

## NEC UNIVERGE BLUE® AGENCY PARTNER AGREEMENT

**CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND NEC CLOUD COMMUNICATIONS AMERICA, INC. ONLY AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MAY ACCEPT THIS AGREEMENT ON BEHALF OF YOUR COMPANY. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, YOU DO NOT HAVE PERMISSION TO USE OR MARKET NEC SERVICES AND DO NOT HAVE ANY OF THE OTHER RIGHTS SET FORTH BELOW.**

By accepting this Agreement between Agency Partner (defined below) and NEC (defined below) – by clicking “I Agree and Continue” – Agency Partner agrees to be bound by all of the terms and conditions of (i) this Agency Partner Agreement with NEC and (ii) NEC’s Privacy Policy (collectively, this “Agreement”).

NEC’s Privacy Policy is expressly incorporated herein by reference, and a current copy is located at <https://www.univerge.blue/legal>.

If Agency Partner does not agree to the terms in this Agreement, then (i) Agency Partner must click “I Decline” or close the browser and (ii) Agency Partner does not have NEC’s permission to market any of the NEC Products. If you are an individual entering into this Agreement on behalf of Agency Partner, you represent and warrant that you have the authority to bind Agency Partner to this Agreement, that you have reached the age of majority in your jurisdiction (generally, 18 years of age) and you have the required capacity to enter into this agreement on behalf of Agency Partner.

**DEFINITIONS.** For the purposes of this Agency Partner Agreement, the following definitions apply:

“Account” means any account on the Agency Partner Portal created by or used by Agency Partner and its Authorized Representatives.

“Agency Partner” means the individual or Entity on whose behalf this Agreement is accepted.

“Agency Partner Account Information” means information that, alone or in combination with other information, can provide an individual with access to any portion of Agency Partner’s Account, including but not limited to Agency Partner’s Account number, login names, passwords, financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Agency Partner Account Information will include any of the foregoing information related to accounts of Authorized Representatives.

“Agency Partner Commission” means all one-time and recurring payments and commissions that are contemplated, pursuant to Exhibit A, to be paid by

NEC to Agency Partner in connection with sales of NEC Products.

“Agency Partner Data” means all data submitted by Authorized Representatives to NEC in connection with this Agreement, including all Agency Partner Account Information, content, material, IP and similar addresses, Account information and Account-related settings.

“Agency Partner ID” means the unique ID provided by NEC to Agency Partner, that Agency Partner provides to prospective End Users to identify Agency Partner during the End Users’ agreement execution process. The Agency Partner ID may be in the form of a code, an encrypted link or another form determined by NEC.

“Agency Partner Portal” means the on-line interface operated by NEC through which NEC may make available to Agency Partner accounting information, marketing materials, End User tracking, or other information or materials that relate to the subject matter of this Agreement and through which Agency Partner may make available to NEC certain information related to Agency Partner’s Account, such as contact or payment information.

“Authorized Representative” means any of Agency Partner’s employees, representatives, consultants or independent contractors whom Agency Partner authorizes to assist it in carrying out its duties or exercise its rights under this Agreement.

“End User” means an Entity that purchases or subscribes to NEC Products.

“Entity” means a company, corporation, partnership, association, trust, unincorporated organization, government or political subdivision or any other legal entity.

“Material Gross Breach” means (a) an unlawful or willful effort taken by Agency Partner that defrauds NEC or the End User or (b) any mishandling, misuse or negligent care of PII. This type of breach will be cause for immediate termination by NEC and the other remedies set forth herein.

"NEC" means NEC Cloud Communications America, Inc., an affiliate company of NEC Corporation of America.

"NEC Parties" means NEC's affiliates (including parents and subsidiaries), vendors, licensors and partners, and its officers, employees, agents and representatives.

"NEC Products" has the meaning assigned to such term on Exhibit A attached hereto.

"Personally Identifiable Information" or "PII" means information that could be used on its own to directly identify, contact or precisely locate an End User, such as End Users' names, mailing addresses, email addresses or telephone numbers. The term may also include electronic addresses in combination with any of the following: passwords, social security numbers, credit card numbers or other credit or bank account data, precise location information, all device or other identification numbers issued to End Users, all electronic serial numbers, MAC addresses, all automatic identification information and all information described in the FCC's definition of "Customer Proprietary Network Information" as set forth in 47 U.S.C. Section 222(h)(1) (as amended and interpreted from time to time) and its implementing regulations (but subject to the exceptions set forth in 47 U.S.C. Section 222 as amended and interpreted from time to time). For purposes of clarification, the term "PII" does not include IP addresses, pseudonymous cookie IDs, pseudonymous advertising IDs or other pseudonymous End User identifiers.

"Triggering Contract" means an agreement that is: (i) agreed to between NEC and an End User and in which NEC agrees to provide the End User with NEC Products, and (ii) accompanied by a valid Agency Partner ID during the agreement acceptance or execution process. The term "Triggering Contract" excludes agreements between NEC and existing End Users.

## 1. GRANT OF RIGHTS; ACCOUNT INFORMATION.

1.1 Grant of Rights. NEC hereby grants to Agency Partner a nonexclusive, revocable, personal, non-transferable and non-assignable right to market the NEC Products to prospective End Users, subject to the terms and conditions of this Agreement. A breach of this Agreement by any Authorized Representative will be deemed to be a breach by Agency Partner.

1.2 Designated Contact. Agency Partner will designate an individual to serve as the primary contact with NEC for all matters relating to

this Agreement. Agency Partner may change such designated individual by providing notice to NEC.

1.3 Agency Partner Portal. NEC grants to Agency Partner a non-exclusive, non-transferable, non-sublicensable (except to Authorized Representatives) right and license, solely during the term of this Agreement, to use the Agency Partner Portal made available by NEC to Agency Partner solely for the purposes of performing under this Agreement and subject to the terms and conditions of this Agreement, NEC's Acceptable Use Policy, a current copy of which is available at <https://www.univerge.blue/legal> ) and other policies, terms, and conditions that NEC may publish from time to time. The collection, use, and disclosure of information through any Agency Partner Portal is governed by NEC's Privacy Policy (a current copy of which is available at <https://www.univerge.blue/legal> ).

1.4 Account Information. All information related to Agency Partner's Account (including contact and payment information) will remain accurate and up-to-date at all times.

1.5 Account Security and Activity. Agency Partner is solely responsible for: (i) maintaining the confidentiality and security of Agency Partner Account Information, and (ii) all activities that occur in connection with Agency Partner's Account. Agency Partner will notify NEC immediately of any unauthorized use of Agency Partner's Account, Agency Partner Account Information, Agency Partner ID or any other actual or potential breach of security of NEC Products. Agency Partner will indemnify NEC for losses resulting from such failure to maintain confidentiality and security.

## 2. AGENCY PARTNER REPRESENTATIONS AND DUTIES.

2.1 Representations, Warranties, and Obligations. Agency Partner:

(a) will use commercially reasonable efforts to promote the NEC Products to prospective End Users;

(b) will not send SPAM or unsolicited e-mails and communications (whether personalized or bulk, personal or commercial) in promoting NEC or any NEC Product;

(c) will comply with all applicable laws and regulations, including without limitation anti-corruption and anti-bribery laws and regulations, such as the U.K. Bribery Act and the U.S. Foreign Corrupt Practices Act, as amended;

(d) will accept reasonable sales and marketing direction from NEC in marketing NEC Products;

(e) will maintain and provide NEC reasonable access to any and all of Agency Partner's records and documentation regarding the marketing of NEC Products and performance under this Agreement;

(f) has the legal right to enter into and perform the obligations set forth in this Agreement;

(g) will not misrepresent the features, performance specifications or other components of NEC's services or any agreements, including but not limited to Master Service Agreements, Service Level Agreements, Schedules, and the Privacy Policy, covering NEC's services; and

(h) will use, share, safeguard and destroy PII only in accordance with Section 6 of this Agreement, and will notify NEC of any breach of PII in accordance with Section 6 of this Agreement.

### 3. NEC PRODUCTS.

3.1 Ownership; Modifications. Ownership of the NEC Products and any software made available in connection with the NEC Products, is retained by NEC or its licensors. NEC retains the right to modify any features of the NEC Products in its sole discretion or may cease offering a particular NEC Product at any time in its sole discretion. Agency Partner shall have no rights arising from any such change to the NEC Products.

3.2 Training. NEC may, in its sole discretion, provide training to Agency Partner with respect to the NEC Products.

### 4. AUTHORITY; INDEPENDENT CONTRACTORS.

Neither party will have any authority, and neither party will represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other party. Agency Partner is neither a distributor of NEC Products nor an agent with authority to bind NEC. Agency Partner will not: (i) make any representations or promises or provide any warranties related to the NEC Products except with the express written permission of NEC, (ii) enter into any agreement with a prospective End User on behalf of NEC, (iii) enter into, or attempt to enter into, any agreement with NEC on behalf of any prospective or existing End User, including a Triggering Contract, or (iv) modify, or attempt to modify, the terms of the

Triggering Contract directly or indirectly, orally or in writing. Each party is an independent contractor, and this Agreement will not be construed as creating a partnership, joint venture, agency, or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party.

### 5. PAYMENT.

5.1 Agency Partner Commission. NEC will pay Agency Partner applicable Agency Partner Commissions, subject to Agency Partner's compliance with the terms and conditions of this Agreement, in accordance with Exhibit A.

5.2 Triggering Contracts. NEC will not be required to supply any NEC Product to any prospective End User or to enter into any Triggering Contract. Triggering Contracts will be between NEC and the relevant End User, with NEC having full contract approval and final pricing control.

5.3 Payment Disputes. In the event of any dispute between NEC and Agency Partner, or between Agency Partner and a third party, that relates to (i) the determination of whether a contract is a Triggering Contract, (ii) the determination as to whether an Agency Partner Commission is payable to Agency Partner, (iii) NEC accounts or (iv) NEC products and services, NEC may resolve such dispute in its sole discretion. Agency Partner will notify NEC of any dispute relating to any Agency Partner Commissions paid or payable to Agency Partner by notifying NEC's customer service department in writing at [univergebluebilling@necam.com](mailto:univergebluebilling@necam.com) within sixty (60) days of the date the disputed Agency Partner Commissions were or should have been paid. Agency Partner waives all rights to dispute any Agency Partner Commissions not disputed by written notice as required above. Agency Partner agrees that in any such dispute: (a) NEC's records will control, and (b) Agency Partner will supply NEC with any information or documentation reasonably requested by NEC for the purpose of resolving such dispute.

5.4 Additional Payment Terms. All taxes imposed in connection with the payment of any Agency Partner Commission will be the responsibility of Agency Partner. Agency Partner Commissions payable hereunder will be made via ACH (Automated Clearing House) in US Dollars. It is Agency Partner's responsibility to timely and accurately complete and submit to NEC the ACH Vendor Payment Authorization Form included as

part of this Agreement, as well as to notify NEC in writing of any changes to such information by submitting an updated copy of such form. Agency Partner Commissions are paid monthly and only when Agency Partner's account has reached a minimum Agency Partner Commission due of one hundred dollars (\$100.00). Accounts with a balance of less than the minimum will not be paid that month. The unpaid balance will roll over to the subsequent month until the accrued Agency Partner Commissions payable to such account equal at least one hundred dollars (\$100.00). NEC will have no obligation to pay any Account Commission prior to Agency Partner providing NEC a fully completed Form W-9 (or substitute form if so required by applicable law), which may be completed and submitted online through NEC's Agency Partner Portal.

## 6. CONFIDENTIAL INFORMATION.

6.1 Confidential Information. "Confidential Information" is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Subject to the exclusions set forth below, NEC's Confidential Information will include the source code comprising NEC Products (and any portion thereof), the terms and conditions of this Agreement and all related forms and support records (written or electronic), as well as NEC's business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by NEC. Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. Confidential Information will not include information provided to NEC by Agency Partner that is Agency Partner Data or that is defined as "Information" in NEC's Privacy Policy, and the collection, use, storage and disclosure of any such information shall be solely governed by NEC's Privacy Policy. Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Section 6 shall, under any circumstances, restrict NEC from contacting End Users of NEC Products for any

purpose, at any time during the term or following termination of expiration of this Agreement.

6.2 Protection of Confidential Information. Except as otherwise permitted by this Agreement or in writing by the Disclosing Party, the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement.

## 6.3 Agency Partner's Use and Handling of PII.

(a) Agency Partner will only use PII for non-marketing and administrative purposes unless informed in writing by NEC of the subset of PII that can be used for marketing purposes.

(b) Under no circumstances will Agency Partner share PII with any person or entity other than NEC or the End User.

(c) Agency Partner will implement acceptable physical, technical and managerial safeguards to protect the integrity of any PII that Agency Partner accesses. All reasonable precautions shall be taken to secure PII from entities and individuals who do not specifically have authorized access. Apart from the End User, the only parties with authorized access are the Agency Partner and NEC.

(d) Breach Notification. Agency Partner shall promptly notify NEC of any breach, impermissible use, or disclosure ("Breach Event") of PII within twenty-four (24) hours of any such Breach Event. Written notification of the Breach Event shall be provided to [NECBlue-Breach@Necam.com](mailto:NECBlue-Breach@Necam.com).

(e) Destruction of PII. All PII accessed or stored by Agency Partner, in any form or on any media, shall be destroyed by Agency Partner upon the occurrence of one of the following events: (i) at the request of NEC within the timeframe specified by NEC in its request (or, if no timeframe is identified by NEC in its request for destruction, then within three (3) business days of Agency Partner's receipt of such request); (ii) if there is a Material Gross Breach, in which case Agency Partner will destroy PII within twenty-four (24) hours of such Material Gross Breach; or (iii) within five (5) business days following termination of this Agreement for anything other than a Material Gross Breach. Destruction shall be accomplished

by physical destruction, securely overwriting data or other means of irretrievably deleting PII in accordance with industry standards ("Destruction"). Agency Partner shall provide written notice to NEC at the address identified in Section 6.3(d) that it has complied with this Section 6.3(e) within five (5) business days of Destruction unless an earlier date is requested by NEC.

7. WARRANTY; DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.

7.1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEC MAKES NO WARRANTIES WHATSOEVER TO AGENCY PARTNER, EXPRESS OR IMPLIED, WITH REGARD TO THE NEC PRODUCTS, OR OTHER PRODUCTS, SERVICES, SUPPORT OR ANY MATERIALS SUPPLIED TO AGENCY PARTNER, OR ANY MATTER RELATING TO THIS AGREEMENT. NEC SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2 Except with regard to a party's indemnity obligation set forth in this Agreement, (i) neither party's liability in connection with the NEC Products, this Agreement, or any other matter relating to this Agreement will exceed the amounts paid and/or payable by NEC to Agency Partner under this Agreement in the three (3) month period prior to the event giving rise to such liability, and (ii) in no event will either party be liable to the other party for any special, consequential, or incidental damages, whether based on breach of contract, fundamental breach, tort (including negligence), product liability, or otherwise, and whether or not the other party has been advised of the possibility of such damage.

7.3 The parties have entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and the limitations and disclaimers form an essential basis of the bargain between the parties.

8. INDEMNITY.

Agency Partner agrees to fully defend, indemnify and hold harmless NEC, its officers, directors, employees and agents, from any claim or damages (including reasonable attorney's fees and costs) that (a) results from Agency Partner's or an Authorized Representative's failure to comply with Section 6, Material Gross Breach, negligence, misrepresentation, acts or omissions or (b) otherwise results from the activities contemplated by this Agreement.

9. TERM AND TERMINATION.

9.1 Term. This Agreement will continue in full force and effect unless terminated as provided herein.

9.2 Termination. NEC may terminate this Agreement upon notice to Agency Partner. Agency Partner may terminate this Agreement upon sixty (60) days' notice to NEC.

9.3 Effect of Termination. Upon the termination of this Agreement, Agency Partner will promptly return to NEC or (at NEC's request) destroy all copies of all materials supplied by NEC pursuant to this Agreement, including without limitation all Confidential Information, NEC Products, customer lists, lists of sales and marketing personnel, marketing and promotional brochures and sales kits, and certify to NEC in writing, signed by a duly authorized representative of such Agency Partner, that it has done so return or destroyed all such materials and information. The preamble, definitions, and Sections 3.1, 4, 6, 7, 8, 9 and 11 will survive termination of this Agreement. Termination of this Agreement by either NEC or Agency Partner in accordance with the terms of this Agreement will be without prejudice to the terminating party's other rights and remedies under or in connection with this Agreement, either at law and in equity.

10. USE OF MARKS; OWNERSHIP; PUBLICITY.

10.1 License to Use Marks. During the term of this Agreement, Agency Partner is hereby granted a non-exclusive license to use NEC's trademarks, service marks, trade names, the NEC Product name, logos, designs and other designations or brands used by NEC in connection with the NEC Products (collectively, the "Marks") subject to the terms and conditions of this Agreement, including any additional branding guidelines for Agency Partners that NEC may publish from time to time. Such license is expressly limited to uses by Agency Partner necessary or appropriate in connection with its performance pursuant to this Agreement and as set forth in any general instructions issued by NEC or as expressly permitted by NEC in writing. Agency Partner will not alter the Marks in any way or remove the Marks from any materials provided by NEC. Subject to the provisions of this Section 10, Agency Partner may indicate its relationship to NEC and refer to the NEC Products by using the Marks provided that such references are truthful and not misleading and NEC is designated as the owner of the Marks.

10.2 No Other Rights to Marks. NEC reserves the right to disallow any use of the Marks

which would, in NEC's reasonable opinion, harm the validity or value of the Marks. Upon expiration or termination for any reason of this Agreement, the license set forth in this Section 10 will immediately terminate. Other than the license to use the Marks granted in this Section 10, Agency Partner is granted no other right, title or interest in the Marks. Agency Partner acknowledges NEC's ownership of and right in and to the Marks, and agrees that any and all use of the Marks will inure to the sole benefit of NEC. Agency Partner will take no action inconsistent with NEC's ownership of the Marks and will not challenge NEC's rights in or attempt to register any of the Marks, or any other trademarks, service marks, trade names, product names, logos, designs, and other designations or brands owned or used by NEC or any mark confusingly similar thereto. If at any time Agency Partner acquires any rights in or to, or any registration or application for, any of the Marks by operation of law or otherwise, it agrees to assign, and hereby does assign, such rights, registrations, or applications to NEC, along with any and all associated goodwill.

10.3 Marketing Materials. NEC may from time to time, at its discretion, provide marketing materials for NEC Products to Agency Partner either through NEC's portal or through other means. Agency Partner may use such marketing materials for the purposes set forth herein or as expressly permitted by NEC in writing. The marketing materials provided to Agency Partner may only be used solely in connection with Agency Partner's obligations hereunder and may not be used to market any non-NEC Product.

10.4 Other Use of Marks. Agency Partner will not bid for or otherwise use (including the use by any third party on behalf of Agency Partner) any keyword or search term for use in search engines, linking or re-directing that (i) incorporates any Mark, or any variant or misspelling thereof, or (ii) infringes the intellectual property rights of NEC or any third party. Agency Partner will not use any Mark: (a) in any domain name registered by Agency Partner, or (b) in connection with any SPAM or unsolicited e-mails (whether personalized or bulk, personal or commercial), or (c) for any unlawful purpose.

10.5 NEC Rights. NEC may reference Agency Partner on NEC's website and in its marketing materials as an Agency Partner of NEC during the term of this Agreement.

10.6 Other Publicity. Except as set forth in this Section, neither party may issue a news release, public announcement, advertisement or any other form of publicity concerning this

Agreement without the express prior written approval of the other party.

## 11. MISCELLANEOUS.

11.1 Modifications. NEC may update, amend, modify or supplement the terms and conditions of this Agreement on a going forward basis from time to time upon notice to Agency Partner. Except as otherwise specified by NEC, all such changes are effective upon NEC's giving of notice of the changed Agreement. Agency Partner can review the most current version of this Agreement at <https://partner.univerge.blue/legal/> . In connection with any such update, amendment, modification or supplement to this Agreement, NEC may (in its sole discretion) require you to provide consent by accepting the changed Agreement. In such event, if you do not accept the changed Agreement within the required time period designated by NEC, NEC may immediately terminate the Agreement then in effect between the parties. Disputes arising under the Agreement will be resolved in accordance with the Agreement in effect at the time the dispute arose.

11.2 Governing Law; Jurisdiction; Forum; Attorneys' Fees. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without regard to its conflicts of laws or its principles. Any claim or suit arising out of or relating to this Agreement may only be brought in any court of competent jurisdiction located in Texas. If NEC prevails in an action to enforce this Agreement, including, without limitation, any action by NEC for the recovery of fees due hereunder, Agency Partner will pay NEC's reasonable attorneys' fees and costs associated with such action. Agency Partner agrees to waive the right to trial by jury with respect to any proceeding related to or arising out of this Agreement.

11.3 Written Communications and Notice. Agency Partner accepts that communication from NEC may be electronic, and that NEC may provide certain notices under this Agreement to Agency Partner by e-mail or through posting to Agency Partner's account or to the NEC website. Agency Partner agrees that these electronic communications are effective as notice. All other notices, permissions and approvals hereunder will be in writing. Notices to Agency Partner may be addressed by NEC to any e-mail address, postal address or facsimile number registered with NEC and associated with Agency Partner's account. Notices to NEC must be mailed to NEC Cloud Communications America, Inc., 3929 W John Carpenter Freeway, Irving, Texas 75063

Attn: Contracts, or such other address as designated for notice on NEC's website.

11.4 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, then the remaining provisions of this Agreement will nevertheless be given full force and effect and be interpreted as broadly as possible to give full effect to the intentions of the Parties in entering into this Agreement.

11.5 Waiver. No waiver by NEC of any breach by Agency Partner of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing.

11.6 Assignment. Agency Partner may not assign this Agreement or otherwise transfer any of its rights and obligations under this Agreement without the prior written consent of NEC. NEC may assign this Agreement or transfer any of its rights and obligations under this Agreement, without consent of Agency Partner. Any attempted assignment in violation of this Section 11.6 will be void and of no force and effect. Subject to the foregoing, this Agreement will inure to the benefit of and will be binding upon the permitted successors and assigns of the parties.

11.7 Force Majeure. NEC will not be in default or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of the Agreement due to any causes beyond its reasonable control, which causes include but are not limited to Acts of God or the public enemy; riots and insurrections; war; terrorism; fire; strikes and other labor difficulties (whether or not the party is in a position to concede to such demands); pandemics; epidemics; embargoes; judicial action; lack of or inability to obtain export permits or approvals, necessary labor, materials, energy, components or machinery; or acts of civil or military authorities.

11.8 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous representations, understandings, proposals, and agreements. Continued performance of the activities contemplated by this Agreement constitutes continued acceptance of this Agreement, including any and all modified terms. These terms will bind and benefit the successors and heirs of the parties.

Agency Partner understands and agrees that (i) the NEC Parties are third party beneficiaries of this Agreement, and (ii) in the event of any breach of this Agreement, such NEC Parties shall have all rights and remedies available to them as if they were parties to this Agreement, including claiming the benefit of Section 7 of this Agreement.

## EXHIBIT A

### 1. DEFINITIONS AND TERMS

“Aggregate Net Monthly Recurring Fee” means the gross fees that NEC, in accordance with generally accepted accounting principles and regular, established NEC practices, recognizes under a Triggering Contract on a recurring monthly basis for the applicable NEC Products, less NEC’s costs for service fees, sales tax and gross receipts tax amounts imposed by any competent taxing authority. For the avoidance of doubt, (i) non-recurring fees paid to NEC (which, for the NEC Engage Contact Center service, includes usage fees) and (ii) any local, state or federal taxes, regulatory recovery fees, regulatory compliance fees, administrative charges or surcharges, 911 fees (such as emergency service surcharges), or any other excise tax or fees paid to NEC, are all expressly excluded from the calculation of the Aggregate Net Monthly Recurring Fee.

“Initial Period” means the first four (4) complete calendar months completed of the term of the applicable Triggering Contract.

“NEC Data Products” means all NEC Products, other than NEC Voice-Related Products. These include hosted Exchange email, email archiving, email backup and are each classified as “NEC Data Products” for purposes of this Agreement.

“NEC Products” means all cloud-based communications products and services that NEC makes available for purchase by End Users through NEC’s public-facing website or through distributors, resellers or other distribution partners, including, but not limited to, NEC UNIVERGE BLUE CONNECT, UNIVERGE BLUE MEET, UNIVERGE BLUE SHARE, UNIVERGE BLUE ENGAGE, UNIVERGE BLUE CONNECT BRIDGE, UNIVERGE BLUE FILES (but specifically excluding the Office 365 suite of Microsoft services), hosted Exchange email, email archiving, email backup, and SIP Trunking. NEC may place territorial restrictions on the marketing of NEC Products. For commission rates for specific NEC Products (which may be different from the general commission rates set forth herein), please check the product release notes for the applicable NEC Product.

“NEC Voice-Related Products” means the following NEC Products: NEC UNIVERGE BLUE CONNECT (including the basic versions of UNIVERGE BLUE FILES AND MEET that are included with a standard user package of UNIVERGE BLUE CONNECT), UNIVERGE BLUE ENGAGE, UNIVERGE BLUE CONNECT BRIDGE, SIP Trunking, and individual telephony-related services.

### 2. AGENCY PARTNER COMMISSIONS FOR SALES OF NEC PRODUCTS

#### (a) NEC Data Products

If an End User enters into a Triggering Contract for NEC Data Products during the term of this Agreement, based on the Agency Partner utilizing the quoting and ordering process within NEC’s web portal, , then NEC will pay Agency Partner an Agency Partner Commission equal to eight percent (8%) of the Aggregate Net Monthly Recurring Fee for the applicable NEC Data Products for each calendar month, including the month in which the Triggering Contract is signed, where such Triggering



Contract remains an active NEC account as of the end of the last day of that particular calendar month.

(b) NEC Voice-Related Products

If an End User enters into a Triggering Contract for NEC Voice-Related Products during the term of this Agreement via the NEC quoting and ordering web portal, NEC will pay Agency Partner the following Agency Partner Commissions:

NEC shall pay eighteen (18%) of the Aggregate Net Monthly Recurring Fee for applicable NEC Voice-Related Products for each calendar month where such Triggering Contract remains an active NEC account as of the end of the last day of that particular calendar month.

3. TERMS AND TIMING OF AGENCY PARTNER COMMISSIONS

NEC will pay Agency Partner Commissions to Agency Partner under each Triggering Contract following the applicable Initial Period, it being understood that (a) no payment will be due to Agency Partner with respect to a Triggering Contract until the applicable Initial Period has been completed; (b) the initial Agency Partner Commissions for a Triggering Contract will not be considered earned until the applicable Triggering Contract has completed the applicable Initial Period; and (c) if NEC voluntarily pays any Agency Commissions prior to the end of the applicable Initial Period, and if the applicable NEC Product is returned or otherwise canceled for any reason prior to the end of the applicable Initial Period, then NEC reserves the right to recover (including, without limitation, through demanding repayment from Agency Partner or through offsets against future Agency Partner Commissions paid by NEC with respect to such purchase. For the avoidance of doubt, NEC will not be obligated to pay any Agency Partner Commissions with respect to a Triggering Contract that is terminated prior to the end of the respective Initial Period. For clarity, any previously paid commission payments will be adjusted to reflect any customer chargebacks, bad debt, write-offs or service credits incurred by NEC.

NEC will pay Agency Partner Commissions that are due, within thirty (30) days after the Initial Period, and within thirty (30) days after each subsequent month. NEC will be obligated to pay Agency Partner Commissions from recurring payments under a Triggering Contract following the termination of this Agreement, at the commission rate in place as of the date of such termination, for the period of time that the applicable End User (i) remains a customer in good standing with NEC and (ii) continues to purchase NEC Products originally purchased under an accepted Triggering Contract, except in the event of termination of this Agreement for Material Gross Breach, in which case NEC's obligation to continue making Agency Partner Commission payments to Agency Partner shall immediately terminate on the date of such breach. NEC's obligation to pay the Agency Partner Commissions to Agency Partner with respect to a Triggering Contract is contingent upon NEC receiving the applicable monthly recurring fee from the End User.

4. FEES FOR NON-GENERALLY AVAILABLE PRODUCTS AND SERVICES

For those NEC products and services which cannot be licensed directly through NEC's website but which require the intercession of an NEC sales representative, NEC will offer customized pricing and fee arrangements on a case by case basis, at its sole discretion.

5. GENERAL

NEC reserves the right to change, define and/or interpret, in its sole discretion, the terms of the Agency Commissions payable to Agent (including without limitation, calculations of any metrics used herein, Agency's eligibility for the commission, deal-specific changes to the commission structure (including without limitation different commission percentages and/or maximum commission payments) due to the large size or special pricing of the transaction, or any other term hereof).

## ACH VENDOR PAYMENT AUTHORIZATION FORM

This form is used for Automated Clearing House (ACH) payments. The information being collected on this form will be used by NEC Cloud Communications of America to transmit payment data, by electronic means, to a vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payment through the ACH Payment System. Recipients of the payments should bring this information to the attention of their financial institution when presenting this form for completion. **Recipients should also request to be notified immediately regarding any change occurring at the financial institution that may delay or prevent the receipt of scheduled payments.**

### *VENDOR INFORMATION*

COMPANY NAME: \_\_\_\_\_

PARTNER NAME / ID: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

CONTACT EMAIL: \_\_\_\_\_

FEDERAL I.D. #: \_\_\_\_\_

### *FINANCIAL INSTITUTION INFORMATION*

BANK NAME: \_\_\_\_\_

BANK ADDRESS: \_\_\_\_\_

ACH ROUTING NUMBER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

TYPE OF ACCOUNT:  CHECKING  SAVINGS

\_\_\_\_\_  
**SIGNATURE & TITLE OF REPRESENTATIVE** (\_\_\_\_\_) \_\_\_\_\_  
PHONE NUMBER

**Please complete this form with ORIGINAL signatures:**

- (1) Retain the original for your records
- (2) Email completed form to [NECBlue-ACH@Necam.com](mailto:NECBlue-ACH@Necam.com)