTRACTOR must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Attn: San Antonio Police Department
P.O. Box 839966
San Antonio, Texas 78283-3966.

11.8 CONTRACTOR's insurance policies must contain or be endorsed to contain the following provisions:
- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- CITY's insurance is not applicable in the event of a claim. Required coverages shall be primary and non-contributory with, and not in excess to, any insurance available to the City of San Antonio with the exception of the workers' compensation and professional liability policies;
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

11.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR'S performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

11.10 In addition to any other remedies CITY may have upon CONTRACTOR'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONTRACTOR to stop work and/or withhold any payment(s) which become due to CONTRACTOR under this Agreement until CONTRACTOR demonstrates compliance with requirements.

11.11 Nothing contained in this Agreement shall be construed as limiting the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR'S or its subcontractors' performance of the work covered under this Agreement.

11.12 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

11.13 CONTRACTOR and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE 12

14

CRIMINAL BACKGROUND CHECKS / CRIMINAL JUSTICE INFORMATION SERVICES (CJIS)

12.1 Vendor is responsible for assessing risk and maintaining effective background check policy and procedures for all employees, staff and subcontractors responsible for performing services under this contract. Vendor shall retain all employee records, including any criminal background checks, for the retention period stated in **Exhibit A**, City's RFO, Records Retention.

12.2 Vendor is responsible for any costs incurred in conducting criminal background checks.

12.3 Criminal Justice Information Services (CJIS). Vendor will be providing services under this contract for facilities with access to CJIS. Persons with any of the criminal histories shown below are not allowed unescorted access to CJIS Facilities. Since CITY staff may not be available to provide escorted access, Vendor's employees providing services to CJIS facilities must pass this criminal background check to provide services in these locations.
   a) Felony conviction – permanent disqualifier
   b) Felony deferred adjudication – permanent disqualifier
   c) Class A misdemeanor conviction – permanent disqualifier
   d) Class A misdemeanor deferred adjudication – permanent disqualifier
   e) Class B misdemeanor conviction – disqualifier for ten (10) years
   f) Class B misdemeanor deferred adjudication – disqualifier for ten (10) years
   g) Open arrest for any criminal offense (felony or misdemeanor) – disqualifier until disposition
   h) Family violence conviction – permanent disqualifier

12.4 CJIS Facilities. CJIS Facilities within this contract are: Emergency Dispatch Center (PSAP), Emergency Operations Center (EOC), Frank Wing Building (Municipal Courts), Police Training Academy, Public Safety Headquarters (PSHQ), and SAPD Property & Evidence Facility.

12.5 Security Addendum for Criminal Justice Information Services (CJIS). Vendor will be required to provide services to CITY departments that perform criminal justice services. Criminal Justice Agencies, such as the San Antonio Police Department, are required to comply with the security requirements managed by the Federal Bureau of Investigations (FBI) and state agencies, such as the Texas Department of Public Safety. The Federal Criminal Justice Information Services Security Policy applies to every individual, Vendor, private entity, noncriminal justice agency representative, or member of a criminal justice entity with access to, or who operate in support of, criminal justice services and information. Agency shall comply with the Policy and shall execute the CJIS Security Addendum attached to this agreement. Vendor's employees or agents who are subject to the Policy will be required to sign a Contractor Employee Certification and be finger printed. All costs associated with compliance of the CJIS Policy shall be borne by the Vendor. Vendor shall comply with any changes made to the security requirements by law. The Federal Bureau of Investigation CJIS Security Addendum, and Security Addendum Certification and Texas Signatory Page dated 9/13/2023 by NEC, are attached hereto and incorporated herein by reference.

12.6 Vendor shall ensure Vendor's employees assigned to support SAPD onsite make an appearance at the ID Unit at SAPD Headquarters at 315 S. Santa Rosa, San Antonio, Texas to fill out and submit a Fingerprint Application Form to initiate a background check. Vendor shall ensure Vendor's employees pass a criminal background check and complete CJIS Level 1Training prior to starting work at CJIS Facilities under this contract.

12.7 Vendor shall ensure Vendor's employees working off site each has a DPS/FBI profile in the FACT Clearinghouse (RapBack). Vendor's employees with recent or active profiles will be added to the

City's subscription list. Vendor shall provide SAPD with the names and dates of birth of any Vendor-assigned employees accessing the City's network off site. If Vendor's employees providing services or working under this Agreement are not in the FACT Clearinghouse, Vendor shall ensure such employees are fingerprinted at SAPD's Public Safety Headquarters at 315 S. Santa Rosa, San Antonio, Texas, or through a Identigo location.

12.8 Vendor shall immediately remove any employee, staff or subcontractor that does not meet these requirements from performing services under this contract.

ARTICLE 13
ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties.

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap/click-through), the terms and conditions set forth in this contract shall supersede and govern the license terms between City and Vendor.

In the event that conflicting or additional terms in Vendor software license agreements, shrink/click wrap license agreements, service agreements or linked or supplemental documents amend or diminish the rights of City, such conflicting or additional terms shall not take precedence over the terms of this Agreement.

[*Signature Page Follows*]

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

CITY OF SAN ANTONIO

Name: _____

Title: _____

Date: _____

Approved as to Form:

_____
Assistant City Attorney

NEC CORPORATION OF AMERICA

Name: _____Eugene Le Roux_____

Title: _____Senior Vice President_____

Date: _____11/30/2023_____

Exhibit C

Managed Hosting Services Agreement
by and between

City Of San Antonio Police Department

and

NEC Corporation of America
For

{AFIS UPGRADE – NEC}

_____
{INSERT EFFECTIVE DATE}

NEC NEC Corporation of America

TABLE OF CONTENTS

In consideration of the mutual promises, covenants and conditions set forth herein and for good and valuable consideration, NEC and Customer agree as follows:

1 APPLICABLE DOCUMENTS

1.1 Definitions

The terms and phrases in this Section 1.3, whether singular or plural, shall have the particular meanings set forth below whenever such terms are used in this Agreement.

1.1.1 ADDITIONAL PRODUCTS

The term "Additional Product(s)" shall mean any item of additional hardware, Software, customizations, interfaces, including additional workstations, and related Documentation, that NEC may provide pursuant to an Amendment, upon Customer's request. Once mutually agreed upon, such Additional Products shall become part of, and be deemed, part of the Solution for the purpose of this Agreement.

1.1.2 RESERVED

1.1.3 BUSINESS DAY

The term "Business Day" shall mean any day of eight (8) working hours from 8:00 a.m. to 5:00 p.m. Pacific Time (PT), Monday through Friday, excluding NEC observed holidays.

1.1.4 CONFIDENTIAL INFORMATION

The term "Confidential Information" shall have the meaning specified in Section 13 (Confidentiality).

1.1.5 CUSTOMER DATA

The term "Customer Data" shall mean the customer provided data utilized by the Solution.

1.1.6 RESERVED

1.1.7 DATA MIGRATION

The term "Data Migration" shall mean migration of Customer Data as part of System Implementation Services, as further specified in City's Integration Agreement, Exhibit E, Statement of Work.

1.1.8 DAY

The term "Day" shall mean calendar day and not Business Day.

1.1.9 DEFICIENCY; DEFICIENCIES

The terms "Deficiency" and "Deficiencies", whether singular or plural, shall have the meaning specified in City's Integration Agreement, Exhibit E, Statement of Work.

1.1.10   DELIVERABLE; deliverable

The terms "Deliverable" and "deliverable" shall mean items provided or to be provided by NEC under this Agreement, including Deliverable(s) in City's Integration Agreement, Exhibit E, Statement of Work.

1.1.11   DISPUTE RESOLUTION PROCEDURE

The term "Dispute Resolution Procedure" shall mean and refer to the provisions of Section 17 (Applicable Laws and Dispute Resolution Procedure) describing the procedure for resolving the disputes arising under or with respect to this Agreement.

1.1.12   DOCUMENTATION

The term "Documentation" shall mean any and all written and electronic materials provided by NEC under this Agreement, including, but not limited to, documentation relating to software and hardware specifications and functions, training course materials, specifications including System requirements, technical manuals, handbooks, flow charts, technical information, reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other instructions and reference materials relating to the capabilities, operation, installation and use of the Solution and/or applicable components.

1.1.13   DUE DATE

The term "Due Date" shall mean the due date for the completion of any Deliverable in Project Schedule.

1.1.14   RESERVED

1.1.15   FINAL ACCEPTANCE DATE

The term "Final Acceptance Date" shall mean the date of Final Acceptance.

1.1.16   FIXED HOURLY RATE

The term "Fixed Hourly Rate" shall mean the hourly rate for Professional Services including Consulting Services and programming modifications, as applicable, that NEC may provide, following Final Acceptance, upon Customer's request in the form of Optional Work.

1.1.17   RESERVED

1.1.18   FINAL ACCEPTANCE

The term "Final Acceptance" shall mean Customer's written acceptance of any deliverables, and Services or other work, including System Acceptance Testing, provided by NEC to Customer, pursuant to the mutually agreed upon Acceptance Test Plan.

1.1.19 OPTIONAL WORK

The term "Optional Work" shall mean application modifications, Professional Services and/or Additional Products that may be provided by NEC to Customer, upon Customer's request in accordance with Section 4.4 (Optional Work).

1.1.20 PRICING AND PAYMENT SCHEDULE

The term "Pricing and Payment Schedule" shall mean prices, rates and other fees for Deliverables identified as City's Integration Agreement, Exhibit B Price Schedule.

1.1.21 PRODUCTIVE USE

The term "Productive Use" shall mean the actual use of the Solution in the Customer's operational environment for the performance of Customer's operations.

1.1.22 PROFESSIONAL SERVICES

The term "Professional Services" shall mean professional and/or consulting services that NEC may provide upon Customer's request in accordance with Section 4.4 (Optional Work).

1.1.23 PROJECT MANAGER(S)

The term "Project Manager(s)" shall have the meaning specified in Section 2.1.1 (Project Manager(s)).

1.1.24 PROJECT SCHEDULE

The term "Project Schedule" shall mean the agreed upon timeline for System Implementation and Deliverables specified in City's Integration Agreement, Exhibit E Statement of Work.

1.1.25 SERVICES

The term "Services" shall mean any services provided by NEC under this Agreement including hosting, management, maintenance and support of the Solution.

1.1.26 SERVICE FEE(S)

The term "Service Fee(s)" shall mean the Service Fees to be paid by Customer to NEC for Services performed commencing upon Final Acceptance in accordance with the terms of this Agreement, including City's Integration Agreement, Exhibit B Price Schedule.

1.1.27 SOFTWARE

The term "Software" shall mean the software provided by NEC as part of the Solution, including operating and database software.

1.1.28 SOLUTION

The term "Solution" shall mean the system and services contemplated by this Agreement and as set forth in the Statement of Work.

1.1.29 STATEMENT OF WORK; SOW

The terms "Statement of Work" and "SOW" shall mean the work to be provided by NEC pursuant to this Agreement identified in terms of Services and Deliverables in City's Integration Agreement, Exhibit E Statement of Work.

1.1.30 SYSTEM

The term "System" shall mean the architectural and operational environment for the Solution provided by NEC, including the government community cloud services, provided by Microsoft or Customer meeting the requirements of this Agreement and the Statement of Work and related Documentation, including Software and System Hardware.

1.1.31 SYSTEM ACCEPTANCE TEST; SAT

The terms "System Acceptance Test" and "SAT" shall mean shall mean the System test conducted by NEC under the Statement of Work and Acceptance Test Plan.

1.1.32 RESERVED

1.1.33 RESERVED

1.1.34 SYSTEM HARDWARE

The term "System Hardware" shall mean the hardware and networking equipment, and related Documentation, provided by NEC as part of the Solution, including baseline hardware, hardware upgrades and additional hardware.

1.1.35 SYSTEM IMPLEMENTATION

The term "System Implementation" shall mean system setup, system and system software installation, Data Migration, System Acceptance Tests, training and other work to be provided by NEC under this Agreement.

1.1.36 THIRD PARTY SOFTWARE

The term "Third Party Software" shall mean any software of third parties provided by NEC to Customer under this Agreement as part of the Solution.

1.1.37 TRAINING

The term "Training" shall mean training relating to the Solution to be provided by NEC pursuant to this Agreement, including initial System Training and additional Training that Customer may request as part of Professional Services.

1.1.38 RESERVED

2 ADMINISTRATION OF AGREEMENT

2.1 Key Personnel

2.1.1 Project Manager(s)

NEC and Customer each shall designate a Project Manager ("Project Manager(s)") who will be responsible for ensuring that the technical, business and operational standards and requirements of this Agreement are met.

2.2 Personnel

Customer is responsible for maintaining a list of Customer employees authorized to request changes, and providing such list to NEC as necessary. Customer maintains sole responsibility for informing NEC of Customer employee status changes.

3 CHANGES NOTICES

3.1 General

No representative of either NEC or Customer, including those named in this Agreement, is authorized to make any changes to the Solution, except through the procedures set forth in this Section 3.

3.2 Change Notices

(a) When the Project Manager, or an authorized representative for both parties agree on any change that has no material financial impact (i) on the cost, (ii) scope and/or specifications, each party shall communicate the agreement to such change in writing by Amendment, and the Statement of Work shall be deemed amended effective as of the date of such Amendment.

(b) If changes in design, workmanship, or material are of such a nature as to impact the cost of any part of the work or Services; NEC will use commercially reasonable efforts to evaluate the implications of such change, including, without limitation, the cost and schedule. The Project Manager, or an authorized representative for both parties shall agree upon a reasonable and proper allowance for the adjustment in the cost of the Services to be performed under this Agreement.

(c) Changes made in accordance with the foregoing procedure shall be immediately effective upon execution by each of NEC's and Customer's authorized representative and shall constitute amendments to such Statement of Work and this Agreement.

3.3 Facsimile and Electronic Signatures

NEC and Customer hereby agree to regard facsimile representations of original signatures and electronic signatures of authorized officials of each party, as legally sufficient, and that the parties need not follow up facsimile transmissions and electronic signatures of such documents by subsequent transmissions of "original" versions of such documents.

4   SCOPE OF WORK

In exchange for Customer's payment to NEC of the applicable Service Fees invoiced by NEC and arising under this Agreement, NEC shall (a) provide Services, Deliverables and Optional Work set forth in this Agreement, in accordance with City's Integration Agreement, Exhibit E Statement of Work; and (b) grant to Customer the License to use the Software provided by NEC under the Agreement, as specified in Section 8 (Ownership and License). The System shall be deployed and hosted on Microsoft's Azure Government cloud.

4.1   System Components

NEC will provide the License for Customer to use the Solution in order to meet the system requirements as such may be revised during the term of the Agreement, all in accordance with the provisions of Section 8 (Ownership and License) and the Agreement, pursuant to and as set forth in SOW and other applicable Exhibits.

4.2   System Implementation

NEC shall provide System Implementation Services, including but not limited to System setup, installation, testing, training, baseline customizations and/or baseline interfaces, and other applicable Services, through Final Acceptance of the System, as required for the implementation of the Solution, as specified in the Statement of Work and elsewhere in the Agreement.

4.3   Maintenance

NEC shall, during the term of this Agreement, provide to Customer maintenance and support services, in exchange for Customer's payment of the applicable Service Fees as set forth in City's Integration Agreement, Exhibit B Price Schedule. Service Fees will be paid by Customer to NEC for maintenance periods commencing upon Final Acceptance.

4.4   Optional Work

Upon the written request of Customer, and upon mutual agreement, NEC may provide to Customer Optional Work, including software modifications, Professional Services and/or additional workstations or other Additional Products.

NEC shall provide to Customer a proposed quotation, including the Fixed Hourly Rate, if applicable. NEC's quotation shall be valid for at least ninety (90) days, or a timeframe as NEC may specify at the time of quote submission. Upon Customer's acceptance of the quote and completion of the Optional Work by NEC, this Agreement shall be updated accordingly to add such items of Optional Work by Amendment executed in accordance with Section 3 (Changes Notices).

4.5   Standard of Services

NEC's Services required by this Agreement shall, during the term of the Agreement, conform to reasonable commercial standards as they exist in NEC's profession or field of practice.

4.6   Customer's Acts or Omissions

Customer agrees to provide all information, access and full good faith cooperation reasonably necessary for NEC to deliver and provide the Services under this Agreement. In the event Customer's acts or omissions cause a delay, impact, or failure in NEC's ability to deliver the Services, NEC shall bear no liability whatsoever or otherwise be responsible for such delay, impact, or failure.

5 TERM

5.1 Initial Term

This contract shall begin upon the effective date of the ordinance awarding the contract. This contract shall remain in full force and effect for a (4) four-year period ("Term"), unless sooner terminated in accordance with the provisions of this Agreement. The (4) four-year period consists of a (1) one year implementation period followed by (3) three additional years of maintenance.

5.2 Extended Term

At the end of the Initial Term, at City's option, this contract may be renewed under the same terms and conditions for three (3) additional, one (1) year periods ("Renewal Term"). Renewals shall be in writing and signed by the Director, without additional City Council approval, subject to and contingent upon appropriation of funding therefor, (collectively the "Extended Term and "Initial Term" shall be considered the Term).

6 TERMINATION

6.1 TERMINATION

Either party has the right to terminate this Agreement if the other party materially breaches this Agreement. However, written notice of material breach of this Agreement must first be provided to other party, and the other party shall have the opportunity to cure such breach within thirty (30) days from the date of receipt of the written notice. There is no termination if the breach is cured within the period, or such a cure is impractical within the period, or if the parties otherwise agree not to terminate.

In addition, NEC reserves the right, at NEC's option, to terminate or suspend performance under this Agreement and discontinue providing Services to Customer in the event:

(a) Customer fails to pay the Service Fees when due and such failure shall remain uncured for a period of fifteen (15) days after Customer's receipt of written notice of termination from NEC

(b) Customer violates any law, rule, regulation or policy of any governmental authority in its use of the Solution;

(c) Customer misuse of the Solution in breach of License limitations;

(d) Customer makes a material misrepresentation to NEC in connection with the ordering or delivery of the Services;

(e) Customer engages in any fraudulent use of the Solution;

(f) Customer files bankruptcy or fails to discharge an involuntary petition within sixty (60) days.

Customer understands that pricing under this Agreement, including any discounts, is based upon Customer's commitment to purchase the Services for the entire Term. During the Term, Customer may request an adjustment in the size, capacity and/or scope of the number of hosted components, the acceptance of which shall be accompanied by a commensurate adjustment in the Service Fees and shall be in accordance with Section 3 (Changes Notices).

6.2   Payment in the event of early termination

In the event of any early termination as specified in Section 6.1 (Termination), City shall pay Vendor for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from NEC to Customer. Upon termination, Customer will discontinue use of the Solution.

7   INVOICES AND PAYMENTS

7.1   Invoices

NEC shall invoice Customer in accordance with Exhibit B (Pricing and Payment Schedule) (i) for Services Fees monthly in arrears for maintenance periods commencing upon Final Acceptance, and (iii) for the actual price expended by NEC for any Optional Work, if applicable.

7.2   Delivery of Software

NEC shall provide any Software or Documentation under this Agreement, (i) in an electronic format (e.g., via electronic mail or internet download) or (ii) personally by NEC staff who shall load such Software and Documentation.

Any Software and Documentation that is provided or delivered by NEC to Customer in a tangible format shall be F.O.B. Destination.

7.3   Taxes

Any taxes shall be in addition to the Service Fees listed and if required to be collected or paid by NEC shall be paid by Customer to NEC. If claiming a sales tax or similar exemption, Customer must provide NEC with valid tax exemption certificates.

7.4   Payments

The initial payment date for Service Fees hereunder shall be the first day of the month following Final Acceptance. Thereafter, Customer shall make payment of the Service Fees or any Service Fee Adjustment within thirty (30) days of receipt of an invoice from NEC.

If Customer fails to pay any portion of any invoice by the due date, NEC may charge Customer interest in accordance with the Texas Prompt Payment Act on such undisputed portion.

8   OWNERSHIP AND LICENSE

8.1   Ownership

8.1.1   *Software*

NEC shall own and retains all right, title and interest, worldwide, in any and all proprietary System Hardware, Software, including related Documentation, technology, ideas, methods, processes, know-how, and related Documentation ("NEC Licensed Technology"). NEC Licensed Technology is and shall remain the property of NEC or any rightful third party owner, with which all proprietary rights shall reside, and which shall be subject to the terms of the License granted pursuant to Section 8.2 (License) below. The NEC Licensed Technology is the confidential and copyrighted

property of NEC, or its licensors, and all rights therein not expressly granted to Customer are reserved to NEC, or its licensors. Upon termination or expiration of this Agreement, NEC shall remove all copies or embodiments of NEC Technology from Customer's network and Customer shall immediately cease use of such NEC Licensed Technology.

8.1.2　Customer Data

All Customer Data is and shall remain the property of Customer. NEC safeguards the security of such data with industry standard physical, electronic, and managerial procedures. The field of information security is one in which the risks and threats change daily, although NEC strives to keep Customer Data secure, no security measures are absolute. NEC cannot anticipate each and every threat which can develop in the future and, as such, cannot guarantee that Customer Data will never be disclosed, for example, as the result of unauthorized acts by third parties. NEC will promptly notify Customer if it's determined that NEC experienced a security breach, and that there is a reasonable likely risk of data theft, or other security breach as otherwise required by law.

8.1.3　Vendor License

Microsoft is the vendor of and provides the government community cloud services, which NEC hereby resells to Customer, as part of the Solution. The terms and conditions of the Microsoft license and service are attached hereto as EXHIBIT D Microsoft Cloud Agreement US Government Community Cloud. Customer hereby accepts those terms and conditions unless otherwise agreed upon in an agreement between Customer and Microsoft.

8.2　LICENSE

8.2.1　License Grant

Subject to the applicable provisions and limitations of this Agreement, including but not limited to, the Software License Agreement (City's Integration Agreement Article 4, Software License Grant), the Statement of Work and Section 8 (Ownership and License), NEC hereby grants to Customer a license to use the Software, Third Party Software, including any related Documentation (hereinafter "License"), during the Term. Customer shall also comply with any and all third-party technology licenses utilized in the provisioning of the Services. Additionally, Customer shall use the Solution in strict accordance with applicable, laws, rules, and regulations. Any violation thereof is deemed a material breach of this Agreement.

9　ACCEPTANCE

9.1　SYSTEM ACCEPTANCE TESTING

The Acceptance Test Plan shall be prepared and agreed upon by both parties and is the reflection of the mutually agreed upon Statement of Work. Final Acceptance shall occur upon the date of successful completion of System Acceptance Testing as specified below. Final Acceptance shall be final and not subject to any revocation by Customer.

The System Acceptance Test shall be conducted expeditiously. Within three (3) days of NEC's written notice that the System has been installed and is ready for System Acceptance Testing, NEC's personnel shall begin to conduct System Acceptance Testing. Customer shall complete

the System Acceptance Testing within the timeframe allowed in the Acceptance Test Plan. The System shall be accepted on the date that the Acceptance Test Plan is successfully completed or parties agree to acceptance with a list of deficiencies (punch list) or when the System is in Productive Use by the Customer as provided below, whichever occurs first (the "Final Acceptance Date"). If the System Acceptance Testing discloses operational Deficiencies in the System, the parties shall prepare and mutually agree to a detailed list of all such Deficiencies. NEC shall correct all Deficiencies placed on the list of Deficiencies according to a mutually agreed timeframe. In the event that the System fails to pass System Acceptance Testing as described in the Acceptance Test Plan, Customer shall repeat testing of the deficient items once NEC has made the necessary changes and agree to accept the System either without Deficiency or with a mutually agreed Deficiency list and correction timeframe. Such time period to correct Deficiencies may be extended by mutual consent.

PRODUCTIVE USE

The System shall achieve Go-Live and shall be ready for Productive Use when Customer, approves in writing Deliverables within City's Integration Agreement, Exhibit E Statement of Work. In the event any System Hardware or Software delivered after the date of execution of this Agreement is put into Productive Use by the Customer, notwithstanding any failure to pass any System Acceptance Test, and such Productive Use extends for a cumulative duration in excess of sixty (60) days, then the Solution shall be deemed accepted.

10   WARRANTIES

10.1   General Warranties

 (a) NEC warrants that the Services provided to Customer shall substantially conform to the service level guarantees within the Statement of Work attached as City's Integration Agreement, Exhibit E .

 (b) NEC warrants that its personnel are adequately trained and competent to perform the Services and that the Services shall be performed in a professional manner in accordance with industry standards.

11   LIMITATION OF LIABILITY

11.1   LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS AND LOST SAVINGS) SUFFERED OR INCURRED BY SUCH OTHER PARTY IN CONNECTION WITH THE SERVICES, OR ANY OTHER MATTER COVERED BY THIS AGREEMENT, REGARDLESS OF THE FORM OR THEORY OF THE ACTION, (INCLUDING NEGLIGENCE), EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ABOVE LIMITATION, HOWEVER, DOES NOT APPLY TO DAMAGES TO NEC CAUSED BY CUSTOMER'S BREACH OF THE LICENSE LIMITATIONS OR USE OF THE SOLUTION IN VIOLATION OF APPLICABLE LAWS, RULES OR REGULATIONS.

12 CONFIDENTIALITY

12.1 Confidentiality

The parties acknowledge that, during the Term of this Agreement, each party may provide the other with or otherwise expose the other party to confidential and/or proprietary information, including but not limited to data, information, ideas, materials, specifications, procedures, software, technical processes and formulas, product designs, sales, cost and other unpublished financial information, product and business plans, usage rates, marketing data or other relevant information clearly intended to be confidential (collectively, "Confidential Information").   The parties agree that all Confidential Information disclosed by the other party shall be held in confidence and used only in performance of Services under this Agreement, and shall not be disclosed to any third parties other than NEC's subcontractor for this Services.   The receiving party shall exercise the same standard of care to protect such Confidential Information as is used to protect its own proprietary data, but in no event, less than a reasonable standard of care. The existence and terms of this Agreement shall be held confidential by each party, as shall each party's confidential or proprietary information. NEC's performance, discounts, and prices under this Agreement or other correspondence between the parties, the quality of NEC's Services, and any data provided by NEC to Customer regarding performance of NEC's Services shall be deemed NEC's Confidential Information.

12.2 Exclusions

Confidential Information shall not include information which: (i) is or becomes known publicly through no fault of the receiving party; (ii) is learned by the receiving party from a third party entitled to disclose it; (iii) is already known to the receiving party before receipt from the disclosing party; (iv) is independently developed by the receiving party; or (v) must be disclosed by operation of law. The receiving party shall promptly notify the disclosing party of any such request for disclosure in order to allow the disclosing party full opportunity to seek the appropriate protective orders. In addition, NEC shall not be required to keep confidential any ideas, concepts, know-how, or techniques of general application relating to information monitoring, management or security submitted to NEC or developed by NEC personnel, either alone or jointly with Customer's personnel.

12.3 RESERVED

13 INDEPENDENT CONTRACTOR STATUS

NEC IS AN INDEPENDENT CONTRACTOR. THE PERSONNEL OF ONE PARTY SHALL NOT IN ANY WAY BE CONSIDERED AGENTS OR EMPLOYEES OF THE OTHER. TO THE EXTENT PROVIDED FOR BY LAW, EACH PARTY SHALL BE RESPONSIBLE FOR THE ACTS OF ITS OWN EMPLOYEES.   EACH PARTY SHALL BE RESPONSIBLE FOR WORKERS' COMPENSATION COVERAGE FOR ITS OWN PERSONNEL.

14 RISK OF LOSS

NEC shall pass risk of loss to Customer upon delivery. All Deliverables will be shipped via CPT destination. NEC will select the carrier for shipment and NEC will bear the shipping costs.

15   RECORDS AND AUDITS

To ensure compliance with this Agreement, including the Software License Agreement, upon thirty (30) days written notice, Customer grants to NEC and its agents the right to audit Customer's use of the Solution.

16   APPLICABLE LAWS AND DISPUTE RESOLUTION PROCEDURE

(a) This Agreement shall be deemed to be made in, and shall be construed in accordance with the laws of, the State of Texas. The Uniform Computer Information Transactions Act does not apply to this Agreement or any change order.

(b) Each party agrees to provide the other party with written notice ten (10) Business Days of becoming aware of any controversy or claim arising out of or relating to this Agreement, or breach thereof. Each party agrees to cooperate in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with NEC's appointed senior representative. Senior representatives will convene within ten (10) Business Days of the written dispute notice, unless otherwise agreed. Notwithstanding Article 8 of the Integration Agreement, if Customer, in its sole discretion, decides to attempt to settle a controversy or claim in arbitration it shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Dispute Resolution Procedure"). Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(c) Before a demand for arbitration may be filed by either party, the management of both Parties shall have met at least two times in face-to-face meetings in an effort to resolve any dispute or controversy through normal business management practices. Unless otherwise agreed to in writing, a minimum of one meeting shall take place at each party's home office location.

(d) The arbitrator(s) shall have no power or authority to add to or detract from this Agreement of the parties. The arbitrator(s) shall have no authority to award damages over and above those provided for in this Agreement and in any event shall not exceed the limitations set forth herein, even if the remedy or limitation of liability provisions set forth in this Agreement shall for any reason whatsoever be held unenforceable or inapplicable.

(e) Neither party nor the arbitrator(s) may disclose the existence or results of any arbitration hereunder, except if the arbitration results in a Court imposed judgment, the non-disclosure restriction shall not be effective to the extent the matter becomes a public record.

(f) Each party shall bear its own costs in preparing for and conducting arbitration, except that the joint costs, if any, of the actual arbitration proceeding shall be shared equally by the parties.

(g) Notwithstanding the existence of a dispute, each party will continue without delay to carry out all responsibilities under the Agreement that are not affected by the dispute.

17   CUSTOMER ACKNOWLEDGEMENTS

(a) Customer agrees not to (i) rent, lease, or loan the Service or any part thereof, or provide or use the Service on a third party's behalf, if applicable; (ii) permit third parties to benefit from the use of the Service; (iii) reverse engineer, decompile, or disassemble any Software that

provides the Service, or otherwise attempt to derive the source code of such Software; or (iv) download, export, or re-export any Software or technical data received hereunder, regardless of the manner in which received, without all required United States and foreign government licenses.

(b) Customer complies with any applicable laws and regulations for using the Services and is solely responsible for complying with the legal obligations of all local country data protection legislation, in particular with the legality of transmission of data to NEC and the legal requirements for processing of data.

(c) Customer is responsible for the management and maintenance of any non-hosted components according to their respective manufacturer specifications.

(d) Customer agrees to provide all information, access and in good faith cooperate with NEC to deliver and provide the Services and agrees that NEC's delivery of the Services depends upon the Customer's timely cooperation and assistance as NEC may require. NEC shall bear no liability or otherwise be responsible for delays or failure in the provision of the Services caused by the Customer's failure to provide such cooperation, assistance or access.

(e) Customer acknowledges that export laws and regulations of the United States and other relevant local export laws and regulations apply to the Solution. Customer agrees that such export control laws govern Customer's use of the Solution and Customer agrees to comply with all such export laws and regulations (including "deemed export" and deemed "re-export" regulations.) Customer agrees not export or re-export any System Hardware and/or Software outside of the jurisdiction in which you obtained it without the appropriate United States or foreign government licenses.

18   ASSIGNMENT

This Agreement may not be assigned in whole or in part by either party, without the further consent written consent of the other party, which shall not be unreasonably withheld.

19   WAIVER, VALIDITY AND SEVERABILITY

19.1   Waiver

The failure by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated shall not be construed as a waiver of any such default or right to which the other Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

19.2   Validity

The invalidity of any provision of this Agreement shall not render the other provisions hereof invalid, unenforceable or illegal, unless the essential purposes of this Agreement shall be materially impaired thereby.

19.3   Severability

In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, if practicable, and shall in no way affect, impair or invalidate any other provision

contained herein. If any such provision shall be deemed invalid in its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. If any provision of this Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective.

20   NOTICES

NOTICE TO PARTIES

ALL NOTICES UNDER THIS AGREEMENT SHALL BE DELIVERED PERSONALLY, SENT BY CONFIRMED FACSIMILE TRANSMISSION, SENT BY NATIONALLY RECOGNIZED EXPRESS COURIER, OR SENT BY CERTIFIED OR REGISTERED U.S. MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS SHOWN BELOW OR SUCH OTHER ADDRESS AS MAY BE SPECIFIED BY EITHER PARTY TO THE OTHER PARTY IN COMPLIANCE WITH THIS SECTION. NOTICES SHALL BE DEEMED EFFECTIVE ON PERSONAL RECEIPT, RECEIPT OF SUCH ELECTRONIC FACSIMILE WITH CONFIRMATION, TWO (2) DAYS AFTER SUCH DELIVERY BY COURIER, OR FOUR (4) DAYS AFTER SUCH MAILING BY U.S. MAIL, AS THE CASE MAY BE. NOTICES SHALL BE SENT AS FOLLOWS:

Notices to NEC shall be addressed to:

NEC Corporation of America
3929 W. John Carpenter Frwy
Irving, TX 75063
Attn: Legal Division – Contract Administration Department

With a copy to:

NEC Corporation of America
10850 Gold Center Drive, Suite 200
Rancho Cordova, California 95670
Attn: SVP, Biometrics

Notices to Customer shall be addressed to:

City of San Antonio

Police Department

P.O. Box 839966

San Antonio, Texas 78283-3966

With a copy to:

City of San Antonio

Finance Department, Purchasing Division

P.O. Box 839966

San Antonio, Texas 78283-3966

21 CAPTIONS AND SECTION HEADINGS

Captions and section headings used in this Agreement are for convenience only, are not a part of this Agreement, and shall not be used in construing this Agreement. If there is a conflict when referencing a section in this Agreement, between the section heading title and its number, the section heading title shall control.

22 FORCE MAJEURE

Should performance of any obligation created under this Agreement become illegal or impossible by reason of fire, flood, storm, epidemic, pandemic, or other national or regional emergency, act of God, governmental authority, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or any other cause not enumerated herein but which is beyond the reasonable control of the Party whose performance is affected, then such performance is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to remove the cause of force majeure**.**

23 NOTICE OF DELAYS

Exception as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within ten (10) Business Days, give notice thereof, including all relevant information with respect thereto, to the other party.

EXHIBIT C

NEC CORPORATION OF AMERICA

SOFTWARE LICENSE AGREEMENT

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. THE USE OF THE SOFTWARE WHICH IS LICENSED BY NEC CORPORATION OF AMERICA AND ITS LICENSORS TO YOU, FOR YOUR USE ONLY DURING THE TERM OF THE AGREEMENT AND AS SET FORTH BELOW.

1. LICENSE GRANT

    Subject to the terms of this license and payment of the applicable license fees, NEC grants Customer a (subject to Section 6 (Termination) in Agreement), non-exclusive, non-transferable license for the following:

    System License – to use the Software, including any System Documentation furnished under this Agreement, for Customer's own internal use on the Equipment;

    Unit License – to install and use a copy of the Software on your workstation or mobile devices ("Units"), up to the permitted number of Units. The permitted number of Units shall be delineated at such time as Customer's elects to license the Software.

    Archive License – If Archive component is included with your Software, the total number of users permitted to use the Archive component of the Software at the same time may not exceed the number of users delineated at such time as Customer's elects to license the Software.

2. RESTRICTIONS

    CUSTOMER MAY NOT DO THE FOLLOWING: (I) MODIFY, ADAPT, TRANSLATE OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE; (II) REVERSE ENGINEER, DECOMPILE, DISASSEMBLE OR OTHERWISE ATTEMPT TO DISCOVER THE SOURCE CODE OF THE SOFTWARE EXCEPT TO THE EXTENT YOU MAY BE EXPRESSLY PERMITTED TO REVERSE ENGINEER OR DECOMPILE UNDER APPLICABLE LAW; (III) SELL, RENT, LEASE, TIMESHARE, PROVIDE SUBSCRIPTION SERVICES, LEND, SUBLICENSE, DISTRIBUTE, ASSIGN OR OTHERWISE TRANSFER ANY RIGHTS IN THE SOFTWARE; AND (IV) DISCLOSE OR PUBLISH RESULTS OF ANY BENCHMARK TESTS OF ANY SOFTWARE TO ANY THIRD PARTY WITHOUT NEC'S PRIOR WRITTEN CONSENT. CUSTOMER MAY MAKE ONE BACKUP COPY OF THE SOFTWARE PROVIDED YOUR BACKUP COPY IS NOT INSTALLED OR USED UNTIL NEEDED. CUSTOMER MAY NOT TRANSFER THE RIGHTS TO A BACKUP COPY.

3. INTELLECTUAL PROPERTY OWNERSHIP, RESERVATION OF RIGHTS

    CUSTOMER ACKNOWLEDGES AND AGREES THAT (I) NEC AND ITS LICENSORS OWN AND SHALL RETAIN ALL RIGHTS, TITLE AND INTEREST IN AND TO THE SOFTWARE, INCLUDING WITHOUT LIMITATION, ALL INTELLECTUAL PROPERTY RIGHTS EMBODIED THEREIN; AND (II) THE SOFTWARE'S STRUCTURE,

ORGANIZATION, SEQUENCE AND SOURCE CODE ARE THE VALUABLE TRADE SECRETS AND CONFIDENTIAL INFORMATION OF NEC AND/OR ITS LICENSORS. THE SOFTWARE IS PROTECTED BY LAW, INCLUDING WITHOUT LIMITATION THE COPYRIGHT LAWS OF THE UNITED STATES AND OTHER COUNTRIES, AND BY INTERNATIONAL TREATY PROVISIONS. EXCEPT AS EXPRESSLY STATED HEREIN, THIS LICENSE DOES NOT GRANT CUSTOMER ANY INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE AND ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY NEC AND ITS LICENSORS. CUSTOMER AGREES NOT TO REMOVE OR OBLITERATE ANY COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS NOTICES CONTAINED IN OR ON THE SOFTWARE.

4. THIRD PARTY BENEFICIARIES

CUSTOMER ACKNOWLEDGES AND AGREES THAT NEC'S LICENSORS ARE DIRECT AND INTENDED THIRD PARTY BENEFICIARIES OF THIS SOFTWARE LICENSE AGREEMENT.

5. TERMINATION

THIS LICENSE WILL TERMINATE IMMEDIATELY BY NEC AS SPECIFIED IN SECTION 6 (TERMINATION) OF THE AGREEMENT, UPON SUCH TERMINATION, YOU SHALL IMMEDIATELY REMOVE AND DESTROY ALL COPIES OF THE SOFTWARE OR ANY PARTS THEREOF.

6. LIMITED WARRANTY

EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NEC AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT OF THIRD PARTY RIGHTS. NEC DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OPERATE IN COMBINATION WITH OTHER PRODUCTS NOT PROVIDED BY NEC, BE UNINTERRUPTED, OPERATE ERROR FREE OR THAT THE ERRORS WILL BE CORRECTED.

7. LIMITATION OF LIABILITY

IN NO EVENT SHALL NEC OR IT'S LICENSORS BE LIABLE TO CUSTOMER FOR (I) ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR (II) ANY DAMAGES OR COSTS RESULTING FROM LOSS OF USE, GOODWILL, DATA, SAVINGS OR PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE WHICH MAY ARISE OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE. IN NO EVENT WILL NEC'S OR IT'S LICENSORS' AGGREGRATE LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY, EXCEED THE SERVICE FEES PAID BY CUSTOMER.

8. U.S. GOVERNMENT RIGHTS

THE SOFTWARE WAS DEVELOPED ENTIRELY AT PRIVATE EXPENSE. THE SOFTWARE LICENSED UNDER THIS AGREEMENT IS "COMMERCIAL COMPUTER SOFTWARE" AS THE TERM IS DESCRIBED IN 48 C.F.R. 252.227-7014(A)(1). IF

ACQUIRED BY OR ON BEHALF OF A CIVILIAN AGENCY, THE U.S. GOVERNMENT ACQUIRES THIS COMMERCIAL COMPUTER SOFTWARE AND/OR COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION SUBJECT TO THE TERMS OF THIS AGREEMENT AS SPECIFIED IN 48 C.F.R. 12.212 (COMPUTER SOFTWARE) AND 48 C.F.R. 12.211 (TECHNICAL DATA) OF THE FEDERAL ACQUISITION REGULATIONS ("FAR") AND ITS SUCCESSORS. IF ACQUIRED BY OR ON BEHALF OF ANY AGENCY WITHIN THE DEPARTMENT OF DEFENSE ("DOD"), THE U.S. GOVERNMENT ACQUIRES THIS COMMERCIAL COMPUTER SOFTWARE AND/OR COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION SUBJECT TO THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT AS SPECIFIED IN 48 C.F.R. 227.7202-3 OF THE DOD FAR SUPPLEMENT ("DFAR") AND ITS SUCCESSORS.

9. EXPORT

THE SOFTWARE SUPPLIED BY NEC UNDER THIS AGREEMENT IS SUBJECT TO EXPORT CONTROLS UNDER THE LAWS AND REGULATIONS OF THE UNITED STATES. CUSTOMER SHALL COMPLY WITH SUCH LAWS AND REGULATIONS GOVERNING EXPORT AND RE-EXPORT AND WILL OBTAIN ALL REQUIRED U.S. AND LOCAL AUTHORIZATIONS, PERMITS OR LICENSES.

10. GOVERNING LAW

THIS SOFTWARE LICENSE AGREEMENT WILL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, EXCLUDING THE APPLICATION OF ITS CONFLICTS OF LAW RULES. THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT DOES NOT APPLY TO THIS AGREEMENT.

EXHIBIT D

Microsoft Cloud Agreement
US Government Community Cloud

This Microsoft Cloud Agreement is incorporated into the Government Contract entered into between the customer who is a Government entity ("Customer") and the person or entity who has entered into a prime contract with the Customer ("Contractor") as an addendum and governs Customer's use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the "agreement"). It is effective on the date that the Contractor provisions the Customer's Subscription. Key terms are defined in Section 9.

1. ***Grants, rights and terms.***

   All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

   a. **Software.** Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.

      i. **Use Rights.** The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

      ii. **Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.

   b. **Online Services.** Customer may use the Online Services as provided in this agreement.

      i. **Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.

      ii. **Suspension.** Microsoft may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.

iii. **End Users.** Customer controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.

iv. **Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

v. **Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services.

Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.

c. **Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

d. **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

e. **Preview releases**. Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available" and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."

f. **Verifying compliance for Products.**

    i. **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third- party audit.

    ii. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then within 30 days Customer must order sufficient licenses to cover its use. If unlicensed use or distribution is 5% or more, the Customer may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Customer from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

    iii. **Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

2. *Subscriptions, ordering.*

a. **Available Subscription offers**. The Subscription offers available to Customer will be established by the Government Contract and generally can be categorized as one or a combination of the following:

    i. **Online Services Commitment Offering**. Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

    ii. **Consumption Offering (also called Pay-As-You-Go)**. Customer pays based on actual usage with no upfront commitment.

iii. **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example,   MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

iv. **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

b. **Ordering.**

i. Orders must be placed through the Contractor. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

ii. The Contractor may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

c. **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by the Contractor.

d. **Renewal.**

i. Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.

ii. Customer's Subscription will automatically renew unless Customer provides the Contractor   notice of its intent not to renew prior to the expiration of the Term.

e. **Eligibility for Academic, Government and Nonprofit versions.** Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:

i. For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at http://go.microsoft.com/academic;

    ii.   For   government   offers,   the   requirements   listed   at http://go.microsoft.com/government; and

    iii.   For nonprofit offers, the requirements listed at http://go.microsoft.com/nonprofit.

Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.

f. **Taxes**. The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.

3. *Term, termination.*

a. **Agreement term and termination.** This agreement will remain in effect until the expiration or termination of the Government Contract, whichever is earliest.

b. **Cancel a Subscription.** The Government Contract will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.

4. *Security, privacy and data protection.*

a. **Reseller Administrator Access and Customer Data.** Customer acknowledges and agrees that the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Contractor; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Contractor's administrative privileges; (iii) the Contractor's privacy practices with respect to Customer Data or any services provided by the Contractor are subject to the terms of the Government Contract and may differ from Microsoft's privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing the Contractor with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

b. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

c. Additional privacy and security details are in the Online Services Terms. The

commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor.

d. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Customer shall obtain the users' consent to the same.

e. Customer appoints the Contractor as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

5. *Warranties.*

   a. **Limited warranty.**

      i. **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.

      ii. **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA.

      The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

   b. **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

   c. **Disclaimer. Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.**

6. *Defense of third party claims.*

   a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used

within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim.

b. **Customer's agreement.** Customer agrees that use of Customer Data or non-Microsoft software Microsoft provides or otherwise makes available on Customer's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's trade secret. In addition, Customer will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Customer's use of the Product or Fix, Microsoft will seek to obtain the right for Customer to keep using it or modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Customer's right to the Product or Fix and refund any amounts Customer has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

d. **Other terms.** Customer must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement (provided that for any Federal Agency Customers, the control of the defense and settlement is subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in helping. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Customers, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

7. *Limitation of liability.*

a. For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

b. **Online Services.** For Online Services, Microsoft's maximum liability to Customer for

any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.

c. **Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US$5,000.

d. **Exclusions. In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.**

e. **Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6; or (2) violation of the other's intellectual property rights.

For Customers that are Federal Agencies, this Section shall not impair the Customer's right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

8. *Miscellaneous.*

a. **Notices.** You must send notices by mail, return receipt requested, to the address below.

Notices should be sent to:	Copies should be sent to:
Microsoft Corporation Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329	Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329

Customer agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not Customer actually receives the email.

b. **Assignment.** Customer may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without Customer's consent, but only to one

of Microsoft's Affiliates. Any prohibited assignment is void.

c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

e. **No agency.** This agreement does not create an agency, partnership, or joint venture.

f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.

g. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for   their performance, subject to the terms of this agreement.

h. **Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.

i. **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

j.   **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will   control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.

k. **Survival.** All provisions survive termination of this agreement except that requiring performance only during the term of the agreement.

l. **U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination   restrictions   issued   by   U.S.   and   other governments related to Microsoft products, services, and technologies.

m. **Force majeure**. .Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of   regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services). This Section will not, however, apply to your payment obligations under this agreement.

n. **Contracting authority.** If you are an individual accepting these terms on behalf of an

entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

o. **Additional Terms Applicable when the Customer is a U.S. Federal Agency.**

i. No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or authorized officer of Customer purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

ii. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of your license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than Federal law; and/or (4) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

9. *Definitions.*

Any reference in this agreement to "day" will be a calendar day.

"Acceptable Use Policy" is set forth in the Online Services Terms.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity. "Community" means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Customer Data" is defined in the Online Services Terms.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.   "Fix" means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.   "Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms. "Government Contract" means the binding agreement between the Contractor and Customer under which Customer orders Products from the Contractor and the Contractor binds Customer to the terms of this agreement.

"Licensing Site" means http://www.microsoft.com/licensing/contracts or a successor site. "Non-Microsoft Product" is defined in the Online Services Terms.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this   agreement, including Government Community Cloud Services, Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the Licensing Site and updated from time to time.

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

"Product Terms" means the document that provides information about Microsoft Products and Professional   Services available through volume licensing. The Product Terms document is published on the Licensing Site and is updated from time to time.

"SLA" means Service Level Agreement, which specifies the minimum service level for the Online Services and   is published on the Licensing Site.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state' jurisdiction and geographic boundaries.

"Software" means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

"Subscription" means an enrollment for Online Services for a defined Term as established by your Reseller. "Term" means the duration of a Subscription (e.g., 30 days or 12 months).

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.