

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Form 8-K**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): November 30, 2023**

**AVIAT NETWORKS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation)

**001-33278**  
(Commission  
File Number)

**20-5961564**  
(I.R.S. Employer  
Identification No.)

**Address of principal executive offices:  
200 Parker Dr., Suite C100A, Austin, Texas 78728**

**Registrant's telephone number, including area code: 408-941-7100**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class                       | Trading<br>Symbol | Name of each exchange<br>on which registered |
|---|-------------------|--|
| Common Stock, par value, \$0.01 per share | AVNW              | NASDAQ Stock Market LLC                      |
| Preferred Share Purchase Rights           |                   | NASDAQ Stock Market LLC                      |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2)

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## Introductory Note

On May 9, 2023, Aviat Networks, Inc., a Delaware corporation (the “Company,” “Aviat,” “we,” “us,” or “our”) announced that it entered into a Master Sale of Business Agreement (the “MSBA”), with NEC Corporation, a Japan corporation (together with certain of its subsidiaries, collectively “NEC”). Pursuant to the MSBA, Aviat agreed that it or certain of its subsidiaries would purchase certain assets and assume certain liabilities of NEC relating to NEC’s wireless backhaul business (the “Transaction”). Consideration due at the closing of the Transaction (the “Closing”) includes (i) an amount in cash equal to \$45.0 million, subject to certain post-closing adjustments (the “Cash Consideration”), and (ii) the issuance of \$25 million in Company common stock, par value \$0.01 per share (the “Stock Consideration”), being 787,741 shares based on a 30-day volume weighted averaged of the closing sales price of our common stock (as adjusted for stock splits) on all domestic securities exchanges ending on the day prior to signing of the MSBA. The price per share of the stock consideration on May 9, 2023 was \$31.74 per share and the price per share remains the same upon Closing. Pursuant to the MSBA, from Closing and for a period of two years thereafter, NEC will have the right to nominate a director to the Company’s Board of Directors.

Also on May 9, 2023, the Company entered into a Secured Credit Facility Agreement (as amended by the First Amendment to Credit Agreement, the “Loan Facility” or the “Credit Agreement”), by and among the Company, Aviat U.S., Inc. (“Opco” and together with the Company the “U.S. Borrowers”), Aviat Networks (S) Pte. Ltd. (the “Singapore Borrower” and together with the Company and Opco, the “Borrowers”) and Wells Fargo Bank, National Association, as administrative agent, swingline lender and issuing lender and Wells Fargo Securities LLC, Citigroup Global Markets Inc., and Regions Capital Markets as joint lead arrangers and joint bookrunners (the “Lender”). The Loan Facility provides for a \$40 million revolving credit facility and a \$50.0 million Delayed Draw Term Loan Facility with a maturity date of May 8, 2028. The \$50.0 million Delayed Draw Term Loan Facility had a funding date on or prior to the Closing, with the proceeds used to settle the Cash Consideration portion of the purchase price under the MSBA. As previously announced, on November 22, 2023, the Loan Facility was amended to address the MSBA Amendment (defined below).

### **Item 1.01 Entry into a Material Definitive Agreement**

#### ***MSBA Amendment***

On November 30, 2023, the Company and NEC entered into an Amendment to the Master Sale of Business Agreement (the “MSBA Amendment”). The MSBA Amendment provides for changes and modifications to the MSBA, which include, among other things, delaying the transfer of certain assets and liabilities connected to the Business (as that term is defined in the MSBA) in Malaysia to a date subsequent to the date of the Closing and correspondingly reducing the consideration payable at Closing from \$70.0 million to \$65.5 million. The reduction in purchase price is a result of the portion of the business which is delayed under the MSBA Amendment. This correlates to approximately 7% of the previously disclosed \$150M run rate revenue expected. The MSBA Amendment accordingly reduces the amount of Stock Consideration owed at Closing by 50,990 to 736,750 shares of common stock of the Company (the “Closing Stock Consideration”).

The foregoing description of the MSBA Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the MSBA Amendment, which is filed with this Current Report on Form 8-K as Exhibit 2.2 and is incorporated herein by reference.

The MSBA is filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on May 9, 2023 and is incorporated herein by reference.

### ***Registration Rights and Lock-Up Agreement***

On November 30, 2023, the Company entered into a Registration Rights and Lock-Up Agreement (the "Registration Rights and Lock-Up Agreement") with NEC pursuant to which the Company, within 30 days prior to the one-year anniversary of the day immediately following the Closing Date (the "Initial Lock-Up Expiration Date") agreed to file a registration statement with the Securities and Exchange Commission for resale of the Closing Stock Consideration. NEC agreed that, except for limited exceptions as provided in the Registration Rights and Lock-Up Agreement, no shares of the Closing Stock Consideration may be transferred (the "Lock-Up") until one day following the Initial Lock-Up Expiration Date. One day after the Initial Lock-Up Expiration Date, one-twelfth of the Closing Stock Consideration shall be released from the Lock-Up, and an additional one-twelfth of the Closing Stock Consideration shall be released from the Lock-Up in each subsequent month, such that all of the Closing Stock Consideration shall be released from Lock-Up by the two-year anniversary of the day immediately following the Closing Date.

The foregoing description of the Registration Rights and Lock-Up Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights and Lock-Up Agreement, which is filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

### ***Manufacturing and Supply Agreement***

On November 30, 2023, the Company entered into a Manufacturing and Supply Agreement ("MSA"), by and among the Company, NEC Platforms, Ltd., a Japan limited company ("NECPF") and NEC. Pursuant to the MSA, NECPF will sell to the Company, and the Company will purchase from NECPF certain products related to the wireless backhaul business acquired by the Company pursuant to the MSBA (the "Products") and NECPF will not produce, deliver or sell the Products to any third party outside of Japan or to resellers and distributors in Japan for resale outside of Japan unless NECPF first obtains written consent from the Company. NEC shall act as a representative of NECPF to receive orders from the Company for the transactions between the Company and NECPF contemplated under the MSA.

The foregoing description of the MSA does not purport to be complete and is qualified in its entirety by reference to the full text of the MSA, which is filed with this Current Report on Form 8-K as Exhibit 10.2 and is incorporated herein by reference.

### ***Buyer TSA***

On November 30, 2023, the Company and NEC entered into a Global Transition Services Agreement (the "Buyer TSA") for NEC to provide certain transition services to the Company following the Closing of the Transaction.

The foregoing description of the Buyer TSA does not purport to be complete and is qualified in its entirety by reference to the full text of the Buyer TSA, which is filed with this Current Report on Form 8-K as Exhibit 10.3 and is incorporated herein by reference.

### ***Seller TSA***

On November 30, 2023, the Company and NEC entered into a Global Seller Transition Services Agreement (the "Seller TSA") for the Company to provide certain transition services to NEC following the Closing of the Transaction.

The foregoing description of the Seller TSA does not purport to be complete and is qualified in its entirety by reference to the full text of the Seller TSA, which is filed with this Current Report on Form 8-K as Exhibit 10.4 and is incorporated herein by reference.

### ***Distribution Agreements***

On November 30, 2023, Aviat Networks (S) Pte. Ltd., a Singapore entity and a wholly-owned subsidiary of the Company ("Aviat Singapore"), entered into Distribution Agreements with each of NEC XON Holdings Proprietary Limited, a South Africa company ("NEC South Africa"), NEC Saudi Arabia Limited, a Saudi Arabia company ("NEC Saudi Arabia"), NEC New Zealand Ltd., a New Zealand company ("NEC New Zealand"), and NEC Corporation of Malaysia SDN BHD, a private Malaysia company ("NEC Malaysia"), each a subsidiary of NEC and in each case to become Aviat

Singapore's distributor of certain products set forth in the Distribution Agreements in the relevant local markets or territories (the "Distribution Agreements").

The foregoing description of the Distribution Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of each of the Distribution Agreements, filed with this Current Report on Form 8-K as Exhibits 10.5 through 10.8 and is incorporated herein by reference.

#### ***Pasolink Licensing Agreement***

On November 30, 2023, the Company entered into a Trademark License Agreement with NEC (the "Pasolink Licensing Agreement"), pursuant to which the Company will grant NEC a non-exclusive license to the "PASOLINK" and "iPASOLINK" Japanese registered trademarks in the territory of Japan.

The foregoing description of the Pasolink Licensing Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Pasolink Licensing Agreement, which is filed with this Current Report on Form 8-K as Exhibit 10.9 and is incorporated herein by reference.

#### ***IP Licensing Agreement***

On November 30, 2023, the Company entered into an Intellectual Property License Agreement with NEC (the "IP Licensing Agreement"), pursuant to which NEC will grant Aviat a non-exclusive, worldwide (excluding Japan) license to certain NEC IP, including mobile backhaul-related patents, to be used in connection with the Business.

The foregoing description of the IP Licensing Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the IP Licensing Agreement, which is filed with this Current Report on Form 8-K as Exhibit 10.10 and is incorporated herein by reference.

#### ***Trademark Assignment Agreement***

On November 30, 2023, the Company entered into a Trademark Assignment Agreement with NEC (the "Trademark Assignment Agreement"), pursuant to which NEC will assign and transfer to Aviat the U.S. and foreign (excluding Japan) trademarks defined therein as the PASOLINK Marks.

The foregoing description of the Trademark Assignment Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Trademark Assignment Agreement, which is filed with this Current Report on Form 8-K as Exhibit 10.11 and is incorporated herein by reference.

#### ***Development Services Agreement***

On November 30, 2023, Opco and NEC entered into a Research and Development Cooperating Agreement for Existing Products (the "Development Services Agreement"), pursuant to which NEC will provide the Company with certain services relating to the development work to maintain existing products of the Business (as that term is defined in the MSBA).

The foregoing description of the Development Services Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Development Services Agreement, which is filed with this Current Report on Form 8-K as Exhibit 10.12 and is incorporated herein by reference.

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 1.01.

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**Item 2.01 Completion of Acquisition or Disposition of Assets**

On November 30, 2023 (the “Closing Date”), the Company and NEC completed the Transaction. On the Closing Date, the Company (i) paid the Cash Consideration using cash drawn from the Delayed Draw Term Loan Facility and (ii) issued the Closing Stock Consideration to NEC. In exchange, NEC transferred certain assets and liabilities related to its wireless backhaul business to certain subsidiaries of the Company, as further described in the MSBA and the MSBA Amendment.

The MSBA is filed as Exhibit 2.1 to the Company’s Current Report on Form 8-K filed on May 9, 2023 and is incorporated herein by reference. The MSBA Amendment is filed as Exhibit 2.2 to this Current Report and is incorporated herein by reference.

In connection with the Transaction, the Company will be filing by amendment to this Current Report not later than 71 days after the date on which this Current Report is required to be filed certain historical financial statements and pro forma financial statements related to the assets and liabilities acquired in the Transaction, each of which are incorporated by reference herein.

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement**

The Company drew on the Delayed Draw Term Loan Facility to furnish the Cash Consideration to NEC.

The Credit Agreement is filed as Exhibit 10.1 to the Company’s Current Report on Form 8-K filed on May 9, 2023 and is incorporated herein by reference.

The “Credit Agreement Amendment” described in Item 1.01 and filed as Exhibit 10.1 to the Company’s Current Report on Form 8-K filed on November 29, 2023 is incorporated herein by reference.

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

**Item 3.02 Unregistered Sales of Equity Securities**

On the Closing Date, the Company issued the Closing Stock Consideration to NEC as consideration in exchange for certain assets and liabilities described in Item 2.01 of this Current Report.

The Company’s issuance of the Closing Stock Consideration in connection with the Closing of the Transaction was not registered under the Securities Act of 1933, as amended (the “Securities Act”), in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act, as (a) the transaction did not involve any public offering, (b) there will be only one recipient and (c) representations from NEC to support such exemption, including with respect to NEC’s status as an “accredited investor” (as that term is defined in Rule 501(a) of Regulation D promulgated under Section 4(a)(2) of the Securities Act).

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

**Item 3.03 Material Modification to Rights of Security Holders.**

The information set forth in the Introductory Note and Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

## **Item 7.01 Regulation FD Disclosure.**

On November 30, 2023, the Company issued a press release announcing the Closing of the Transaction. The press release is furnished herewith as Exhibit 99.1.

The information furnished in this Item 7.01 shall not be deemed “filed” for purposes of Section 18 of the Securities Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

### **Forward-Looking Statements**

The information contained in this Current Report on Form 8-K includes forward-looking statements within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995, including Aviat’s beliefs and expectations regarding the Transaction with NEC, outlook, business conditions, new product solutions, customer positioning, future orders, bookings, new contracts, cost structure, profitability in fiscal 2024, process improvements, plans and objectives of management, realignment plans and review of strategic alternatives and expectations regarding future revenue, Adjusted EBITDA, operating income of earnings or loss per share. All statements, trend analyses and other information contained herein regarding the foregoing beliefs and expectations, as well as about the markets for the services and products of Aviat and trends in revenue, and other statements identified by the use of forward-looking terminology, including “anticipate,” “believe,” “plan,” “estimate,” “expect,” “goal,” “will,” “see,” “continue,” “delivering,” “view,” and “intend,” or the negative of these terms or other similar expressions, constitute forward-looking statements.

Forward-looking statements are neither historical facts nor assurances of future performance. Instead, forward-looking statements are based on estimates reflecting the current beliefs, expectations and assumptions of the senior management of Aviat regarding the future of its business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Such forward-looking statements involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. Forward-looking statements should therefore be considered in light of various important factors, including those set forth in this document. Therefore, you should not rely on any of these forward-looking statements.

Important factors that could cause actual results to differ materially from estimates or projections contained in the forward-looking statements include the following: disruption the NEC Transaction may cause to customers, vendors, business partners and our ongoing business; our ability to integrate the operations of the acquired NEC Corporation businesses with our existing operations and fully realize the expected synergies of the NEC Transaction on the expected timeline; the impact of COVID-19; disruptions relating to the ongoing conflict between Russia and Ukraine and the conflict in Israel and surrounding areas; continued price and margin erosion in the microwave transmission industry; the impact of the volume, timing, and customer, product, and geographic mix of our product orders; our ability to meet financial covenant requirements; the timing of our receipt of payment; our ability to meet product development dates or anticipated cost reductions of products; our suppliers’ inability to perform and deliver on time, component shortages, or other supply chain constraints; the effects of inflation; customer acceptance of new products; the ability of our subcontractors to timely perform; weakness in the global economy affecting customer spending; retention of our key personnel; our ability to manage and maintain key customer relationship; uncertain economic conditions in the telecommunications sector combined with operator and supplier consolidation; our failure to protect our intellectual property rights or defend against intellectual property infringement claims; the results of our restructuring efforts; the effects of currency and interest rate risks; the effects of current and future government regulations; general economic conditions, including uncertainty regarding the timing, pace and extent of an economic recovery in the United States and other countries where we conduct business; the conduct of unethical business practices in developing countries; the impact of political turmoil in countries where we have significant business; our ability to realize the anticipated benefits of any proposed or recent acquisitions; the impact of tariffs, the adoption of trade restrictions affecting our products or suppliers, a United States withdrawal from or significant renegotiation of trade agreements, the occurrence of trade wars, the closing of border crossings, and other changes in trade regulations or relationships; our ability to implement our stock repurchase program or that it will enhance long-term stockholder value; and the impact of adverse developments affecting the financial services industry, including events or concerns involving liquidity, defaults or non-performance by financial institutions.

For more information regarding the risks and uncertainties for Aviat’s business, see “Risk Factors” in Aviat’s Form 10-K for the fiscal year ended June 30, 2023 filed with the U.S. Securities and Exchange Commission (“SEC”) on August 30, 2023, as well as other reports filed by Aviat with the SEC from time to time. Aviat undertakes no obligation to update publicly any forward-looking statement, whether written or oral, for any reason, except as required by law, even as new information becomes available or other events occur in the future.

**Item 9.01 Financial Statements and Exhibits.**

(a) *Financial Statements of Business Acquired.*

The financial statements required by Item 9.01(a) will be filed with the SEC by amendment to this Current Report not later than 71 days after the date on which this Current Report is required to be filed.

(b) *Pro Forma Financial Information.*

The financial statements required by Item 9.01(b) will be filed with the SEC by amendment to this Current Report not later than 71 days after the date on which this Current Report is required to be filed.

(d) Exhibits.

| <u>Exhibit No.</u> | <u>Description</u>  |
|--------------------|---|
| 2.1#¥              | <a href="#"><u>Master Sale of Business Agreement, dated May 9, 2023, by and among the Company and NEC (incorporated by reference to Exhibit 2.1 of Aviat’s Current Report on Form 8-K filed May 9, 2023, File No. 001-33278).</u></a> |
| 2.2*#¥             | <a href="#"><u>Amendment to the Master Sale of Business Agreement, dated November 30, 2023, by and between the Company and NEC.</u></a>   |
| 10.1*#+            | <a href="#"><u>Registration Rights and Lock-Up Agreement, dated November 30, 2023, by and between the Company and NEC.</u></a>  |
| 10.2*#+            | <a href="#"><u>Manufacturing and Supply Agreement, dated November 30, 2023, by and among the Company, NECPF and NEC.</u></a>  |
| 10.3*#+            | <a href="#"><u>Global Transition Services Agreement, dated November 30, 2023, by and between the Company and NEC.</u></a>   |
| 10.4*#+            | <a href="#"><u>Global Seller Transition Services Agreement, dated November 30, 2023, by and between the Company and NEC.</u></a>  |
| 10.5*#+            | <a href="#"><u>Distribution Agreement, dated November 30, 2023, by and between Aviat Singapore and NEC South Africa.</u></a>  |
| 10.6*#+            | <a href="#"><u>Framework Agreement, dated November 30, 2023, by and between Aviat Singapore and NEC Saudi Arabia.</u></a>   |
| 10.7*#+            | <a href="#"><u>Distribution Agreement, dated November 30, 2023, by and between Aviat Singapore and NEC New Zealand.</u></a>   |
| 10.8*#+            | <a href="#"><u>Distribution Agreement, dated November 30, 2023, by and between Aviat Singapore and NEC Malaysia.</u></a>  |
| 10.9*#+            | <a href="#"><u>Trademark License Agreement, dated November 30, 2023, by and between the Company and NEC.</u></a>  |
| 10.10*#+           | <a href="#"><u>Intellectual Property License Agreement, dated November 30, 2023, by and between the Company and NEC.</u></a>  |
| 10.11*#+           | <a href="#"><u>Trademark Assignment Agreement, dated November 30, 2023, by and between the Company and NEC.</u></a>   |
| 10.12*#+           | <a href="#"><u>Development Services Agreement, dated November 30, 2023, by and between Opco and NEC.</u></a>  |
| 99.1*              | <a href="#"><u>Press Release of the Company, dated November 30, 2023.</u></a>   |
| 104                | Cover Page Interactive Data File (embedded within the Inline XBRL document).  |

\* Furnished herewith.

# Certain schedules and exhibits to this agreement have been omitted in accordance with Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC on request.

¥ Certain portions of this exhibit were redacted pursuant to Item 601(b)(2)(ii) of Regulation S-K.

+ Certain portions of this exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AVIAT NETWORKS, INC.

November 30, 2023

By: /s/ David M. Gray  
Name: David M. Gray  
Title: Chief Financial Officer

EXECUTION VERSION

**AMENDMENT TO THE  
MASTER SALE OF BUSINESS AGREEMENT**

**DATED November 30, 2023**

**NEC CORPORATION**

**and**

**AVIAT NETWORKS, INC.**

**CERTAIN PORTIONS OF THIS EXHIBIT WERE REDACTED PURSUANT TO ITEM 601(B)(2)(II) OF REGULATION S-K.**

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**THIS AMENDMENT TO THE MASTER SALE OF BUSINESS AGREEMENT** (this **Amendment Agreement**) is made on November 30, 2023 by and between NEC CORPORATION (registered number 0104-01-022916) whose registered office is at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan (the **Seller**) and AVIAT NETWORKS, INC., whose registered office is at 200 Parker Drive, Suite C100A, Austin, Texas, 78728, United States (the **Purchaser**).

## RECITALS

WHEREAS, the Seller and the Purchaser are party to a certain master sale of business agreement dated May 9, 2023 (the **MSBA**), under which the parties have agreed to transfer certain assets and liabilities relating to the Business in a number of jurisdictions.

WHEREAS the parties have agreed to delay the transfer of the relevant assets and liabilities connected with the Business in Malaysia to a date subsequent to the date on which Completion as envisaged under the MSBA occurs.

WHEREAS, the Seller and the Purchaser wish to amend certain terms of the MSBA, but otherwise allow the MSBA to continue in full force and effect in accordance with its terms.

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the Seller and the Purchaser hereby agree as follows:

### 1. INTERPRETATION

1.1 In this Amendment Agreement, terms capitalised but otherwise undefined shall have the meaning given to them in the MSBA.

### 2. AMENDMENTS

2.1 The Seller and the Purchaser agree that with effect from the date of this Amendment Agreement:

#### (a) Definitions:

(i) The following definitions in Schedule 37 (*Interpretation*) of the MSBA shall be deleted and replaced as follows:

*“Assignable Revenue means if Saudi Consent is obtained: (i) [...]; or (ii) otherwise [...];*

*Assignment Revenue* means the aggregate of the revenue for calendar year 2022 generated by each customer in relation to the Assignable Contracts (using such revenue figures as set forth on Part 2 of Schedule 32) which are Validly Assigned;

*Estimated Consolidated Balance Sheet* means the consolidated balance sheet set out in Schedule 6 to the Amendment Agreement;

*Estimated Separate Balance Sheets* means the separate balance sheets set out in Schedule 7 to the Amendment Agreement;

*Estimated Working Capital* means the Working Capital of the Completion Business at December 31, 2022, which is an amount equal to [...];

**Saudi Local APA** has the meaning given in subparagraph 1 **of Part I** of Schedule 28;

**Target Working Capital** means [...]; and

**Transaction Documents** means this Agreement (**as amended by the Amendment Agreement**), the Local APAs, the TSA, the Seller TSA, the Reg. Rights and Lock-Up Agreement, the IPLA, **the Trademark Assignment Agreement**, the PLA, the Saudi Distribution Agreement, **the Malaysia Distribution Agreement**, the SADA, the NZDA (if applicable), the Escrow Agreement (if applicable), the MSA, any Contract Transfer Agreement, the CPA Termination Agreement, and any other agreement, document, certificate or instrument to be executed or delivered in connection with the transactions contemplated hereby.”

- (ii) The following new definitions shall be inserted in Schedule 37 (Interpretation) of the MSBA in alphabetical order:

**Amendment Agreement** means that certain Amendment to the Master Sale of Business Agreement, dated as of November 30, 2023, by and between Seller and Buyer;

**Aviat Malaysia** means Aviat Networks Malaysia Sd. Bhd.;

**Completion Assets** means the Assets other than the Malaysian Assets and the Saudi Assets;

**Completion Business** means the Business as conducted by the Selling Entities other than NEC Malaysia and NEC Saudi;

**Final Long Stop Date** means such date as falls on the 15-month anniversary of the Completion Date;

**Malaysian Assets** means the assets to be sold by the NEC Malaysian to Aviat Malaysia under this Agreement and referred to Part 1 of Schedule 2 of the MSBA excluding, for the avoidance of doubt, the Excluded Assets;

**Malaysian Business** means the Business as conducted by NEC Malaysia;

**Malaysian Business Day** means a day other than a Saturday or Sunday or other day on which commercial banks are generally open in Kuala Lumpur, Tokyo, and Austin, Texas for normal business;

**Malaysian Cash Consideration** means USD2,912,809;

**Malaysian Completion** means the completion of the sale and purchase of the Malaysian Assets in accordance with the MSBA as amended hereby or the time thereof, as the case may be;

**Malaysian Completion Working Capital** means the Malaysian Working Capital at Malaysian Completion;

**Malaysian Completion NAV** means the NAV of the Malaysian Business at the Malaysian Completion, as shown in the Malaysian Completion Balance Sheet;

**Malaysian Distribution Agreement** has the meaning given to it in subparagraph 1 of Part 2 of Schedule 28 of the MSBA as amended by the Amendment Agreement;

**Malaysian Estimated Consideration** means the sum of the Malaysian Estimated Cash Consideration and the Malaysian Stock Consideration;

**Malaysian Estimated Working Capital** means [...];

**Malaysian Estimated Working Capital Adjustment** means an amount, positive or negative, as determined on the date of Malaysian Completion and without duplication, equal to Malaysian Estimated Working Capital minus Malaysian Target Working Capital. For the avoidance of doubt, all amounts included in the calculation of Estimated Net Debt shall not be included in the calculation of Malaysian Estimated Working Capital or the Malaysian Estimated Working Capital Adjustment;

**Malaysian Final Consideration** means the sum of the Malaysian Final Cash Consideration and the Malaysian Stock Consideration;

**Malaysian Local APA** has the meaning given to it in subparagraph 2 of Part 2 of Schedule 28 of the MSBA as amended by the Amendment Agreement;

**Malaysian Stock Consideration** means \$1,618,228 in Purchaser Common Stock to be issued by the Purchaser to the Seller on the Malaysian Completion, the number of which shall be determined by dividing \$1,618,228 by the volume weighted average of the closing sales prices of the Purchaser Common Stock (as adjusted for stock splits) on all domestic securities exchanges on which the Purchaser Common Stock may at the time be listed averaged over thirty (30) consecutive trading days ending on the day immediately prior to the date of the Malaysian Completion as quoted on NASDAQ;

**Malaysian Target Working Capital** means [...];

**Malaysian Working Capital** means with respect to the Malaysian Assets, in each case to the extent incurred prior to Malaysian Completion and outstanding immediately prior to Malaysian Completion:

- (a) the aggregate amount in the Malaysian Completion Balance Sheet of all:
  - (i) trade receivables;
  - (ii) construction work accounts receivables;
  - (iii) inventories; and
  - (iv) other current assets, excluding any Tax assets (WC items); minus
- (b) the aggregate amount in the Malaysian Completion Balance Sheet of all:
  - (i) allowances for doubtful accounts;
  - (ii) trade payables;
  - (iii) other accounts payable;

- (iv) advances received;
- (v) provisions for product warranties; and
- (vi) other current liabilities, excluding any deferred tax liabilities (WC established to reflect timing differences between book accounting and relevant Tax Law (WC items));

**Malaysian Working Capital Adjustment** means an amount, positive or negative, as determined on the date of Malaysian Completion and without duplication, equal to Malaysian Completion Working Capital minus Malaysian Target Working Capital. For the avoidance of doubt, all amounts included in the calculation of Net Debt shall not be included in the calculation of Malaysian Working Capital or the Malaysian Working Capital Adjustment.

**NEC Malaysia** means NEC Corporation of Malaysia SDN. BHD.;

**Saudi Completion** means the completion of the sale and purchase of the Saudi Arabian Assets in accordance with the MSBA as amended hereby or the time thereof, as the case may be;

**Saudi Business** means the Business as conducted by NEC Saudi;”

- (iii) The following shall be inserted as a new paragraph to follow paragraph 5 in Schedule 37 (Interpretation) of the MSBA:

“Any reference in this Agreement as amended to Completion or any actions to be taken on or around such time shall be deemed to be in respect of the Completion Business only and where applicable such reference to any obligations of the parties shall apply mutatis mutandis to (i) the Malaysian Business with reference to the Malaysian Completion, and (ii) the Saudi Business with reference to the Saudi Completion; provided, that, for the avoidance of doubt, clause 6.10 and the reimbursement obligation set forth in clause 6.11(b) of the MSBA shall apply solely with respect to the Completion (and not with respect to the Malaysian Completion or the Saudi Completion).”

**(b) Sale and Purchase**

- (i) Clause 2.2 of the MSBA shall be deleted and replaced as follows:

“The Purchaser covenants with the Seller that it will (and shall cause the Purchasing Entities to covenant with the Selling Entities that they will) duly and properly perform, assume, pay and discharge when due all Liabilities ~~(i) from and after Completion to the extent arising out of or resulting from the Completion Business, (ii) from and after Malaysian Completion to the extent arising out of or resulting from the Malaysian Business, and (iii) from and after Saudi Completion to the extent arising out of or resulting from the Saudi Business,~~ (in each case, excluding, for the avoidance of doubt, Liabilities related to the Non-Transferring Contracts or Non-Transferring Business Employees and the Excluded Liabilities (as defined below)), whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured, or determined or determinable as of the Completion Date (or the Malaysian Completion or Saudi Completion as applicable), including, for the avoidance of doubt any such Liabilities arising under any Sales Agreement or

*Supply Agreement or Employment Contract with an Automatic Transferring Business Employee (all of the foregoing liabilities and obligations to be so assumed, satisfied or discharged being herein collectively the **Assumed Liabilities**) and all debts, liabilities and obligations incurred by the Purchaser (and/or by the Purchasing Entities) in connection with the Assets or the Business (except for the Non-Transferring Contracts and the Excluded Liabilities) after Completion (or the Malaysian Completion or Saudi Completion as applicable).*”

- (ii) The first line of clause 2.5 of the MSBA shall be deleted and replaced as follows:

“2.5 The transfer of the **Completion** Business will be effected at Completion as follows:

(c) **Post-Completion Covenants**

- (i) Clause 4.5 of the MSBA shall be deleted and replaced as follows:

“4.5 To the extent reasonably practicable from Completion or otherwise as soon as is reasonably practicable thereafter, the Purchaser shall procure that, replacement or new, bonds or parent guarantees are entered into by the Purchaser with respect to: (i) the performance bonds or guarantees related to the Business set forth on Schedule 33, as updated from time to time by the Seller prior to Completion to reflect any expired bonds or guarantees (or expired underlying Contracts), any renewed bonds or guarantees (in accordance with clause (ii)) and any new bonds or guarantees (in accordance with clause (iii)) (the **Performance Bonds**); (ii) any new or replacement bonds or guarantees that the Seller or any Selling Entity may have entered into before the Completion Date in replacement or renewal of any of the Performance Bonds, so long as the Seller obtains prior written consent from the Purchaser after providing the Purchaser with the terms of such new or replacement bonds or guarantees (such consent not to be unreasonably withheld, delayed or conditioned); or (iii) any guarantee or bond issued in connection with any Contract that has been approved by the Purchaser, so long as the Seller obtains prior written consent from the Purchaser after providing the Purchaser with terms of such new or replacement bonds or guarantees; provided, that the Purchaser’s obligations pursuant to this subclause 4.5 are conditioned in all respects on the following and shall only apply if: (x) the Performance Bond is solely related to the Business that the Purchaser and the Purchasing Entities are acquiring pursuant to the Transaction Documents; and (y) the underlying Contract requiring the Performance Bond is Validly Assigned to the Purchaser or the applicable Purchasing Entity. The parties shall cooperate in good faith with respect to the transfer or replacement of the Performance Bonds in due course, including, in the case of the Seller, by maintaining the Performance Bonds as required until replaced as provided in this subclause 4.5. **Notwithstanding anything herein to the contrary, any obligations related to Performance Bonds with respect to the Malaysian Business or the Saudi Business shall not apply until the Malaysian Completion or the Saudi Completion, respectively.**”

(d) **Post-Completion Covenants**

- (i) Clause 6.2 of the MSBA shall be deleted as replaced as follows:

*“6.2 With effect from Completion, and unless the parties otherwise agree in writing, the Seller shall not and shall cause its Affiliates not to: (i) use, register, or seek to use or register in any Relevant Jurisdiction the PASOLINK Marks (other than in Japan in accordance with the PLA); or (ii) contest the use, ownership, validity, or enforceability of any rights of the Purchaser or any of its Affiliates in or to the PASOLINK Marks in any Relevant Jurisdiction.*

*(a) Notwithstanding the foregoing, following the Completion, the Seller may use the PASOLINK Marks **in the Relevant Jurisdictions:***

*(i) in the operation of its business solely to utilize existing stationery, work product, business cards, signage and other similar items that bear the PASOLINK Marks as of the Completion (collectively, the Branded Materials) until the existing supply of such items is depleted or no more than ninety (90) calendar days following the Completion, whichever occurs first (at which time the Seller shall promptly destroy, rebrand, or otherwise dispose of, all remaining Branded Materials, other than the Branded Materials used in accordance with the PLA or subparagraph (ii) or (iii) below); provided that: (i) such utilization shall be substantially the same (and use 15 substantially the same standard of care) as the Seller or its Affiliates used the Branded Materials in the twelve (12) months prior to the date of this Agreement; and (ii) the Seller shall not (and shall cause its Affiliates not to): (A) alter the use of the PASOLINK Marks on the Branded Materials as it was used as of Completion, other than to remove or conceal such PASOLINK Marks or apply notices of ownership by the Purchaser of such PASOLINK Marks; (B) develop new Branded Materials (or additional copies or instances of existing Branded Materials); (C) use the PASOLINK Marks in connection with any Branded Material in any manner that tarnishes, harms or disparages the Purchaser, any of its Affiliates, or the PASOLINK Marks (or any goodwill associated therewith). The Seller shall indemnify and hold the Purchaser and its Affiliates harmless for any losses the Purchaser or its Affiliates suffer from or that arise or relate to the Seller's or any of its Affiliates' use of any of the PASOLINK Marks;*

*(ii) in relation to any PASOLINK products provided by any member of the Purchaser's Group to any member of the Seller's Group, provided that no material modifications are made to the products, and the PASOLINK Marks are used in accordance with current form as updated in writing by the Purchaser from time to time and in a manner that does not tarnish, harm or disparage the Purchaser, any of its Affiliates, or the PASOLINK Marks (or any goodwill associated therewith); **and***

***(iii) with the prior written consent of the Purchaser (such consent not be unreasonably withheld, delayed or conditioned), in relation to the performance of any Non-Transferring Contracts to which any member of the Seller Group is party at Completion Date.***

- (ii) Notwithstanding clause 6.2(a)(i) of the MSBA, the parties hereby agree that in each case until (i) the Malaysian Completion, NEC Malaysia, and (ii) until the Saudi Completion, NEC Saudi, may continue to use the PASOLINK Marks in the ordinary course of its business and thereafter in the operation of its business in the same jurisdictions as used as of the effective date of this Amendment Agreement solely to utilize existing stationery, work product, business cards, signage and other similar items that bear the PASOLINK Marks as of the Malaysian Completion or Saudi Completion as applicable until the existing supply of such items is depleted or no more than ninety (90) calendar days following Malaysian Completion or Saudi Completion as applicable, whichever occurs first.

(iii) With respect to the Malaysian Business and the Saudi Business, the time periods set out in clauses 6.5, 6.7, 6.8 and 6.12 of the MSBA shall be deemed to run from the Malaysian Completion or the Saudi Completion as applicable.

(e) **Purchase Price and Post-Completion Adjustment to Purchase Price**

(i) Clause 8.1 of the MSBA shall be deleted as replaced as follows:

“8.1 The aggregate consideration for the sale of the Assets (the **Purchase Price**) shall be:

- (a) an amount in cash equal to the sum of (the **Cash Consideration**): (i) **\$42,087,191**; minus (ii) Completion Net Debt; plus (iii) the Working Capital Adjustment; minus (iv) \$[...] (the **Saudi Arabia Adjustment**), solely in the event the Seller has not obtained the Saudi Consent before the date falling three Business Days prior to the Completion Date; plus (v) the Expense Adjustment; minus (vi) the Contract Assignment Escrow Amount, in each case as determined in accordance with the terms and conditions of this Agreement; and
- (b) **\$23,381,772** in common stock of the Purchaser (the **Purchaser Common Stock**) to be issued by the Purchaser (the **Stock Consideration**) to the Seller on Completion, the number of which shall be determined by dividing **\$23,381,772** by the volume weighted average of the closing sales prices of the Purchaser Common Stock (as adjusted for stock splits) on all domestic securities exchanges on which the Purchaser Common Stock may at the time be listed averaged over thirty (30) consecutive trading days ending on the day immediately prior to the date of this Agreement as quoted on NASDAQ, which, subject to subclause 8.6 but notwithstanding any other provision in Agreement, shall not be subject to any other adjustments.

If the consideration for the Business of the Seller on a stand-alone basis is less than **\$23,381,772** (i.e. if the aggregate consideration payable **at Completion** to the Selling Entities (**disregarding NEC Malaysia and NEC Saudi**) exceeds **\$42,087,191**), the Seller shall pay the Purchaser an amount in cash equal to amount by which the consideration for payable for the Business of the Seller is less than **\$23,381,772** such that the aggregate of such cash amount and the value of the Business of the Seller on a stand-alone basis is equal to **\$23,381,772**.”

(ii) Clause 8.2 of the MSBA shall be deleted as replaced as follows:

“8.2 The estimated aggregate consideration for the sale of the Assets (the **Estimated Purchase Price**):

- (a) payable at Completion and subject to adjustment as provided in this Agreement shall be:
  - (i) an amount in cash equal to the sum of (the **Estimated Cash Consideration**): (A) **\$42,087,191**; minus (B) the Estimated Net Debt; plus (C) the Estimated Working Capital Adjustment; minus (D) the Saudi Arabia Adjustment; plus (E) the Expense Adjustment; minus (F) the Contract Assignment Escrow Amount (as calculated in accordance with subclause 8.3) if applicable; and
  - (ii) the **Stock Consideration**;

- (b) if applicable, payable at the Malaysian Completion and subject to adjustment as provided in this Agreement shall be:
- (i) an amount in cash equal to the sum of (the Malaysian Estimated Cash Consideration): (A) Malaysian Cash Consideration; plus (B) the Malaysian Estimated Working Capital Adjustment; and
- (ii) the Malaysian Stock Consideration; and
- (c) if applicable, payable at the Saudi Completion, the Saudi Arabia Adjustment.”

(iii) The following shall be inserted as a new Clause 9.11 at the end of Clause 9 of the MSBA as follows:

“9.11 Notwithstanding anything herein or in the Escrow Agreement to the contrary (including, without limitation, Clause 9.10), in no event shall any amounts be released to the Seller from the Escrow Account prior to Seller delivering ninety percent (90%) of the PDM Materials (as defined below) to the Purchaser, which Seller shall do on or prior to December 30, 2023. In the event that the Seller has not delivered ninety percent (90%) or more of the PDM Materials (as defined below) to the Purchaser by December 30, 2023, the Purchaser and the Seller shall provide joint written instructions to the Escrow Agent to deliver promptly from the Escrow Account USD 6 million (the **Withheld Funds**) to the Purchaser. Following such time, if the Seller delivers at least ninety percent (90%) or more of the PDM Materials to the Purchaser by January 31, 2024 (the **Final Delivery Deadline**), then the Purchaser shall deposit the Withheld Funds with the Escrow Agent and such Withheld Funds will thereafter be released in accordance with this Agreement and the Escrow Agreement; provided, that, if the Seller does not deliver at least ninety percent (90%) of the PDM Materials to the Purchaser by the Final Delivery Deadline, then (i) the Purchaser shall retain the Withheld Funds, and (ii) notwithstanding anything to the contrary in this Agreement, Clause 9.10 shall only apply with respect to the remaining funds in the Escrow Account (after being reduced by the Withheld Funds). Seller acknowledges that the actual damages likely to result from a failure to deliver the PDM Materials by the Final Delivery Deadline are difficult to estimate on the date hereof and would be difficult for Purchaser to prove. The parties intend that Purchaser’s receipt and retention of the Withheld Funds would serve to compensate Purchaser as liquidated damages and the sole and exclusive remedy of the Purchaser for any breach by Seller of its obligation to deliver such PDM Materials in accordance with this Clause 9.11 or the IPLA, and they do not intend for it to serve as punishment or a penalty for any such breach by Seller.

**PDM Materials** means all files (electronic and/or physical) and databases containing the information required to manage a product throughout all end-to-end business processes as set out in Schedule 13 of this Amendment Agreement, which shall be included as a new Schedule 38 of the MSBA.”

**(f) Purchase Price Allocation**

- (i) For the purposes of the Purchase Price Allocation as set out in clause 10, each of NEC Malaysia, the Malaysian Assets and the Malaysian Cash Consideration shall be disregarded and the Purchase Price Allocation for the Malaysian Business shall be dealt with separately as set out in subparagraph 3 of Part 2 of Schedule 28 of the MSBA as amended by this Amendment Agreement.

- (ii) Schedule 1 of the MSBA (*Selling Entities and Purchasing Entities*) shall be replaced with Part 1 of Schedule 10; and
- (iii) Part 1 of Schedule 3 of the MSBA (*Tax Matters – Purchase Price Allocation Among Seller and Selling Entities*) shall be replaced with Part 2 of Schedule 10.
- (iv) Part 2 of Schedule 3 of the MSBA (*Tax Matters – Purchase Price Allocation Among Assets of each of Seller and Selling Entities*) shall be replaced with Part 2 of Schedule 10.

**(g) VAT**

- (i) For the purposes of the VAT determination and VAT payment processes as set out in clauses 20.2, 20.3, 20.4, 20.5, and 20.6, (i) the VAT incurred in connection with the transfer of the Malaysian Business shall be disregarded and the VAT determination and VAT payment processes for the Malaysian Business shall be dealt with separately as set out in subparagraph 4 of Part 2 of Schedule 28 of the MSBA as amended by this Amendment Agreement, provided that the maximum amount of the Estimated Seller VAT Portion and the maximum amount of the Final Seller VAT Portion shall be calculated in aggregation of any VAT incurred in connection with the transfer of the Malaysian Business, and (ii) the VAT incurred in connection with the transfer of the Business of NEC Latin America S.A. in Brazil shall be disregarded and the VAT determination and VAT payment processes shall be dealt with separately as set out relevant Local APA.

**(h) Saudi Arabia & Malaysia Arrangements**

- (i) Clause 14 of the MSBA shall be deleted and replaced as follows:

**“14. SAUDI ARABIA AND MALAYSIA”**

14.1 If the Seller obtains the Saudi Consent at least three Business Days prior to the date of Completion, the Seller shall procure that NEC Saudi sells, and the Purchaser shall procure that its subsidiary in Saudi Arabia purchases, the Saudi Arabian Assets in accordance with the Saudi Local APA on the Completion Date. If the Seller does not obtain the Saudi Consent at least three Business Days prior to the date of Completion, the parties shall comply with the provisions of **Part 1 of** Schedule 28.

**14.2 The parties shall comply with the provisions of Part 2 of Schedule 28 in respect of the Malaysian Assets.”**

- (ii) Schedule 28 (*Saudi Arabia Arrangements*) of the MSBA shall be deleted and replaced as set out in Schedule 2 of this Amendment Agreement and shall be titled (*Saudi Arabia and Malaysian Arrangements*).
- (iii) the existing Schedule 15 (*Saudi Arabia Distribution Agreement*) of the MSBA shall be designated as Part 1 and a new Part 2 (*Malaysian Distribution Agreement*) shall be included in the form as set out in Schedule 1 of this Amendment Agreement. Schedule 15 of the MSBA shall be titled (*Saudi Arabia and Malaysian Distribution Agreements*).

(i) **Contracts, Debts and Employees**

Clause 15, 16 and 17 of the MSBA shall be read to apply in respect of the Completion Business as of Completion, in respect of the Malaysian Business as of the Malaysian Completion and in respect of the Saudi Business as of the Saudi Completion.

(j) **Restrictive Covenants**

(i) Clause 18.2(f) of the MSBA shall be deleted and replaced as follows:

*“apply to the distribution agreements between the Purchaser or the Purchasing Entities and NEC New Zealand, NEC South Africa, NEC Saudi until the Saudi Arabian Assets are sold to the Purchaser’s Group in accordance with subclause 14.1 or **NEC Malaysia until the Malaysian Completion.**”*

(k) **Confidentiality**

(i) Clause 19.6 of the MSBA shall be deleted and replaced as follows:

*“19.6 With effect from Completion, **in respect of the Completion Business only** the Purchaser shall be released from its obligations under that agreement **and with effect from the later of (i) the Malaysian Completion, (ii) the Saudi Completion and (iii) the Final Long Stop Date, the Non-Disclosure Agreement shall be terminated and the Purchaser shall be fully released from its obligations under that agreement.** except in **each case in** relation to any antecedent breach. If there is a conflict between the terms of that agreement and the terms of this Agreement, the provisions of this Agreement shall prevail.”*

(l) **Payments**

Clause 23.1 of the MSBA shall be deleted and replaced as follows:

*“23.1 Unless otherwise expressly stated herein **(including as may be provided in Schedule 3 of the MSBA as amended by the Amendment Agreement)**, in any Local APA or other Transaction Document (or as otherwise agreed in the case of a given payment), each payment to be made to the Seller, a Selling Entity, the Purchaser or a Purchasing Entity under this Agreement shall be made in \$ by transfer of the relevant amount into the relevant account on the date (and, if applicable, at or before the time) the payment is due for value on that date and in immediately available funds and payment shall only be treated as having been made when the relevant amount is received in the relevant account in immediately available funds. The relevant account for a given payment shall be separately provided in writing by the Seller, in respect of itself or any Selling Entity or the Purchaser, in respect of itself or any Purchasing Entity.”*

(m) **Assets & Other Transferring Contracts:**

- (i) Schedule 2 (*Assets and Other Transferring Contracts*), Part 1 (*Assets*) shall be deleted and replaced as set out in Schedule 3 of this Amendment Agreement.
- (ii) Schedule 2 (*Assets and Other Transferring Contracts*), Part 3 (*Other Transferring Contracts*) shall be deleted and replaced as set out in Schedule 3 of this Amendment Agreement.
- (iii) Annexes 3, 4 and 5 of the Disclosure Letter shall be deleted and replaced with new Annexes as set out in Schedule 4 of this Amendment Agreement.

(iv) Schedule 2 (*Assets and Other Transferring Contracts*), Part 2 (*Excluded Assets*) shall be updated to include the following:  
“Any amounts payable or otherwise due to, or payable by NEC Argentina S.A. or NEC Telecommunication and Information Technology Ltd”

(n) **Completion actions/deliverables**

(i) Item (h) in Schedule 6 (*Completion*), Part 1 (*Seller’s Obligations*) of the MSBA shall be deleted and replaced as follows:

“(h) a copy of (i) the Saudi Distribution Agreement in the same or substantially the same form as appended in Part 1 of Schedule 15, duly executed by NEC Saudi; and (ii) the Malaysia Distribution Agreement in the same or substantially the same form as appended as Part 2 of Schedule 15, duly executed by NEC Malaysia.”

(ii) The following shall be inserted as a new Item (r) in Schedule 6 (*Completion*), Part 1 (*Seller’s Obligations*) of the MSBA as follows:

“(r) to the extent that the USD amount allocated to Japan under the column “Allocation of Estimated Cash Consideration” on Part 1 of Schedule 3 results in a negative number following the adjustments identified on Part 1 of Schedule 3, at Completion Seller shall make a payment in USD to the Purchaser with respect to the absolute value of such negative number, by wire transfer of immediately available funds to the Purchaser’s bank account in accordance with instructions provided by the Purchaser.”

(iii) Item (b) in Schedule 6 (*Completion*), Part 2 (*Purchaser’s Obligations*) of the MSBA shall be deleted and replaced as follows:

“(b) procure that each Purchasing Entity make a payment to the relevant Selling Entity in accordance with Part 1 of Schedule 3 any relevant Local APA; provided, that, notwithstanding herein to the contrary, (i) at Completion, with respect to the payments for China and India, in lieu of the applicable Purchasing Entity making a payment to the applicable Selling Entity in such jurisdictions, the Purchaser shall make a deposit (the Deposit) with the Seller in USD in accordance with the column titled “Allocation of Estimated Cash Consideration” in Part 1 of Schedule 3 and the Estimated VAT Amount for China and India in accordance with the analysis delivered by the Seller to the Purchaser in accordance with Clause 20.6 of the MSBA, (ii) within 60 days of Completion (such period of time, the Deposit Period), the Purchaser shall procure that the applicable Purchasing Entity in India and China make a payment to the applicable Selling Entity in accordance with Part 1 of Schedule 3, and (iii) during the Deposit Period, the Seller shall hold the Deposit separate, and within 8 Business Days of payment by the Purchaser or the applicable Purchasing Entity of the applicable China or India amount to the applicable Selling Entity, the Seller shall return the Deposit relating to the relevant jurisdiction (deducting any reasonable and documented costs incurred (including any tax related costs and liabilities if any) to the Seller for receipt and holding the Deposit and any reasonable and documented transferring fees for the return of the Deposit, provided that the Seller shall use its reasonable best efforts to minimize any such costs or fees) to the Purchaser. If the applicable Purchasing Entity in China and/or India does not make a payment to the applicable Selling Entity in accordance with Part 1 of Schedule 3 within the Deposit Period, (i) the Seller shall have the right to

receive the Deposit on behalf the relevant Selling Entity in China and/or India as consideration under the relevant Local APA(s), and (ii) the Purchaser shall indemnify the Seller for any costs and liabilities actually incurred to the Seller arising from the Seller's receipt and holding of the Deposit and the Seller's receipt of such payment on behalf of the Selling Entities in China and/or India (including any tax consequences to the Seller arising from the Seller's receipt of such payment on behalf of the Selling Entities).";

- (iv) The Parties agree that the actual payment between the Parties on Completion shall be the net amount of the payments to be made under subclauses 2.1(n)(ii) and (iii) above from the Purchaser to the Seller, or the Seller to the Purchaser, as applicable.
- (v) Item (e)(vii) in Schedule 6 (Completion), Part 2 (Purchaser's Obligations) of the MSBA shall be deleted and replaced as follows:  
“(e)(vii) a copy of (i) the Saudi Distribution Agreement in the same or substantially the same form as appended in **Part 1 of Schedule 15**, and (ii) the Malaysia Distribution Agreement in the same or substantially the same form as appended as **Part 2 of Schedule 15**, each duly executed by the Purchaser.”
- (o) **Employees:** Schedule 7 (Employees) of the MSBA shall be specifically amended as set forth on Schedule 11 and shall otherwise remain unchanged.
- (p) **Update of Intellectual Property Licence Agreement:** Exhibit B-1 (NEC Patents), Exhibit B-2 (Related Japanese Patents), Exhibit B-3 (Abandoned Patents) and Exhibit C (Products and NEC Management System) of the IPLA shall be deleted and replaced as set out in Schedule 8 of this Amendment Agreement.
- (q) **SEC Financial Statements:** Schedule 23 of the MSBA (SEC Financial Statements) shall be deleted and replaced as set out in Schedule 5 of this Amendment Agreement.
- (r) **Non-Transferring Contracts:** Schedule 29 of the MSBA (Non-Transferring Contracts) shall be deleted and replaced as set out in Schedule 5 of this Amendment Agreement.
- (s) **Assignable Contacts:** Part 2 of Schedule 32 of the MSBA (List of Revenue in Calendar Year 2022 For Each Customer) shall be deleted and replaced as set out in Schedule 9 of this Amendment Agreement.

### 3. GENERAL

- 3.1 The Parties agree that except as modified herein, the MSBA and any rights and claims (including Claims) under or in connection with the MSBA are unaffected and shall continue in full force and effect in accordance with its terms. If there is a conflict between this Amendment Agreement and the MSBA, the terms of this Amendment Agreement shall prevail.
- 3.2 The following clauses the MSBA shall apply, *mutatis mutandis*, to this Agreement: Clause 21 (Notices); Clause 24.4 (Counterparts); Clause 24.6 (Rights of Third Parties); Clause 24.7 (Variation); Clause 24.9 (Severability); Clause 25 (Whole Agreement); Clause 26 (Governing Law); and Clause 27 (Arbitration).

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**SCHEDULE 1**

**MSBA – PART 2 OF SCHEDULE 15**

**MALAYSIAN DISTRIBUTION AGREEMENT**

**[See attached]**

**DISTRIBUTION AGREEMENT**

BETWEEN

**NEC CORPORATION OF MALAYSIA SDN BHD**  
(hereinafter called “**NECOMAL**” or “**Distributor**”)

Registration Number:  
(Company No. 200001023469 (526077-M))

and

**AVIAT NETWORKS (S) PTE. LTD.**  
(hereinafter after called “**Supplier**”)

Registration Number:  
199901592C

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This Distribution Agreement (hereinafter referred to as the “Agreement”) is made on December 1<sup>st</sup>, 2023 (the “Effective Date”) between **NEC CORPORATION OF MALAYSIA SDN BHD** (Company No. 200001023469) (526077-M), a private company with its principal place of business at Suite 19-01, Level 19, The Gardens South Tower, Mid Valley City, Lingkaran Syed Putra, 59200 Kuala Lumpur, Malaysia (hereinafter referred to as “**NECOMAL**” or “**Distributor**”) and Aviat Networks (S) Pte. Ltd., a limited liability corporation with its principal place of business at 51, Changi Business Park Central 2 #08-03, The Signature, Singapore 486066 (hereinafter referred to as the “**Supplier**”).

Both the Distributor and Supplier shall be collectively referred to as “Parties”, and each separately as “Party”, as the case may be.

WHEREAS:

- (A) The Supplier supplies wireless network products.
- (B) NECOMAL is a renowned systems integrator providing custom ICT technology solutions and services in the Territory.
- (C) The Supplier wishes to authorize and appoint NECOMAL, and NECOMAL wishes to accept the authorization and appointment as the Supplier’s distributor on a non-exclusive basis (as set out in clause 3 hereof), to market, distribute, sell, or incorporate for distribution, the Products and Services listed in Annexure A attached to this Agreement, within the Territory in each case on the terms and subject to the conditions set out in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1 DEFINITIONS**

In this Agreement:

“**Business**” means the wireless backhaul business.

“**Business Day**” means a day other than a Saturday, a Sunday, or any public holiday in the Territory.

“**Confidential Information**” means all non-public, confidential or proprietary information disclosed by one Party to the other Party, in any tangible or intangible form, such as but not limited to written, oral, visual, audio, those produced by electronic media, or through any other means, that is designated as confidential or that by its nature or circumstances surrounding its disclosure, should be reasonably considered as confidential, including but not limited to products or planned products, processes and/or procedures, technological achievements and interests, customers and potential customers, business prospects, financial statements and information, financial situation and corporate plans, internal activities, future plans of the disclosing party, and other information deemed proprietary or confidential by the disclosing party or any other matter in which the disclosing party may have any interest whatsoever, which may include, without limitation, trade secrets, engineering designs, architecture and other technical data, as well as business plans, financial data. For the avoidance of doubt, for the purpose of this Agreement, all information disclosed by a Party to the other Party shall be treated as Confidential Information

“**Defect**” means a flaw in the materials and/or workmanship incorporated in a product during its manufacturing process which hinders its usability for the purpose for which it was originally designed and manufactured or substantially affects its performance in accordance with the technical specifications published by the manufacturer of the Products. Software and firmware bugs, known or unknown at the time of sale of the firmware or software, which cause the firmware or software to produce an incorrect or unexpected result, or to behave in ways unintended in the technical data sheets from the Supplier;

“**Delivery Date**” means the date at which the risk of loss or damage to the Products transfers to NECOMAL, in accordance with the risk transfer rules of the applicable Incoterm.

“**Effective Date**” is defined in the introduction to this Agreement.

“**Encumbrances**” means any pledges, liens, charges, security interests, leases, title retention agreements, mortgages, restrictions, easements, rights-of-way, title defects, options, adverse claims, or encumbrances of any kind.

“**End Customer**” means the final customer in the Territory that purchases the Products and/or Services listed in Annexure A from NECOMAL for its own internal use and not for resale.

“**Governmental Authority**” means:

- (a) any national, regional, local, or foreign government, and any political subdivision of any of them,
- (b) any agency or instrumentality of any such government or political subdivision,
- (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), and
- (d) any arbitrator, court or tribunal of competent jurisdiction.

“**Initial Term**” is defined in clause 13.1.

“**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world:

- (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
- (b) copyrights, including all applications and registrations related to the foregoing,
- (c) trade secrets and confidential know-how,
- (d) patents and patent applications,
- (e) websites and internet domain name registrations, and
- (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

“**Inspection Period**” is defined in clause 6.1.

“**Law**” means:

- (a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
- (b) any official directive, protocol, code, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

“**Legal Proceeding**” means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).

“**Parties**” means both the Supplier and NECOMAL, collectively.

“**Party**” means either the Supplier or NECOMAL, individually.

“**Permits**” means all material licenses, franchises, permits, certificates, approvals, and authorizations, from Governmental Authorities necessary for the ownership and operation of the Party’s business.

“**Person**” includes

- (a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and
- (b) any individual.

“**Products**” means the Pasolink Products and related Software as further listed in Annexure A, attached to this Agreement.

“**Purchase Order**” is defined in clause 4.1.

“**Renewal Term**” is defined in clause 13.2.

“**Scope Specific Agreement**” means the separate agreement entered into by the Supplier and NECOMAL in respect of the Services to be rendered by the Supplier directly to an End-User on behalf of NECOMAL.

“**Services**” means the services listed in Annexure A, attached to this Agreement.

“**Support Service Charges**” means the charges to be paid for the Support Services under clause 12 and **Error! Reference source not found.**

“**Support Services**” means the support services scoped in clause 11.1 and listed in **Error! Reference source not found.**, attached to this Agreement.

“**Taxes**” includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other applicable taxes for which a Party may have any liability imposed by any Governmental Authority, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

“**Territory**” means Malaysia.

“**USD**” means the United States dollar.

## 2 INTERPRETATION

### 3 References to Specific Terms

4 *Currency*. Unless otherwise specified, all dollar amounts expressed in this Agreement refer to United States Dollars.

5 *”Including”*. Where this Agreement uses the word “including,” it means “including without limitation” and where it uses the word “includes,” it means “includes without limitation.”

6 *”Knowledge”*. Where any representation, warranty, or other statement in this Agreement, or in any other document entered into or delivered under this Agreement, is expressed by a Party to be “to its knowledge” or is otherwise expressed to be limited in scope to facts or matters known to the Party or of which the Party is aware, it means:

7 the then-current, actual knowledge of the directors and officers of that Party, and

8 the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.

9 *Statutes, etc.* Unless specified otherwise, any reference in this Agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.

10 *Number and Gender*. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

11 *Headings*. The headings used in this Agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

12 *Internal References*. References in this Agreement to sections and other subdivisions are to those parts of this Agreement.

13 *Calculation of Time*. In this Agreement, a period of days begins on the first day after the event that began the period and ends at 11:59 p.m. Malaysia Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 11:59 p.m. Malaysia Time on the next Business Day.

14 *Construction of Terms*. The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting Party will not apply in interpreting this Agreement.

15 *Conflict of Terms*. If there is any inconsistency between the terms of this Agreement and those in any Annexures to this Agreement or in any document entered into under this Agreement, the terms of this Agreement will prevail. The Parties shall take all necessary steps to conform the inconsistent terms to the terms of this Agreement.

- 16 *Binding Effect.* This Agreement will benefit and bind the Parties and their respective heirs, successors, and permitted assigns.
- 17 APPOINTMENT OF NECOMAL
- 18 NECOMAL shall, for the Initial Term or Renewal Term (as applicable), purchase Products and Services only from the Supplier -and the Supplier agrees to supply NECOMAL with Products and Services on a continuous basis in line with NECOMAL' Purchase Orders accepted by the Supplier- and it shall not, for the Initial Term or Renewal Term (as applicable), distribute or manufacture any goods and/or services which compete with the Products and/or Services accepted by the Supplier at the price as listed in Annexure A—Products, Services and Price List.
- 19 NECOMAL shall, for the Initial Term or Renewal Term (as applicable), be the Supplier's distributor on a non-exclusive basis of the Products within the Territory.
- 20 NECOMAL shall act as an independent contractor, purchasing the Products from the Supplier and reselling them in its own name, on its own behalf and on its own account. NECOMAL shall have no authority to enter into any contract or commitment in the name of or for the account of the Supplier or to bind the Supplier in any manner whatsoever.
- 21 The Parties may revise the list of Products and Services at any time during the Initial Term or Renewal Term (as applicable) by agreement in writing provided that the revision shall not affect those quotation(s) which have already been issued by the Supplier to NECOMAL and which are still within the quote validity period of 30 (thirty) days from the quote issuance date..
- 22 To the extent not specifically covered in this Agreement, sales transactions between the Parties shall be covered by Supplier's standard Terms and Conditions of Sale in effect at the time of Supplier's acceptance of a Purchase Order issued by NECOMAL ("Supplier's Terms"), incorporated by reference in this Agreement, which shall prevail over any terms and conditions included on any purchase order submitted by NECOMAL. In the event of any conflict between this Agreement and Supplier's Terms, the order of precedence is as follows: (a) this Agreement; (b) Supplier's Terms.
- 23 **ORDERS**
- 24 *Purchase Orders.* From time to time, NECOMAL shall submit orders for Products to the Supplier in writing and in accordance with the respective quotation provided by the Supplier to Supplier's address listed in the introduction to this Agreement or as the Supplier otherwise specifies in writing (each, a "**Purchase Order**") and include in each Purchase Order:
- 25 each Product and/or Service it is ordering, identified by model, part number or service description;
- 26 the amount of each Product and/or Service it is ordering;
- 27 the unit price of each Product and/or Service it is ordering;
- 28 the Incoterm applicable to the Purchase Order;
- 29 the location for delivery; and
- 30 the delivery date (the "**Delivery Date**").

31 Accepting, Modifying, and Rejecting Purchase Orders

32 *By Notice.* Within 3 (three) Business Days' of receiving a Purchase Order from NECOMAL, the Supplier shall accept, reject, or propose a modification to the Purchase Order by sending NECOMAL written notice of its acceptance, rejection, or proposed modification (as applicable), save that the Supplier shall not be permitted to reject or propose any modifications to any Purchase Order that is consistent with Annexures A&B and all the terms and conditions of this Agreement.

33 *Cancelling Purchase Orders.* NECOMAL may, at no expense to itself, cancel part or all of a Purchase Order before it is accepted in writing by the Supplier. After the acceptance of a Purchase Order by Supplier in writing, any Order cancellation shall entitle Supplier to charge cancellation charges up to the full amount of the cancelled Purchase Order.

34 **License Keys (If Applicable)**

35 Supplier shall provide NEC with the ability to generate license keys necessary for NEC and/or its End Customers to access, unlock or otherwise enable purchased Product features.

36 **DELIVERY OF PRODUCTS AND SCOPE SPECIFIC AGREEMENT**

37 *Delivery.* The Supplier shall deliver each order of Products to NECOMAL in accordance with the CIF Port Klang, Malaysia Incoterm (2020 edition):

38 on the Delivery Date; and

39 using any delivery method that the Parties shall agree to in writing.

40 *Risk of Loss Shifts on Delivery.* The risk of loss or damage to the Products is transferred to NECOMAL when the Products are handed to the first carrier, in accordance with the risk transfer rules of the CIF Port Klang, Malaysia Incoterm that is applicable to a Purchase Order, after which NECOMAL will assume the risk of loss or damage to the Products.

41 *Title transfer:* The title in the Products (including software media, where applicable) shall transfer from Supplier to NECOMAL upon shipment of the Products from the Supplier's manufacturing facilities.

42 *Scope Specific Agreement.* In the event that NECOMAL resells Supplier's Services, Supplier and NECOMAL may agree, by entering into a mutually agreed Scope Specific Agreement, the terms and conditions under which Supplier shall render the Services to the End Customer directly on behalf of NECOMAL in accordance with the Scope Specific Agreement; however the Supplier shall have no direct relationship with the End Customer. NECOMAL shall at all times remain liable for payment of the Services provided by Supplier under the Scope Specific Agreement. NECOMAL shall enter into a similar back-to-back agreement with the End Customer for the relevant Services, provided always that NECOMAL shall not give any promise, guarantee, condition, or warranty about the Services beyond those given by Supplier in the Scope Specific Agreement or make any representation, pledge any credit, commit to any contract, or incur any liability for or on behalf of Supplier.

43 **ACCEPTANCE AND REJECTION OF PRODUCT DELIVERIES**

- 44 *Inspection Period.* NECOMAL will have 20 (twenty) Business Days after the Products reach the named place of destination to inspect and test the Products for Defects, missing items, items shipped in error, items damaged in transit (the “**Issues**”) and to ensure the order deliveries meet the specifications of the applicable Purchase Order and in the case of software Products, NECOMAL will have 5 (five) Business Days to test or inspect the software Products upon those software Products being authorised by the Supplier for downloading by NECOMAL (the “**Inspection Period**”).
- 45 *Acceptance.* For the Products which satisfy the specifications of the applicable Purchase Order, NECOMAL shall accept the Products and notify the Supplier in writing of such acceptance within seven (7) days after the end of the Inspection Period.
- 46 *Deemed Acceptance.* NECOMAL will be deemed to have accepted Products if
- 47 NECOMAL fails to notify the Supplier on or before the expiration of the Inspection Period; or
- 48 if during the Inspection Period, NECOMAL sells, runs, or otherwise uses the Products beyond what is necessary for inspection and testing, and in a way a reasonable Person would consider consistent with NECOMAL having accepting the delivery from the Supplier.
- 49 *Rejection and Cure.* For the Product Issues supported by undisputed evidence:
- 50 NECOMAL shall deliver to the Supplier a written list detailing each Issue and the affected Products;
- 51 On NECOMAL returning the Products having an Issue at Supplier’s cost and in accordance with Supplier’s Return Material Authorization process, the Supplier shall promptly deliver to NECOMAL any Products necessary to remedy each Issue, at no expense to NECOMAL.

## **52 CHANGES TO PRODUCTS.**

The Supplier may not discontinue, modify, or replace Products or Services that are subject to an accepted and outstanding Purchase Order, unless:

- 53 required by Law;
- 54 the Supplier is able to replace such Products and Services with similar or better products or services that achieve the same purpose and/or outcome;
- 55 the End Customer has agreed to such replacement of the Products and Services; and
- 56 the replacement products are no more expensive than the Products being replaced.

## **57 PRICE**

- 58 *Price.* NECOMAL shall pay the Supplier’s listed price for each Product or Service as advised by the Supplier. The price list in effect between the parties at the Effective Date is as set out in Annexure A - Products, Services and Price List attached to this Agreement. The price list is in U.S. dollars and Supplier’s invoices shall be issued and paid in U.S. dollars. The price list is exclusive of all sales, use, excise, and other taxes, including withholding taxes, duties, assessments or fees or charges of any kind imposed by a governmental authority on any amount payable by the Distributor under this Agreement and represent net amounts the Supplier is entitled to receive and shall not be subject to any deductions for any reason whatsoever. For the avoidance of doubt, the Price List is set to reflect an ExWorks Supplier’s manufacturing facilities delivery. Should NECOMAL request deliveries on CIF Port Klang,

Malaysia Incoterm, then the CIF freight/insurance and export custom clearance duties and taxes shall be quoted on an adhoc basis and be added to the ExWorks price of the Products as a separate quotation line.

59 *Resale Prices.* NECOMAL may determine its own resale prices.

60 Changes to Prices

61 *Notice of Upcoming Price Changes.* If the Supplier changes its pricing, the Supplier shall give NECOMAL at least thirty (30) calendar days' notice before implementing such changes.

62 *No Effect on Outstanding Purchase Orders.* Changes to the Supplier's prices will not affect any Purchase Orders already submitted prior to the effective date of such price changes.

### 63 PAYMENT OF PRICES

64 *Invoice Delivery.* The Supplier shall invoice NECOMAL for Product purchases at the time of shipment of the Products from Supplier's manufacturing facilities. In the case of Services, and unless differently agreed in a Purchase Order for Services, the Supplier shall invoice NECOMAL upon completion of the Services and/or, in the case of Support Services, annually in advance.

65 *Invoice Procedure and Requirements.* The Supplier shall:

66 issue each invoice to NECOMAL in writing, including:

67 an invoice date and number;

68 the total amount due;

69 the calculation of the total amount; and

70 the details of its nominated bank account; and

71 send each invoice to the nominated recipient of NECOMAL as advised by NECOMAL in writing.

72 *Payment.* NECOMAL shall pay each properly rendered invoice within 45 (forty-five) calendar days after receiving each invoice, to the account whose details are set out in the relevant invoice in accordance with clause 9.2.1.4. If Distributor fails to timely pay any outstanding amounts, Supplier may, in its sole discretion, and in addition to any other rights and remedies it may have under this Agreement and at law, including the right to suspend any delivery and to terminate any outstanding Purchase Order after 30 days of suspension, charge interest on such unpaid amounts equal to a rate of 1.5% per month or the maximum rate permitted by law, whichever is the lesser, from the date such amounts become due until the date such amounts are received in full, save that nothing contained in this provision shall apply to any improperly rendered or bona fide disputed invoice.

73 If NECOMAL disputes any invoice or other request for payment, NECOMAL shall immediately notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within 30 days of NECOMAL giving notice to the Supplier, the dispute shall be resolved in accordance with clause 33.15.

- 74 Unless differently agreed between the Parties in writing, the Supplier shall be responsible for the payment of all invoices due to third party suppliers of the Supplier in connection with the provision of the Support Services.
- 75 NECOMAL shall be entitled to require the Supplier to provide all such evidence as may be reasonably necessary to verify the Support Service Charges and any other matters set out in an invoice.
- 76 TAXES.**
- 77 NECOMAL and the Supplier shall respectively bear and pay any applicable tax that may be imposed on them in relation to their obligations under this Agreement and a Purchase Order.
- 78 If the payment by NECOMAL of any sum due under this Agreement is subject by law to withholding tax, NECOMAL shall:
- 79 withhold such legislated levied amount from the payment to the Supplier;
- 80 account to the relevant tax authority for that withholding tax; and
- 81 supply to the Supplier a certificate certifying such payment of withholding tax.
- 82 SUPPORT SERVICES – LEVEL 3 TO BE PROVIDED BY SUPPLIER**
- 83 Where NECOMAL issues a Purchase Order for support services outside of the Product warranty period and basic coverage (the “**Support Services**”), the Supplier shall provide the Support Services—Level 3 to the Products and Software to NECOMAL in accordance with this Agreement and for the duration covered by NECOMAL’s Purchase Order.
- 84 SUPPORT SERVICES CHARGES**
- 85 In consideration of Supplier providing the Support Services to NECOMAL, NECOMAL shall pay the Support Service Charges to Supplier.
- 86 The Supplier shall invoice NECOMAL for the Support Services yearly in advance. NECOMAL shall pay Supplier’s invoices for the Support Services within 45 calendar days of receipt of Supplier’s invoice, to the bank account nominated in writing by Supplier.
- 87 TERM**
- 88 *Initial Term.* The initial term of this Agreement will begin on the Effective Date and continue for 12 (twelve) months thereafter (the “**Initial Term**”), unless terminated earlier in accordance with the provisions of this Agreement.
- 89 *Non-Automatic Renewal.* The parties may discuss the principle and the details of a renewal of this Agreement at three (3) months prior to the expiry of the Initial Term.
- 90 MARKETING DEVELOPMENT / SALES DEVELOPMENT CONTRIBUTION**
- 91 The Parties shall discuss in good faith at the beginning of each anniversary of this Agreement NEC’s Marketing and Sales Development strategy and specific plans in the Territory for the contract year to come and the Parties shall agree in good faith if Supplier should contribute in any way to those efforts. Supplier shall make reasonable commercial efforts to participate with NEC in fairs, exhibitions and similar events in the Territory, but shall be under no obligation to do so unless such participation is agreed by the parties in writing sufficiently in advance of each event to enable proper preparation by the parties.

**92 REPRESENTATIONS**

93 Mutual Representations

94 *Existence.* The Parties are corporations incorporated and existing under the Laws of the jurisdictions of their respective incorporation.

95 *Authority and Capacity.* The Parties have the authority and capacity to enter into this Agreement.

96 *Execution and Delivery.* The Parties have duly executed and delivered this Agreement.

97 *Enforceability.* This Agreement constitutes a legal, valid, and binding obligation, enforceable against the Parties according to its terms.

98 *No Conflicts.* Neither Party is under any restriction or obligation that the Party could reasonably expect might affect the Party's performance of its obligations under this Agreement.

99 *No Breach.* Neither Party's execution, delivery, or performance of its obligations under this Agreement will breach or result in a default under:

100 its articles, by-laws, or any unanimous shareholders agreement;

101 any Law to which it is subject;

102 any judgment, Order, or decree of any Governmental Authority to which it is subject; or

103 any agreement to which it is a Party or by which it is bound.

104 *Permits, Consents, and Other Authorizations.* Each Party holds all Permits and other authorizations necessary to:

105 own, lease, and operate its properties, and

106 conduct its business as it is now carried on.

107 *No Disputes or Proceedings.* Each Party confirms, represents and warrants that there are no Legal Proceedings pending, threatened or foreseeable, against itself, which would affect its ability to complete its obligations under this Agreement.

108 *No Bankruptcy.* Neither Party has taken or authorized any proceedings related to that Party's bankruptcy, insolvency, liquidation, dissolution, or winding up.

109 Supplier's Representations

110 *Ownership.* The Supplier is the sole owner or rightful licensee of the Products, free of any claims by a third party or any Encumbrance.

111 *Legal Right.* The Supplier has the necessary right to transfer or license the Products to NECOMAL under the terms of this Agreement.

112 *No Infringement.* The Supplier's sale of the Products does not infringe on or constitute a misappropriation of the Intellectual Property or other rights of any third party.

**113 LIMITED WARRANTIES**

114 *Products.* All Products are covered by the Supplier's warranty statements that are provided with the Products or Services, otherwise made available or advised by the Supplier from time to time. The Parties may mutually agree additional warranty terms on a case-by-case basis.

115 *Services.* The Supplier certifies that all its personnel are trained appropriately to perform the Services and, possess the necessary certifications and/or licenses to deliver the Services.

116 *Third Party Products.* Non-Supplier branded products or services receive warranty coverage as provided by the relevant third-party supplier.

117 *Software Warranty.* The Supplier hereby warrants that for the Software Warranty Period, which shall be 90 days from the date NECOMAL is in receipt of shipment of the Software at which the Software license is delivered by Supplier to NECOMAL, that when operated according to the documentation and other instructions the Supplier provides, software will perform substantially according to the functional specifications listed in the documentation.

118 *Support Services Warranty.* The Supplier hereby warrants any repairs performed by Supplier as part of the Product Warranty and/or Support Services purchased by NECOMAL for a period which is the longer of (a) the balance of the initial Product Warranty Period or (b) 6 months from the return shipment date.

119 The limited warranties listed in clauses 16.1 to 16.4 apply only to the Distributor and its End Customers. Supplier shall provide the above-mentioned warranties for the most current version of Supplier's products. Supplier shall have no obligation to provide warranty if a material defect in the Supplier's product is caused by the malfunction of non-Supplier hardware or Software, by modification of the Supplier's product not made the Supplier, by use of the Supplier's products that is not in accordance with the Supplier's written instructions for the Supplier's products. Supplier will accept warranty returns only from Distributor and Distributor must arrange all details of such returns with End Customers, eligible under the aforementioned warranties. EXCEPT FOR THE WARRANTIES STATED ABOVE, SUPPLIER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES ON SUPPLIER'S PRODUCTS FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

120 *Compliance with Laws.* The Supplier hereby warrants that the Products and Support Services comply with any applicable laws, statutes and regulations relevant to the manufacture, design, packaging, sale and use of the Products or Support Services (as applicable) in connection with this Agreement.

121 The following provisions relating to the Products, shall be addressed in accordance with the Supplier's Global Customer Services Support Guidelines:

122 *Upgrades/Updates.*

123 *Return Material Authorisation/RMA.*

- 124 Support.
- 125 Dead on Arrival / Out-of-box Failures.
- 126 Service Level Agreement on warranties.

**127 INTELLECTUAL PROPERTY.**

- 128 The Supplier hereby grants to NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute the Products solely for use by the End Customers, and in connection with their use of the Products under this Agreement, within the Territory.
- 129 Except for rights expressly granted under this Agreement:
  - 130 nothing in this Agreement will function to transfer any of either Party's Intellectual Property rights to the other Party, and
  - 131 each Party will retain exclusive interest in and ownership of its Intellectual Property developed before this Agreement or developed outside the scope of this Agreement.
- 132 The Supplier indemnifies and holds NECOMAL harmless against all losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by NECOMAL in connection with any claims, actions or proceedings arising out of or in connection with any actual or alleged infringement by the Products sold or licensed by Supplier to NECOMAL and/or by the Support Services provided by Supplier to NECOMAL of the Intellectual Property or other rights of a third Party. The preceding indemnification obligation shall not apply (i) to any Products and/or Support Services, or portion thereof, manufactured and/or provided to specifications furnished by NECOMAL or on NECOMAL's behalf, or (ii) to any infringement arising out of the use of such Products and/or Support Services in combination with other equipment, software or services not sold or recommended by Supplier, or (iii) to use in a manner not normally intended, or (iv) to any patent, copyright, trademark or trade secret in which NECOMAL, or any of NECOMAL's affiliates has a direct or indirect interest, or (v) if NECOMAL has not provided Supplier with prompt notice, authority, information and assistance necessary to defend the action, or (vi) to any claim alleging infringement of any intellectual property right or interest in FOSS.
- 133 The Supplier shall retain the right, in its sole discretion, to modify or replace the infringing Products or Services with non-infringing Products or Services and the Supplier shall give NECOMAL reasonable advance notice of such action.
- 134 The provisions of this clause 17 shall survive the termination of this Agreement, irrespective of the reasons for termination.

**135 SUPPLIER RESPONSIBILITIES**

- 136 *Supply of Products and Support Services.* The Supplier shall supply the Products and Support Services to NECOMAL in accordance with the provisions of this Agreement and agreed timeline in accepted Purchase Orders. Shipping or delivery dates are estimates only and subject to change based on Supplier' commitments at the time NECOMAL's Purchase Order is received and accepted, on NECOMAL's diligence in providing all information necessary to permit Supplier to complete the Purchase Order and on NECOMAL's ability to secure financing of the Purchase Order. When Supplier is providing financing to NECOMAL, shipments will not be made until all required security agreements and financing statements have been executed and approved by Supplier.

- 137 *Insurance.* Each party shall put in place and maintain appropriate public liability insurance for in respect of each claim and Supplier shall also put in place appropriate product liability insurance in respect of each product liability claim for the duration of this Agreement. Each party shall promptly provide copies of the insurance certificates to the other party at the other party's request.
- 138 *Licences and permits.* The Supplier shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Products and Support Services in accordance with this Agreement.
- 139 *Personnel.* The Supplier shall employ a sufficient number of competent and qualified personnel to carry out its obligations under this Agreement.

#### **140 NECOMAL RESPONSIBILITIES**

- 141 *Marketing.* Subject to clause 14 hereof, NECOMAL shall use reasonable efforts to market, advertise, and otherwise promote and sell the Products in the Territory.
- 142 *Employee Training.* NECOMAL shall ensure that any of its employees who are responsible for the marketing, sales, and technical support services for the Products have proper skill, training, and background to enable them to provide these services in a competent and professional manner.
- 143 *Sales Forecast.* NECOMAL shall provide the Supplier with a non-binding quarterly sales forecast, in a mutually agreed-upon format.
- 144 *Markings and Notices.* NECOMAL will not remove or alter any trademarks, Product identification, notices of any proprietary or copyright restrictions, or other markings or notices that appear on the Products or their packaging.
- 145 *No Reverse Engineering.* NECOMAL will not:
- 146 create or attempt to, or aid or permits others to, create by reverse engineering, disassembly, de-compilation, reverse engineering or otherwise, the internal structure, the source code, hardware design, or organization of any Product, unless expressly permitted by Law;
  - 147 copy, modify, translate, or create derivative works of software included in any Product, unless the Supplier consents in writing; or
  - 148 separate the Product into component parts for distribution or transfer to a third party.

#### **149 LICENSE GRANTS**

- 150 *Software License Grant.* Supplier hereby grants NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute any software incorporated in Products solely for use by the End Customers in the Territory in and in connection with their use of Products and always subject to such End Customers abiding by the terms of Supplier's End-User License Agreement included in Supplier's Terms.

- 151 *Documentation License Grant.* Supplier hereby grants to NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to:
- 152 reproduce or transmit documentation Supplier provides NECOMAL for marketing, selling, and distributing the Products (provided such documentation is not modified and Supplier's proprietary notices are not removed); and
- 153 reproduce and transmit any user manuals and other documentation Supplier creates for customers in connection with the Products.
- 154 *Supplier Trademark License Grant.* Supplier hereby grants to NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use Supplier's name, trademarks, logos, and other identifying information on marketing literature, advertising, promotions, customer information, and programs NECOMAL creates in connection with the Products, subject to Supplier's written approval as well as guidelines for use, in each instance.
- 155 *Trademark Use.* NECOMAL shall comply with all of Supplier's policies regarding the use and display of Supplier's name, trademarks, logos, and other identifying information that Supplier provides to NECOMAL in writing.

**156 COMPLIANCE WITH LAWS.**

Each Party shall:

- 157 At its own expense comply with all applicable Laws relating to the subject matter of the Agreement and in the performance of its duties under this Agreement, and
- 158 notify the other Party if it becomes aware of any non-compliance in connection with this clause 21.

ExportControls:

A. It is expressly understood that this Agreement, and all obligations arising hereunder are subject to U.S. Government export control laws and regulations, as amended, including without limitation, the requirement to obtain necessary approvals and licenses prior to the acceptance of any Purchase Orders, or the export of Products hereunder. Such shall also apply, by way of example only, to spare parts, warranty items delivered by Supplier in connexion with the Products, and the in-country transfer or re-export of any such Products by Distributor or an End Customer thereafter. Any Products purchased by or provided to Distributor, including any technical data or documentation pertaining thereto, shall not be sold, leased or assigned, transferred, conveyed or in any manner disposed of, either directly or indirectly, without the prior written approval of the United States Government, in accordance with U.S. Law.

B. Each Party agrees to use reasonable efforts to obtain all necessary U.S Government approvals or licenses for the export and/or import of the Products hereunder for resale within the Territory. Distributor agrees to use reasonable efforts to provide timely and accurate End User Statements to Supplier, as appropriate, prior to Supplier's application for export license and submission of this Agreement to the appropriate U.S. Government Authority to secure the appropriate export approval.

C. Supplier shall be excused from performance, and not be liable for damages, including the assessment of late deliveries penalties, for failure to deliver the Products hereunder resulting from the U.S Government's delay, denial, or withdrawal of approval to export Products to Distributor or an End Customer PROVIDED THAT the Supplier shall, without any unreasonable delay, inform to the Distributor about such delay in writing.

D. If Supplier has reason to believe that NEC has misrepresented, or failed to properly disclose, any fact regarding end use, End Customers or country of ultimate destination or any other information supplied or requested pursuant to the End Use Statement, Supplier may without liability to NEC terminate this Agreement for default immediately and discontinue all performance hereunder.

E. NECOMAL is responsible for obtaining any necessary import licences or permits required for the entry of the Products into the Territory or their delivery to NECOMAL. Further, NECOMAL is responsible for any customs, duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products into the Territory.

**159 DATA PROTECTION**

All personal data contained in this Agreement shall be processed in accordance with the relevant data protection laws in force in the Territory.

**160 COMPLIANCE WITH CODE OF CONDUCT:**

By entering into this agreement, the Supplier hereby confirms its compliance with the NEC Group's Code of Conduct Policy, which can be found at [https://my.nec.com/en\\_MY/about/about-nec-asia-pacific/csr/Ethical\\_Procurement.html](https://my.nec.com/en_MY/about/about-nec-asia-pacific/csr/Ethical_Procurement.html). NECOMAL undertakes to comply at all times with Supplier's Code of Conduct available at : <https://investors.aviatnetworks.com/code-conduct-0> and as may be updated by Supplier from time to time.

**161 CONFIDENTIALITY OBLIGATIONS.**

162 Each Party ("**Recipient**") undertakes to the other Party ("**Disclosing Party**") that:

163 it will treat all Confidential Information as confidential and will not disclose such Confidential Information to any third Party, other than its auditors and other professional advisers, without the Disclosing Party's prior written consent;

164 if it discloses any Confidential Information to its auditors and other professional advisors, it will ensure that such auditors and professional advisors are bound by obligations of confidentiality no less onerous than those contained in this clause 24;

165 it will only disclose the Confidential Information to those of its employees, contractors and agents who require such Confidential Information to perform their duties and all such employees, contractors and agents will be bound by obligations of confidentiality no less onerous than those contained in this clause 24; and

166 will not use such Confidential Information other than for the purposes of this Agreement.

167 The provisions of clause 24.1 shall not apply to Confidential Information which:

168 was developed by Recipient independently of the Confidential Information disclosed by the Disclosing party which can be verified by independent evidence; or

- 169 has been or becomes now or in the future published in the public domain without breach of this Agreement or breach of a similar agreement by a third party; or
- 170 is disclosed or used by Recipient after receiving express written consent from an authorized representative of the Disclosing party to disclose or use; or
- 171 is required to be disclosed by law or in terms of a court order of a court of competent jurisdiction or otherwise in accordance with any direction or request issued by any governmental or regulatory body, in which event the recipient shall (i) only disclose such of the Confidential Information as is strictly required; (ii) use its reasonable endeavours to seek confidential treatment of such Confidential Information; and (iii) notify the disclosing Party as soon as reasonably possible (and if possible prior to any disclosure) of its obligation to so disclose.
- 172 The obligations contained in this clause 24 shall survive a period of one (1) year after the termination of this Agreement or until the Confidentiality Information has become part of the public domain, whichever is longer.

**173 PUBLICITY**

- 174 *Consent.* Save for the use as set out in this Agreement, neither Party will use the other Party's name, logo, or trademarks, or issue any press release or public announcement regarding this Agreement, without the other Party's written consent, unless specifically permitted under this Agreement or required by Law.
- 175 *Cooperation.* The Parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this Agreement and the relationship between the Parties.

**176 FORCE MAJEURE**

- 177 Notwithstanding any other provision of this Agreement, neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party (or its Affiliates) as a result of any delay or other failure in the performance of its obligations under this Agreement (other than an obligation to pay money, including the Fees) if and to the extent that such delay or other failure is caused by an event or circumstance which was unforeseeable and not within the reasonable control of the Party concerned ("**Force Majeure Event**"). The Party affected by a Force Majeure event shall be granted with an equitable extension of time for performance of the relevant obligation(s) *provided that* it complies with clause 26.2.
- 178 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event shall:
- 179 notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event as soon as reasonably practicable; and
- 180 after cessation of the Force Majeure Event, as soon as reasonably practicable notify the other Party thereof and resume full performance of its obligations under this Agreement.
- 181 If the performance by any Party of any of its obligations under this Agreement is affected by an event of Force Majeure for a continuous period in excess of thirty (30) days, the Parties hereto shall enter into bona fide discussions with regards to the possible resolutions and remedial measures with a view to alleviating its effects or to agree upon such alternative arrangements as may be fair and reasonable.

182 Where the event of Force Majeure persists for a continuous period exceeding 30 Days from the occurrence of the event of Force Majeure or a total of more than 60 Days in six (6) months or when Parties have no resolutions further to the discussions in Clause 26.3 above, both Parties may mutually terminate this Agreement in accordance with the applicable terms as stipulated in Clause 28.3 of this Agreement.

**183 NON-SOLICITATION**

184 Neither Party shall, whether directly or indirectly and whether for its own benefit or the benefit of any third party, at any time while this Agreement is in force and for a period of 12 (twelve) months from the date on which this Agreement terminates encourage, entice, induce, solicit, offer employment or employ any person employed by the other Party who has had a material role in the performance of this Agreement, other than via a job advertisement to the general public.

**185 TERMINATION**

186 *Termination for Material Breach.* Each Party may terminate this Agreement with immediate effect by delivering written notice of the termination to the other Party, if:

187 the other Party fails to materially perform, has made or makes any material inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations in this Agreement; and

188 such failure, inaccuracy, or breach is either non-remediable or continue unremedied for a period of more than 14 (fourteen) Business Days' after the injured Party delivers notice to the breaching Party reasonably detailing the breach.

189 *Termination for Insolvency.* If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this Agreement with immediate effect by delivering notice of the termination to the first Party.

190 *Termination due to Force Majeure.* If due to Force Majeure, a Party is or shall be unable to perform a material obligation under this Agreement or is delayed or prevented from performing its obligations for a continuous period exceeding 30 Days or a total of more than 60 Days in six (6) months, NECOMAL may terminate this Agreement with immediate effect by delivering notice of the termination to the Supplier.

191 *Termination for convenience.* The Parties may terminate this Agreement by mutual agreement in writing during the Initial Term. Either party shall be entitled to terminate this Agreement without cause and without liability to the other Party during the Renewal Term, by observing a two (2) months' notice period prior to the effective termination date.

**192 EFFECT OF TERMINATION**

193 *Termination of Obligations.*

194 On termination for any reason or expiry of this Agreement, the following shall occur:

195 NECOMAL shall cease to represent itself as Supplier's authorized distributor, cease to use Supplier's trademarks, and promptly return to Supplier any demonstration equipment or Products not intended for sale.

- 196 Except for termination for cause, Supplier agrees to fulfil NECOMAL's Purchase Orders accepted by Supplier prior to the effective date of termination, provided that NECOMAL can and will comply with all provisions of the Agreement, and NECOMAL agrees to make full payment for such Purchase Orders, all in accordance with this Agreement, to the same extent as if termination had not occurred. Supplier's acceptance of any Purchase Orders from NECOMAL after the effective date of termination (or payment therefor), will not have the effect of renewing, or extending the Term of this Agreement.
- 197 Neither Supplier nor NECOMAL shall be liable to the other by reason of expiration or termination of this Agreement including, without limitation, any liability for compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases, or commitments made in connection with the business or goodwill of Supplier or NECOMAL, or otherwise.
- 198 *No Further Liability.* On termination or expiration of this Agreement, neither Party will be liable to the other Party, except for liability that arose before the termination or expiration of this Agreement, including but not limited to payment obligations and any antecedent breaches.
- 199 *Continued Assistance.* Subject to the issuance by NECOMAL of one or more Purchase Orders for Support Services, the scope and terms of which shall be agreed between the Parties, the Supplier shall provide such assistance as NECOMAL may reasonably require and as Supplier may reasonably offer after the termination or expiry of this Agreement.
- 200 *Return or Destroy of Materials Confidential Information.* Each Party shall promptly cease to use and shall return or (at the other Party's reasonable request) securely destroy all Confidential Information and other equipment, materials and property of the other Party then in its possession or control in connection with the supply of the Products and Support Services under this Agreement and shall on request certify in writing that this has been done.
- 201 *Continuing Provisions.* Any provision of this Agreement which expressly or by implication is intended to continue in force after termination shall do so notwithstanding termination or expiry of this Agreement.
- 202 INDEMNIFICATION**
- 203 *Indemnification by Supplier:* The Supplier shall indemnify NECOMAL against any and all losses, damages, liability, costs and expenses, including reasonable attorneys' fees directly arising out of any claims, actions or proceedings brought by a third party claiming:
- 204 a breach of any provision of this Agreement by Supplier or Supplier's representatives;
- 205 any negligence or act or omission, wilful misconduct, or other tortious conduct of Supplier or Supplier's representatives, including any resulting bodily injury, death of any person, or damage to real or tangible personal property;
- 206 any infringement by the Supplier of any Intellectual Property Right of a third party;
- 207 any failure by the Supplier or Supplier's representatives to comply with any applicable laws;
- 208 a breach by the Supplier or Supplier's representatives of its agreement with a third party as a result of, or in connection with, entering into, performing under, or terminating this Agreement.
- 209 *Indemnification by NECOMAL:* NECOMAL shall indemnify Supplier and Supplier's affiliates against all losses, damages, liability, costs and expenses (including reasonable professional fees) arising out of any claims, actions or proceedings arising out of or relating to any third-party claim relating to or alleging:

- 210 a breach of any provision of this Agreement by NECOMAL or NECOMAL's representatives;
- 211 any negligence or act or omission, wilful misconduct, or other tortious conduct of NECOMAL or NECOMAL's representatives, including any resulting bodily injury, death of any person, or damage to real or tangible personal property
- 212 any promotion, demonstration, implementation, or integration made by NECOMAL and not expressly directed by Supplier infringes any Intellectual Property Right of a third party;
- 213 a purchase of the Products by any person or entity purchasing through NECOMAL or NECOMAL's representatives and not directly relating to a claim of Limited Warranties breach;
- 214 any representations or statements made by NECOMAL or NECOMAL's representatives not specifically authorized by Supplier herein or in writing;
- 215 any failure by NECOMAL or NECOMAL's representatives to comply with any applicable laws;
- 216 a breach by NECOMAL or NECOMAL's representatives of its agreement with a third party as a result of, or in connection with, entering into, performing under, or terminating this Agreement; or

217 *Exclusions.*

Neither Party will be required to indemnify the other Party against losses to the extent such losses are caused or contributed to by the other Party.

**218 LIMITATION ON LIABILITY**

- 219 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; or (b) fraud or fraudulent misrepresentation.
- 220 Subject to clause 31.1, each Party's total liability to the other Party ("**Aggrieved Party**") or any third party claiming through the Aggrieved Party shall not exceed the actual value of Purchase Orders issued to Supplier by NECOMAL under this Agreement in the 12 (twelve) months immediately preceding the date upon which the claim arose. Each Party's total and liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement.
- 221 Notwithstanding any provision to the contrary of this Agreement, the following types of loss are wholly excluded: (a) loss of revenue, (b) loss of profits, (c) loss of sales or business, (d) loss of agreements or contracts, (e) loss of use, (f) loss of anticipated savings, (g) loss of or damage to goodwill, (h) lost or corrupted data, (i) losses resulting from system shutdown, failure to accurately transfer, read or transmit information, failure to update or provide correct information, (j) system incompatibility or providing incorrect compatibility information, (k) breaches in system security, and (l) special, indirect, incidental, punitive or consequential losses of any party, including third parties, even if Supplier has been advised of the possibility of such losses. The exclusions stated in this clause 31.3 shall apply to any claim or cause of action whether in contract or tort (including negligence, strict liability or breach of warranty).

222 This clause shall survive the termination or expiration of this Agreement.

**223 ANTI-CORRUPTION OBLIGATION**

224 Each Party shall not, and shall procure that its employees and agents shall not, offer, give or agree to give any person, or accept or agree to accept from any person, whether for itself or on behalf of another, any gift, payment, consideration, financial or non-financial advantage or benefit of any kind, which constitutes an illegal or corrupt practice under the laws of any country, either directly or indirectly in connection with this Agreement, or otherwise than in connection with this Agreement (the “**Anti-Corruption Obligation**”).

225 Each Party shall immediately disclose in writing to the other Party details of any breach of the Anti-Corruption Obligation. This is an ongoing obligation.

226 Each Party shall:

227 always maintain strict compliance with the Anti-Corruption Obligation;

228 monitor its employees, agents and sub-contractors who are acting in connection with this Agreement to ensure compliance with the Anti-Corruption Obligation; and

229 make clear, in all its dealings in connection with this Agreement, that it is required by the other Party to act, and is acting, in accordance with the Anti-Corruption Obligation.

230 Any breach of this clause 32 by a Party shall entitle the other Party to immediately terminate this Agreement by delivering notice of the termination to the Party in breach and the Party in breach hereby indemnifies the other Party in full for any damages and losses of any nature incurred, caused, arising out of or in connection to such breach.

**231 GENERAL PROVISIONS**

232 *Entire Agreement.* The Parties intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement:

233 represent the final expression of the Parties’ intent relating to the subject matter of this Agreement;

234 contain all the terms the Parties agreed to relating to the subject matter; and

235 replace all of the Parties’ previous memorandums of understanding, discussions, understandings and agreements relating to the subject matter of this Agreement.

*236 Counterparts*

237 *Signed in Counterparts.* This Agreement may be signed in any number of counterparts.

238 *All Counterparts Original.* Each counterpart when signed and dated is an original.

239 *Counterparts Form One Document.* Together, all counterparts shall constitute one single document.

- 240 *Electronic exchange.* Each Party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement.
- 241 *Severability.* If any part of this Agreement is declared illegal, unenforceable or invalid, the remainder will continue to be legal, valid and enforceable. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 242 *Amendment.* This Agreement can be amended only by a writing signed by both Parties.
- 243 *Waiver*
- 244 *Affirmative Waivers.* No Party's failure, delay or neglect to enforce any rights, power or remedy provided by law or under this Agreement will operate as a waiver of that Party's right, power or remedy nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 245 *Written Waivers.* A waiver of any term, provision, condition or breach of this Agreement is only effective if it is in writing and signed by the Party granting the waiver and then only in the instance and for the purpose for which it is given.
- 246 *No Course of Dealing.* No single or partial exercise of any right, power or remedy provided by law or under this Agreement will preclude any further exercise of it or the exercise of any other right, power or remedy.
- 247 *No Relationship.* Save for the provisions set out in this Agreement, nothing herein creates any special relationship between the Parties, such as a partnership, joint venture, or employee/employer relationship between the Parties.
- 248 *No Authority.* Save for the provisions set out in this Agreement, neither Party will have the authority to, and will not, act as agent for or on behalf of the other Party or represent or bind the other Party in any manner.
- 249 *Assignment.* Neither Party may assign this Agreement or any of their rights or obligations under this Agreement without the other Party's written consent, such consent shall not be unreasonably withheld or delayed; provided, that the Supplier may assign to one or more of its affiliates, provided that such affiliate and the Supplier are jointly and severally liable for all of the Supplier's obligations under this Agreement.

250 *Further Assurance.* Each Party shall do all acts and execute all documents which are necessary to give full effect to this Agreement.

251 *Conflict.* In the event of any conflict between this Agreement and its Annexures or between this Agreement and any other terms of a Purchase Order, the provisions of this Agreement (including Supplier's Terms incorporated by reference into this Agreement) shall prevail.

252 *Costs and expenses.* Each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

253 *Language.* The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.

254 *Third party rights.* Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights to enforce any of the provisions of this Agreement.

#### 255 Notices

256 *Method of Notice.* The Parties shall give all notices and communications between the Parties in writing by: (i) personal delivery; (ii) a nationally-recognized, next-day courier service; (iii) first-class registered or certified mail, postage prepaid; or (iv) electronic mail to the Party's address specified in this Agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section.

257 *Receipt of Notice.* A notice given under this Agreement will be effective on

258 the other Party's receipt of it; or

259 if mailed, the earlier of the other Party's receipt of it and the [fifth] business day after mailing it.

#### 260 Dispute Resolution

261 *Arbitration.* Any dispute or controversy arising out of or in connection with this Agreement will be settled by arbitration in the Asian International Arbitration Centre (AIAC), Malaysia according to the rules of the AIAC Rules then in effect, and by a tribunal of 3 (three) arbitrators, chaired by one (1) arbitrator appointed by the Director of AIAC, and the remaining two (2) arbitrators will be nominated by each of the Parties respectively. The award of arbitration is final and binding, save for fraud or manifest errors.

262 *Judgment.* Judgment may be entered on the arbitrator's award in any court having jurisdiction.

263 *Arbitrator's Authority.* The arbitrator will not have the power to award any punitive or consequential damages.

264 *Governing Law.* This Agreement shall be governed, construed, and enforced in accordance with the laws of Singapore.

265 Domicilium Citandi et Executandi

266 Any notice in terms of this Agreement may be hand delivered to the physical address of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice, together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in which event proof of postage issued by the relevant postal authority will serve as proof.

267 The Parties respectively choose their domicilium citandi et executandi for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature at the following addresses:

| Supplier: | Physical Address  | Postal Address                                  |
|-----------|---|---|
|           | 51 Changi Business Park<br>Central 2, #08-03<br>Central, Singapore<br>The Signature | ShentonWay#18-01,<br>SGX<br><br>Singapore068804 |
|           | Facsimile number: [...]   |   |
|           | Email Address: [...]  |   |

NECOMAL: Suite 19-01, Level 19, The Gardens South Tower  
Mid Valley City, Lingkaran Syed Putra  
59200 Kuala Lumpur, Malaysia  
Facsimile number: 603 22996323

Email Address:

1. Kusha Tunku Sufian : [...]
2. Eddie Hooi : [...]

Signatories in Execution

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2023 in the presence of the undersigned witness

As witness \_\_\_\_\_

**Name:** \_\_\_\_\_

\_\_\_\_\_  
for and on behalf of the **NEC CORPORATION OF MALAYSIA SDN BHD**  
(who warrants that he/she is duly authorised)

**Name:**

SIGNED at \_\_ on this \_ day of \_\_ 2023 in the presence of the undersigned witness

\_\_\_\_\_  
As witness

**Name:**

\_\_\_\_\_  
for and on behalf of **AVIAT NETWORKS (S) PTE. LTD.**  
(who warrants that he/she is duly authorised)

**Name:**

**Annexure A - Products, Services and Price List**

[Intentionallyomitted]

**Annexure B - Support Services – Level 3 and Support Service Charges**

[Intentionallyomitted]

**SCHEDULE 2**

**MSBA – SCHEDULE 28**

**SAUDI ARABIA & MALAYSIA ARRANGEMENTS**

**Part 1**

**SAUDI ARABIA**

[Intentionally omitted]

**Part 2**

**MALAYSIA**

[Intentionally omitted]

**SCHEDULE 3**

**MSBA – SCHEDULE 2**

**ASSETS AND OTHER TRANSFERRING CONTRACTS**

**Part 1**

**ASSETS**

1. Sales Agreements listed in Annex 3 of the Disclosure Letter (including all (i) research and development road maps or other commitments therein or otherwise related thereto as set out in item 3.1.1 [...], and (ii) all amounts outstanding and receivable thereunder as at the Completion Date), **except in respect of Portugal where there are no outstanding accounts receivable due and the following Vietnamese Sales Contracts listed [...]:**
  - (a) **[...]; and**
  - (b) **[...].**
2. Supply Agreements listed in Annex 4 of the Disclosure Letter (including all amounts outstanding and payable thereunder as at the Completion Date).
3. Assets solely relating to or used primarily for the Business listed in Annex 5 of the Disclosure Letter.
4. The PASOLINK Marks and the Other Transferred IP.
5. The Other Transferring Contracts set forth on Part 3 of this Schedule 2.
6. Assets including in Working Capital of the Business or otherwise set forth as assets on the Completion Consolidated Balance Sheet.

For the avoidance of doubt, this Part 1 of Schedule 2 and Part 3 of Schedule 2 shall not include any Non-Transferring Contracts set forth on Schedule 29.

...

**Part 3**

**OTHER TRANSFERRING CONTRACTS**

[Intentionally omitted]

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**SCHEDULE 4**

**MSBA – DISCLOSURE LETTER**

**ANNEX 3**

**LIST OF SALES AGREEMENTS**

[Intentionally omitted]

**ANNEX 4**

**LIST OF SUPPLY AGREEMENTS**

[Intentionally omitted]

**ANNEX 5**

**LIST OF BUSINESS ASSETS**

[Intentionally omitted]

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**SCHEDULE 5**

**MSBA – NON-TRANSFERRING CONTRACTS**

[Intentionally omitted]

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**SCHEDULE 6**

**ESTIMATED CONSOLIDATED BALANCE SHEET**

[Intentionally omitted]

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**SCHEDULE 7**

**ESTIMATED SEPARATE BALANCE SHEETS**

[Intentionally omitted]

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**SCHEDULE 8**

**IPLA EXHIBITS  
IPLA Exhibit B-1  
NEC Patents**

[Intentionally omitted]

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**IPLA Exhibit B-2**  
**Related Japanese Patents**

[Intentionally omitted]

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**IPLA Exhibit B-3  
Abandoned Patents**

[Intentionally omitted]

**Products and NEC Network Management System**

[Intentionally omitted]

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**SCHEDULE 9**

**LIST OF CUSTOMER REVENUE IN CALENDAR YEAR 2022 FOR EACH CUSTOMER**

[Intentionally omitted]

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**SCHEDULE 10**

**PURCHASE PRICE ALLOCATIONS**

**PART 1**

**SELLING ENTITIES AND PURCHASING ENTITIES**

[Intentionally omitted]

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**PART 2**  
**PURCHASE PRICE ALLOCATION AMONG SELLER AND SELLING ENTITIES**

[Intentionally omitted]

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**PART 3**  
**PURCHASE PRICE ALLOCATION AMONG ASSETS OF EACH OF SELLER AND SELLING ENTITIES**

[Intentionally omitted]

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**SCHEDULE 11**

PART 1

[Intentionally omitted]

PART 2

**BUSINESS EMPLOYEES**

[Intentionally omitted]

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**SCHEDULE 12**

**SEC FINANCIAL STATEMENTS**

[Intentionally omitted]

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**SCHEDULE 13**

**PDM MATERIALS**

[Intentionally omitted]

**SIGNATORIES**

**SIGNED** for and on behalf of **NEC** )  
**CORPORATION** )

/s/Asako Aoyama  
Name: Asako Aoyama  
Title: Corporate Senior Vice President, Deputy CFO

**SIGNED** for and on behalf of **AVIAT** )  
**NETWORKS, INC.** )

/s/Peter A. Smith  
Name: Peter A. Smith  
Title: President and Chief Executive Officer

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

## REGISTRATION RIGHTS AND LOCK-UP AGREEMENT

THIS REGISTRATION RIGHTS AND LOCK-UP AGREEMENT (this “**Registration Rights Agreement**”), dated as of November 30, 2023, is by and between NEC Corporation, a corporation registered under the laws of Japan (“**NEC**” or the “**Seller**”) and Aviat Networks, Inc., a Delaware corporation (“**Aviat**” or the “**Company**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Definitive Agreement (defined below).

### RECITALS:

WHEREAS, this Agreement is being entered into pursuant to the Master Sale of Business Agreement, dated as of May 9, 2023, by and among the Seller and Aviat (the “**Definitive Agreement**”);

WHEREAS, in partial consideration for the sale of the Assets at Completion, as contemplated by the Definitive Agreement, on the date hereof, the Company issued to NEC 736,750 shares of Common Stock (the “**Stock Consideration**”).

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties hereby agree as follows:

### ARTICLE I DEFINITIONS

As used herein, the following terms shall have the following respective meanings:

“**Board**” means the board of directors of the Company.

“**Business Day**” means any day other than a Saturday, Sunday, any federal holiday or any other day on which banking institutions in the State of Texas are authorized or required to be closed by law or governmental action.

“**Common Stock**” means the common stock of the Company, par value \$0.01 per share.

“**Commission**” means the Securities and Exchange Commission or any successor governmental agency.

“**Company Securities**” has the meaning set forth in [Section 2.4\(c\)\(i\)](#).

“**Effectiveness Period**” has the meaning set forth in [Section 2.1\(c\)](#).

“**Final Lock-Up Expiration Date**” means the second anniversary of the day immediately following the Completion Date.

“**Indemnified Party**” has the meaning set forth in Section 3.3.

“**Indemnifying Party**” has the meaning set forth in Section 3.3.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

“**Initial Lock-Up Expiration Date**” means the first anniversary of the day immediately following the Completion Date.

“**Lock-Up Restrictions**” has the meaning set forth in Section 5.1(a).

“**Losses**” has the meaning set forth in Section 3.1.

“**Managing Underwriter**” means, with respect to any Underwritten Offering, the lead book-running manager(s) of such Underwritten Offering.

“**Other Securities**” has the meaning set forth in Section 2.4(c)(i).

“**Person**” means any individual, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

“**Piggyback Underwritten Offering**” has the meaning set forth in Section 2.4(a).

“**Registrable Securities**” shall mean (a) the Stock Consideration and (b) any securities issued or issuable with respect to the Stock Consideration by way of distribution or in connection with any reorganization or other recapitalization, merger, consolidation or otherwise; *provided, however*, that a Registrable Security shall cease to be a Registrable Security when (i) a Registration Statement covering such Registrable Security has become effective under the Securities Act and such Registrable Security has been disposed of pursuant to such Registration Statement, (ii) such Registrable Security is disposed of under Rule 144 under the Securities Act or any other exemption from the registration requirements of the Securities Act and the legend on any certificate or book-entry notation representing such Registrable Security restricting transfer of such Registrable Security has been removed, or (iii) such Registrable Security has been sold or disposed of in a transaction in which the Transferor’s rights under this Agreement are not assigned to the Transferee pursuant this Registration Rights Agreement; and *provided, further*, that any security that has ceased to be a Registrable Security shall not thereafter become a Registrable Security and any security that is issued or distributed in respect of securities that have ceased to be Registrable Securities shall not become a Registrable Security.

“**Registration Rights Agreement**” has the meaning set forth in the introductory paragraph.

“**Registration Expenses**” means all expenses incurred by the Company in complying with Article II, including, without limitation, all registration and filing fees, printing expenses, road show expenses, fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including counsel fees) incurred in connection with complying with state securities or “**blue sky**” laws, fees of the Financial Industry Regulatory Authority, Inc., and fees of transfer agents and registrars, but excluding any Selling Expenses.

“**Registration Statement**” means any registration statement of the Company filed or to be filed with the Commission under the Securities Act, including the related prospectus, amendments and supplements to such registration statement, and including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

“**Section 2.2 Maximum Number of Shares**” has the meaning set forth in [Section 2.2\(c\)](#).

“**Section 2.4 Maximum Number of Shares**” has the meaning set forth in [Section 2.4\(c\)](#).

“**Securities Act**” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time. References to any rule under the Securities Act shall be deemed to refer to any similar or successor rule or regulation.

“**Seller Requested Securities**” has the meaning set forth in [Section 2.2\(c\)](#).

“**Selling Expenses**” means all (a) underwriting fees, discounts and selling commissions allocable to the sale of Registrable Securities, (b) transfer taxes allocable to the sale of the Registrable Securities, (c) costs or expenses related to any roadshows conducted in connection with the marketing of any Shelf Underwritten Offering, and (d) fees and expenses of counsel engaged by the Seller (subject to [Article III](#)).

“**Shelf Registration Statement**” has the meaning set forth in [Section 2.1\(a\)](#).

“**Shelf Underwritten Offering**” has the meaning set forth in [Section 2.2\(a\)](#).

“**Shelf Underwritten Offering Request**” has the meaning set forth in [Section 2.2\(a\)](#).

“**Suspension Period**” has the meaning set forth in [Section 2.3](#).

“**Transfer**” means any offer, sale, pledge, encumbrance, hypothecation, entry into any contract to sell, grant of an option to purchase, short sale, assignment, transfer, exchange, gift, bequest or other disposition, direct or indirect, in whole or in part, by operation of law or otherwise. “Transfer,” when used as a verb, and “Transferee” and “Transferor” have correlative meanings.

“**Underwritten Offering**” means an offering (including an offering pursuant to a Shelf Registration Statement) in which shares of Common Stock are sold to an underwriter on a firm commitment basis for reoffering to the public.

“**Underwritten Offering Filing**” means (a) with respect to a Shelf Underwritten Offering, a preliminary prospectus supplement (or prospectus supplement if no preliminary prospectus supplement is used) to the Shelf Registration Statement relating to such Shelf Underwritten Offering, and (b) with respect to a Piggyback Underwritten Offering, (i) a preliminary prospectus supplement (or prospectus supplement if no preliminary prospectus supplement is used) to an effective shelf Registration Statement (other than the Shelf Registration Statement) in which Registrable Securities could be included and Seller could be named as a selling security holder without the filing of a post-effective amendment thereto (other than a post-effective amendment that becomes effective upon filing) or (ii) a Registration Statement (other than the Shelf Registration Statement), in each case relating to such Piggyback Underwritten Offering.

**ARTICLE II**  
**REGISTRATION RIGHTS**

Section 2.1 **Shelf Registration**.

(a) Within 30 days prior to the Initial Lock-Up Expiration Date, the Company shall file a Registration Statement (the “**Shelf Registration Statement**”) under the Securities Act to permit the public resale of all the Registrable Securities by the Seller from time to time as permitted by Rule 415 under the Securities Act and shall use commercially reasonable efforts to cause such Registration Statement to become or be declared effective as soon as practicable after the filing thereof, including by filing an automatic shelf registration statement that becomes effective upon filing with the Commission in accordance with Rule 462(e) under the Securities Act to the extent the Company is then a WKSI. Following the effective date of the Shelf Registration Statement, the Company shall notify the Seller of the effectiveness of such Registration Statement.

(b) The Shelf Registration Statement shall be on Form S-3 or, if Form S-3 is not then available to the Company, on Form S-1 or such other form of registration statement as is then available to effect a registration for resale of such Registrable Securities and shall contain a prospectus in such form as to permit the Seller to sell such Registrable Securities pursuant to Rule 415 under the Securities Act (or any successor or similar rule adopted by the Commission then in effect) at any time beginning on the effective date for such Registration Statement. The Shelf Registration Statement shall provide for the resale pursuant to any method or combination of methods legally available to and requested by the Seller.

(c) The Company shall use commercially reasonable efforts to cause the Shelf Registration Statement to remain effective, and to be supplemented and amended to the extent necessary to ensure that the Shelf Registration Statement is available or, if not available, that another Registration Statement is available, for the resale of all the Registrable Securities by the Seller until all of the Registrable Securities have ceased to be Registrable Securities or the earlier termination of this Agreement pursuant to **Section 6.1** (the “**Effectiveness Period**”).

(d) When effective, the Shelf Registration Statement (including the documents incorporated therein by reference) will comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus contained in the Shelf Registration Statement, in the light of the circumstances under which such statements are made).

## Section 2.2 Underwritten Shelf Offering Requests.

(a) In the event that the Seller elects to dispose of Registrable Securities under a Registration Statement pursuant to an Underwritten Offering and either (i) such Underwritten Offering covers the disposition of at least fifty percent (50%) of the number of shares constituting the Stock Consideration, or (ii) Seller reasonably expects gross proceeds of at least \$15 million from such Underwritten Offering, the Company shall, at the request (a “**Shelf Underwritten Offering Request**”) of the Seller, enter into an underwriting agreement in a form as is customary in Underwritten Offerings of securities by the Company with the underwriter or underwriters selected pursuant to Section 2.2(b) and shall take all such other reasonable actions as are requested by the Managing Underwriter of such Underwritten Offering and/or the Seller in order to expedite or facilitate the disposition of such Registrable Securities (a “**Shelf Underwritten Offering**”); provided, however, that the Company shall have no obligation to facilitate or participate in more than two Shelf Underwritten Offerings.

(b) The Company shall propose three or more nationally prominent firms of investment bankers reasonably acceptable to the Company to act as the Managing Underwriter or as other underwriters in connection with such Shelf Underwritten Offering from which the Seller shall select the Managing Underwriter and the other underwriters. The Seller shall determine the pricing of the Registrable Securities offered pursuant to any Shelf Underwritten Offering and the applicable underwriting discounts and commissions and determine the timing of any such Shelf Underwritten Offering, subject to Section 2.3.

(c) If the Managing Underwriter of the Shelf Underwritten Offering shall inform the Company and the Seller in writing of its belief that the number of shares of Common Stock requested to be included by the Company or any other Persons having registration rights with respect to such offering, when added to the number of Registrable Securities proposed to be offered by the Seller, would materially adversely affect such offering, then the Company shall include in the applicable Underwritten Offering Filing, to the extent of the total number of Registrable Securities that the Company is so advised can be sold in such Shelf Underwritten Offering without so materially adversely affecting such offering (the “**Section 2.2 Maximum Number of Shares**”), Registrable Securities in the following priority:

(i) First, all Registrable Securities that the Seller requested to be included therein (the “**Seller Requested Securities**”);

(ii) Second, to the extent that the number of Seller Requested Securities is less than the Section 2.2 Maximum Number of Shares, the Common Stock requested to be included by the Company; and

(iii) Third, to the extent that the number of Seller Requested Securities and the shares of Common Stock requested to be included by the Company is less than the Section 2.2 Maximum Number of Shares, the Common Stock requested to be included by any other Persons having registration rights with respect to such offering, pro rata among such other Persons based on the number of Common Stock each requested to be included.

(d) The Company shall propose three or more nationally prominent firms of investment bankers reasonably acceptable to the Company to act as the Managing Underwriter or as other underwriters in connection with such Shelf Underwritten Offering from which the holders of more than 50% of the Registrable Securities to be so offered shall select the Managing Underwriter and the other underwriters. The Seller shall determine the pricing of the Registrable Securities offered pursuant to any Shelf Underwritten Offering and the applicable underwriting discounts and commissions and determine the timing of any such Shelf Underwritten Offering, subject to Section 2.3.

Section 2.3 **Delay and Suspension Rights**. Notwithstanding any other provision of this Agreement, the Company may (i) delay filing or effectiveness of a Shelf Registration Statement (or any amendment thereto) or effecting a Shelf Underwritten Offering or (ii) suspend the Seller's use of any prospectus that is a part of a Shelf Registration Statement upon written notice to the Seller whose Registrable Securities are included in such Shelf Registration Statement (provided that in no event shall such notice contain any material non-public information regarding the Company) (in which event the Seller shall discontinue sales of Registrable Securities pursuant to such Registration Statement but may settle any then-contracted sales of Registrable Securities), in each case for a period of up to 90 days, if the Board determines (A) that such delay or suspension is in the best interest of the Company and its stockholders generally due to a pending financing or other transaction involving the Company, including a proposed sale of Common Stock pursuant to a Company Registration, (B) that such registration or offering would render the Company unable to comply with applicable securities laws or (C) that such registration offering would require disclosure of material information that the Company has a bona fide business purpose for preserving as confidential (any such period, a "**Suspension Period**"); provided, however, that in no event shall any Suspension Periods collectively exceed an aggregate of 180 days in any twelve-month period.

Section 2.4 **Piggyback Registration Rights**.

(a) Subject to Section 2.4(c), if the Company at any time proposes to file an Underwritten Offering Filing for an Underwritten Offering of shares of Common Stock for its own account or for the account of any other Persons who have or have been granted registration rights (a "**Piggyback Underwritten Offering**"), it will give written notice of such Piggyback Underwritten Offering to the Seller, which notice shall be held in strict confidence by the Seller and shall include the anticipated filing date of the Underwritten Offering Filing and, if known, the number of shares of Common Stock that are proposed to be included in such Piggyback Underwritten Offering, and of the Seller's rights under this Section 2.4(a). Such notice shall be given promptly (and in any event at least ten days before the filing of the Underwritten Offering Filing or two Business Days before the filing of the Underwritten Offering Filing in connection with a bought or overnight Underwritten Offering); provided, that if the Piggyback Underwritten Offering is a bought or overnight Underwritten Offering and the Managing Underwriter advises the Company that the giving of notice pursuant to this Section 2.4(a) would adversely affect the offering, no such notice shall be required (and the Seller shall have no right to include Registrable Securities in such bought or overnight Underwritten Offering). The Seller shall then have four Business Days (or one Business Day in the case of a bought or overnight Underwritten Offering) after the date on which the Seller received notice pursuant to this Section 2.4(a) to request inclusion of Registrable Securities in the Piggyback Underwritten Offering (which request shall specify the maximum number of Registrable Securities intended to be disposed of by the Seller and such other information as is reasonably required to effect the inclusion of such Registrable Securities). If no request for inclusion from the Seller is received within such period, the Seller shall have no further

right to participate in such Piggyback Underwritten Offering. Subject to Section 2.4(c), the Company shall use its commercially reasonable efforts to include in the Piggyback Underwritten Offering all Registrable Securities that the Company has been so requested to include by the Seller; provided, however, that if, at any time after giving written notice of a proposed Piggyback Underwritten Offering pursuant to this Section 2.4(a) and prior to the execution of an underwriting agreement with respect thereto, the Company or such other Persons who have or have been granted registration rights, as applicable, shall determine for any reason not to proceed with or to delay such Piggyback Underwritten Offering, the Company shall give written notice of such determination to the Seller (which the Seller will hold in strict confidence) and (i) in the case of a determination not to proceed, shall be relieved of its obligation to include any Registrable Securities in such Piggyback Underwritten Offering (but not from any obligation of the Company to pay the Registration Expenses in connection therewith), and (ii) in the case of a determination to delay, shall be permitted to delay inclusion of any Registrable Securities for the same period as the delay in including the shares of Common Stock to be sold for the Company's account or for the account of such other Persons who have or have been granted registration rights, as applicable.

(b) The Seller shall have the right to withdraw its request for inclusion of its Registrable Securities in any Piggyback Underwritten Offering at any time prior to the execution of an underwriting agreement with respect thereto by giving written notice to the Company of its request to withdraw. The Seller may deliver written notice (an "**Opt-Out Notice**") to the Company requesting that the Seller not receive notice from the Company of any proposed Piggyback Underwritten Offering; provided, however, that the Seller may later revoke any such Opt-Out Notice in writing. Following receipt of an Opt-Out Notice from the Seller (unless subsequently revoked), the Company shall not, and shall not be required to, deliver any notice to the Seller pursuant to this Section 2.4 and the Seller shall no longer be entitled to participate in any Piggyback Underwritten Offering.

(c) If the Managing Underwriter of the Piggyback Underwritten Offering shall inform the Company of its belief that the number of Registrable Securities requested to be included in such Piggyback Underwritten Offering, when added to the number of shares of Common Stock proposed to be offered by the Company or such other Persons who have or have been granted registration rights (and any other shares of Common Stock requested to be included by any other Persons having registration rights on parity with the Seller with respect to such offering), would materially adversely affect such offering, then the Company shall include in such Piggyback Underwritten Offering, to the extent of the total number of securities which the Company is so advised can be sold in such offering without so materially adversely affecting such offering (the "**Section 2.4 Maximum Number of Shares**"), shares of Common Stock in the following priority:

(i) First, if the Piggyback Underwritten Offering is for the account of the Company, all shares of Common Stock that the Company proposes to include for its own account (the "**Company Securities**") or, if the Piggyback Underwritten Offering is for the account of any other Persons who have or have been granted registration rights, all shares of Common Stock that such Persons propose to include (the "**Other Securities**"); and

(ii) Second, if the Piggyback Underwritten Offering is for the account of the Company, to the extent that the number of Company Securities is less than the Section 2.4 Maximum Number of Shares, the shares of Common Stock requested to be included by the Seller and holders of any other shares of Common Stock requested to be included by Persons having rights of registration on parity with the Seller with respect to such offering, pro rata among the Seller and such other holders based on the number of shares of Common Stock each requested to be included and, if the Piggyback Underwritten Offering is for the account of any other Persons who have or have been granted registration rights, to the extent that the number of Other Securities is less than the Section 2.4 Maximum Number of Shares, the shares of Common Stock requested to be included by the Seller, to the Seller.

(d) The Company or other Persons who have or have been granted registration rights, as applicable, shall select the underwriters in any Piggyback Underwritten Offering and shall determine the pricing of the shares of Common Stock offered pursuant to any Piggyback Underwritten Offering, the applicable underwriting discounts and commissions and the timing of any such Piggyback Underwritten Offering.

#### Section 2.5 **Participation in Underwritten Offerings.**

(a) In connection with any Underwritten Offering contemplated by Section 2.2 or Section 2.4, the underwriting agreement into which the Seller and the Company shall enter into shall contain such representations, covenants, indemnities (subject to Article III) and other rights and obligations as are customary in Underwritten Offerings of securities by the Company. The Seller shall not be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding the Seller's authority to enter into such underwriting agreement and to sell, and its ownership of, the securities being registered on its behalf, its intended method of distribution and any other representation required by law.

(b) Any participation by the Seller in a Piggyback Underwritten Offering shall be in accordance with the plan of distribution of the Company.

(c) In connection with any Piggyback Underwritten Offering in which the Seller has the right to include Registrable Securities pursuant to Section 2.4, the Seller agrees (i) to supply any information reasonably requested by the Company in connection with the preparation of a Registration Statement and/or any other documents relating to such registered offering and (ii) to execute and deliver any agreements and instruments being executed by all holders on substantially the same terms reasonably requested by the Company or the Managing Underwriter, as applicable, to effectuate such registered offering, including, without limitation, underwriting agreements (subject to Section 2.5(a)), custody agreements, lock-ups, "hold back" agreements pursuant to which the Seller agrees not to sell or purchase any securities of the Company for the same period of time following the registered offering as is agreed to by the Company and the other participating holders, powers of attorney and questionnaires.

(d) If the Company or Managing Underwriter, as applicable, requests that the Seller take any of the actions referred to in paragraph (ii) of Section 2.5(c), the Seller shall take such action promptly but in any event within three (3) Business Days following the date of such request.

#### Section 2.6 **Registration Procedures.**

(a) In connection with its obligations under this Article II, the Company will, to the extent the Seller is exercising registration rights under this Article II:

(i) promptly prepare and file with the Commission such amendments and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement until such time as all of such securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such Registration Statement;

(ii) furnish to the Seller such number of conformed copies of such Registration Statement and of each such amendment and supplement thereto (in each case including without limitation all exhibits), such number of copies of the prospectus contained in such Registration Statement (including without limitation each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents, as such seller may reasonably request;

(iii) if applicable, use commercially reasonable efforts to register or qualify all Registrable Securities and other securities covered by such Registration Statement under such other securities or blue sky laws of such jurisdictions as each seller thereof shall reasonably request, to keep such registration or qualification in effect for so long as such Registration Statement remains in effect, and to take any other action which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the securities owned by such seller, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this clause (iii) be obligated to be so qualified or to consent to general service of process in any such jurisdiction;

(iv) in connection with an Underwritten Offering, use all commercially reasonable efforts to provide to the Seller a copy of any auditor "**comfort**" letters or customary legal opinions, in each case that have been provided to the Managing Underwriter in connection with the Underwritten Offering;

(v) promptly notify the Seller, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made, and at the request of any such seller promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made;

(vi) otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act, and shall furnish to each such seller at least the Business Day prior to the filing thereof a copy of any amendment or supplement to such Registration Statement or prospectus;

(vii) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by such Registration Statement from and after a date not later than the effective date of such Registration Statement;

(viii) cause all Registrable Securities covered by such Registration Statement to be listed on any securities exchange on which the Common Stock is then listed; and

(ix) enter into such customary agreements and take such other actions as the Seller shall reasonably request in order to expedite or facilitate the disposition of such Registrable Securities.

(b) The Seller agrees by acquisition of such Registrable Securities that upon receipt of any notice from the Company of the happening of any event of the kind described in Section 2.6(a)(v), the Seller will forthwith discontinue the Seller's disposition of Registrable Securities pursuant to the Registration Statement until the Seller's receipt of the copies of the supplemented or amended prospectus contemplated by Section 2.6(a)(v) as filed with the Commission or until it is advised in writing by the Company that the use of such Registration Statement may be resumed, and, if so directed by the Company, will deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in the Seller's possession of the prospectus relating to such Registrable Securities current at the time of receipt of such notice. The Company may provide appropriate stop orders to enforce the provisions of this Section 2.6(b).

**Section 2.7 Cooperation by the Seller.** The Company shall have no obligation to include Registrable Securities of the Seller in any Registration Statement or Underwritten Offering if the Seller has failed to timely furnish such information that the Company determines, after consultation with its counsel, is reasonably required in order for any registration statement or prospectus supplement, as applicable, to comply with the Securities Act.

**Section 2.8 Restrictions on Public Sale.** The Seller agrees not to effect any public sale or distribution of Registrable Securities for a period of up to 60 days following completion of an Underwritten Offering of equity securities by the Company; provided that (a) the Company gives written notice to the Seller of the date of the commencement and termination of such period with respect to any such Underwritten Offering and (b) the duration of the foregoing restrictions shall be no longer than the duration of the shortest restriction generally imposed by the underwriters of such public sale or distribution on the Company or on the officers or directors or any other shareholder of the Company on whom a restriction is imposed; provided further, that this Section 2.8 shall not apply to the Seller that has delivered (and not revoked) an Opt-Out Notice to the Company.

Section 2.9 **Expenses**. The Company shall be responsible for all Registration Expenses incident to its performance of or compliance with its obligations under this **Article II**. The Seller shall pay its pro rata share of all Selling Expenses in connection with any sale of its Registrable Securities hereunder.

### **ARTICLE III INDEMNIFICATION AND CONTRIBUTION**

Section 3.1 **Indemnification by the Company**. The Company will indemnify and hold harmless the Seller, its officers and directors and each Person (if any) that controls the Seller within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages, liabilities, costs and expenses (including attorneys' fees) ("**Losses**") caused by, arising out of, resulting from or related to any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus, in the light of the circumstances under which such statement is made), provided, however, that such indemnity shall not apply to that portion of such Losses caused by, or arising out of, any untrue statement, or alleged untrue statement or any such omission or alleged omission, to the extent such statement or omission was made in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Seller expressly for use therein.

Section 3.2 **Indemnification by the Seller**. The Seller agrees to indemnify and hold harmless the Company, its officers and directors and each Person (if any) that controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Losses caused by, arising out of, resulting from or related to any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or prospectus relating to Registrable Securities (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus, in the light of the circumstances under which such statement is made), only to the extent such statement or omission was made in reliance upon and in conformity with information furnished in writing by or on behalf of the Seller expressly for use in any Registration Statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, or any preliminary prospectus.

Section 3.3 **Indemnification Procedures**. In case any proceeding (including any governmental investigation) shall be instituted involving any Person in respect of which indemnity may be sought pursuant to **Section 3.1** or **Section 3.2**, such Person (the "**Indemnified Party**") shall promptly notify the Person against whom such indemnity may be sought (the "**Indemnifying Party**") in writing (provided that the failure of the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this **Article III**, except to the extent the Indemnifying Party is actually prejudiced by such failure to give notice), and the Indemnifying Party shall be entitled to participate in such proceeding and, unless in the reasonable

opinion of outside counsel to the Indemnified Party a conflict of interest between the Indemnified Party and Indemnifying Party may exist in respect of such claim, to assume the defense thereof jointly with any other Indemnifying Party similarly notified, to the extent that it chooses, with counsel reasonably satisfactory to such Indemnified Party, and after notice from the Indemnifying Party to such Indemnified Party that it so chooses, the Indemnifying Party shall not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that (a) if the Indemnifying Party fails to assume the defense or employ counsel reasonably satisfactory to the Indemnified Party, (b) if such Indemnified Party who is a defendant in any action or proceeding which is also brought against the Indemnifying Party reasonably shall have concluded that there may be one or more legal defenses available to such Indemnified Party which are not available to the Indemnifying Party or (c) if representation of both parties by the same counsel is otherwise inappropriate under applicable standards of professional conduct then, in any such case, the Indemnified Party shall have the right to assume or continue its own defense as set forth above (but with no more than one firm of counsel for all Indemnified Parties in each jurisdiction, except to the extent any Indemnified Party or Parties reasonably shall have concluded that there may be legal defenses available to such party or parties which are not available to the other Indemnified Parties or to the extent representation of all Indemnified Parties by the same counsel is otherwise inappropriate under applicable standards of professional conduct) and the Indemnifying Party shall be liable for any expenses therefor. No Indemnifying Party shall, without the written consent of the Indemnified Party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the Indemnified Party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (A) includes an unconditional release of the Indemnified Party from all liability arising out of such action or claim and (B) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of any Indemnified Party.

#### Section 3.4 Contribution.

(a) If the indemnification provided for in this Article III is unavailable to an Indemnified Party in respect of any losses, claims, damages or liabilities in respect of which indemnity is to be provided hereunder, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall to the fullest extent permitted by law contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of such party in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Company (on the one hand) and the Seller (on the other hand) shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(b) The Company and the Seller agree that it would not be just and equitable if contribution pursuant to this Article III were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 3.4(a). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in Section 3.4(a) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Article III, the Seller shall not be liable for indemnification or contribution pursuant to this Article III for any amount in excess of the net proceeds of the offering received by the Seller, less the amount of any damages which the Seller has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

#### **ARTICLE IV RULE 144**

With a view to making available the benefits of certain rules and regulations of the Commission that may permit the resale of the Registrable Securities without registration, the Company agrees to use its commercially reasonable efforts to:

(a) make and keep public information regarding the Company available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after the date hereof;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at all times from and after the date hereof; and

(c) so long as the Seller owns any Registrable Securities, furnish (i) to the extent accurate, forthwith upon request, a written statement of the Company that it has complied with the reporting requirements of Rule 144 under the Securities Act and (ii) unless otherwise available via the Commission's EDGAR filing system, to the Seller forthwith upon request a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as the Company may reasonably request in availing itself of any rule or regulation of the Commission allowing the Company to sell any such securities without registration.

#### **ARTICLE V RESTRICTIONS ON TRANSFER; LEGENDS; TRANSFER OF RIGHTS**

##### **Section 5.1 Restrictions on Transfer.**

(a) The Seller agrees that, prior to the Initial Lock-Up Expiration Date, without the prior written consent of the Company, it will not directly or indirectly Transfer any Stock Consideration or any right or economic interest pertaining thereto, including the right to vote or consent on any matter (the foregoing restrictions are hereinafter referred to as the "**Lock-Up Restrictions**"). On the first day following the Initial Lock-Up Expiration Date, one-twelfth of the Stock Consideration shall be thereafter released from the Lock-Up Restrictions, and one-twelfth of the Stock Consideration on each one month anniversary of such day following the Initial Lock-Up Expiration Date, such that the Stock Consideration shall be released in full from the Lock-Up

Restrictions on the Final Lock-Up Expiration Date; provided further that nothing in this Agreement shall restrict the Seller from transferring (for value or otherwise) any or all of the Stock Consideration issued to it to one or more (but not more than three) of the Seller's wholly-owned subsidiaries (a "**Permitted Transferee**") at any time, provided that such transfer is in accordance with Section 5.1(e).

(b) Notwithstanding the foregoing, the Lock-Up Restrictions shall not apply to any Transfer pursuant to any merger, consolidation or other business combination of the Company.

(c) Each certificate or book-entry notation representing the Stock Consideration (unless otherwise permitted by the provisions of Section 5.1(d)) bear a legend in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM.

THE SECURITIES EVIDENCED HEREIN ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND CERTAIN OTHER AGREEMENTS, SET FORTH IN THE REGISTRATION RIGHTS AND LOCK-UP AGREEMENT, DATED AS OF NOVEMBER 30, 2023, BY AND AMONG THE HOLDER THEREOF AND THE COMPANY, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(d) Upon expiration of the Lock-Up Restrictions with respect to each share of Stock Consideration, the legend on any shares of Stock Consideration covered by this Agreement shall be removed if (i) such shares of Stock Consideration are sold pursuant to an effective registration statement, (ii) a registration statement covering the resale of such shares of Stock Consideration is effective under the Securities Act and the Seller delivers to the Company a representation letter agreeing that such shares of Stock Consideration will be sold under such effective registration statement, (iii) if such shares of Stock Consideration may be sold by the Seller free of restrictions pursuant to Rule 144(b) under the Securities Act, or (iv) such shares of Stock Consideration are being sold, assigned or otherwise transferred pursuant to Rule 144 under the Securities Act; provided, that with respect to clause (iii) or (iv) above, the Seller has provided all necessary documentation and evidence (which may include an opinion of counsel) as may reasonably be required by the Company to confirm that the legend may be removed under applicable securities law. The Company shall cooperate with the Seller to effect removal of the legend on such shares pursuant to this Section 5.1(d) as soon as reasonably practicable after delivery of notice from the Seller that the conditions to removal are satisfied (together with any documentation required to be delivered by such holder pursuant to the immediately preceding sentence). The Company shall bear all direct costs and expenses associated with the removal of a legend pursuant to this Section 5.1(d); provided, that the Seller shall be responsible for all legal fees and expenses of counsel incurred by the Seller with respect to delivering the legal opinion to the Company.

(e) The rights of any holder of Registrable Securities hereunder may be transferred or assigned in connection with a transfer of Registrable Securities to a Permitted Transferee; provided that such Permitted Transferee shall not have the right to transfer or assign any rights hereunder in connection with any subsequent transfer or transfers of any Registrable Securities to any person other than a Permitted Transferee. Notwithstanding the foregoing, such rights may only be transferred or assigned if all of the following additional conditions are satisfied: (x) such transfer or assignment is effected in accordance with applicable securities laws; (y) the Company is given written notice by the applicable holder of such transfer or assignment, stating the name and address of the transferee or assignee and identifying the amount of Registrable Securities with respect to which such rights are being transferred or assigned; and (z) such transferee or assignee executes and delivers to the Company an agreement to be bound by this Registration Rights Agreement (including, for the avoidance of doubt, the restrictions in this [Section 5.1](#)) in the same ways as the Seller.

## **ARTICLE VI MISCELLANEOUS**

Section 6.1 **Termination.** This Registration Rights Agreement shall terminate, and the parties shall have no further rights or obligations hereunder on (a) the fifth anniversary of the date hereof or (b) on such earlier date on which either (i) the Seller, together with the Seller's Affiliates, owns less than 3% of the outstanding Common Stock of the Company, or (ii) on or after the Final Lock-up Expiration Date, all Registrable Securities owned by the Seller and its Affiliates may be sold without restriction pursuant to Rule 144 under the Securities Act.

Section 6.2 **Severability.** If any provision of this Registration Rights Agreement shall be determined to be illegal and unenforceable by any court of law, the remaining provisions shall be severable and enforceable in accordance with their terms.

### **Section 6.3 Governing Law; Waiver of Jury Trial.**

(a) This Registration Rights Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to principles of conflicts of laws that would direct the application of the laws of another jurisdiction.

(b) THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANOTHER IN ANY MATTER WHATSOEVER ARISING OUT OF OR IN RELATION TO OR IN CONNECTION WITH THIS AGREEMENT. FURTHER, NOTHING HEREIN SHALL DIVEST A COURT OF COMPETENT JURISDICTION OF THE RIGHT AND POWER TO GRANT A TEMPORARY RESTRAINING ORDER, TO GRANT TEMPORARY INJUNCTIVE RELIEF, OR TO COMPEL SPECIFIC PERFORMANCE OF ANY DECISION OF AN ARBITRAL TRIBUNAL MADE PURSUANT TO THIS PROVISION.

Section 6.4 **Adjustments Affecting Registrable Securities.** The provisions of this Registration Rights Agreement shall apply to any and all shares of capital stock of the Company or any successor or assignee of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for or in substitution for the Stock Consideration, by reason of any stock dividend, split, reverse split, combination, recapitalization, reclassification, merger, consolidation or otherwise in such a manner and with such appropriate adjustments as to reflect the intent and meaning of the provisions hereof and so that the rights, privileges, duties and obligations hereunder shall continue with respect to the capital stock of the Company as so changed.

Section 6.5 **Binding Effects; Benefits of Agreement.** This Registration Rights Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns and the Seller and its successors and assigns. Neither this Agreement nor any of the rights, benefits or obligations hereunder may be assigned or transferred, by operation of law or otherwise, by the Seller without the prior written consent of the Company.

Section 6.6 **Notices.** All notices or other communications which are required or permitted hereunder shall be in writing and shall be deemed to have been given if (a) personally delivered or sent by telecopier, (b) sent by nationally recognized overnight courier or (c) sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(d) If to the Company, to:

Aviat Networks, Inc.  
200 Parker Drive, Suite C100A  
Austin, Texas 78728  
Attention: General Counsel's Office  
Email: [...]

with copies to:

Vinson & Elkins LLP  
200 W 6<sup>th</sup> St., Ste 2500  
Austin, Texas 78701  
Attention: Michael Gibson; Katherine Frank  
Telephone: [...]  
Email: [...]

(e) If to the Seller, to:

NEC Corporation  
7-1, Shiba 5-chome Minato-ku,  
Tokyo 108-8001 Japan

marked for the attention of Senior Director, Wireless Solutions Division,  
Telecom Service Business Unit ([...])

with copies to:

Allen & Overy Gaikokuho Kyodo Jigyo Horitsu Jimusho  
JP Tower 22F, 2-7-2 Marunouchi, Chiyoda-ku  
Tokyo 100-7022, Japan

marked for the attention of Nick Wall ([...]) and Taro Nakashima ([...])

or to such other address as the party to whom notice is to be given may have furnished to such other party in writing in accordance herewith. Any such communication shall be deemed to have been received (i) when delivered, if personally delivered or sent by telecopier, (ii) the next Business Day after delivery, if sent by nationally recognized, overnight courier and (iii) on the third (3rd) Business Day following the date on which the piece of mail containing such communication is posted, if sent by first-class mail.

Section 6.7 **Modification; Waiver**. This Agreement may be amended, modified or supplemented only by a written instrument duly executed by the Company and the Seller. No course of dealing between the Company and the Seller or any delay in exercising any rights hereunder will operate as a waiver of any rights of any party to this Agreement. The failure of any party to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 6.8 **Entire Agreement**. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith.

Section 6.9 **Counterparts**. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts taken together shall constitute but one agreement.

*[signature page follows]*

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its undersigned duly authorized representative as of the date first written above.

**AVIAT NETWORKS, INC.**

By: /s/ Peter A. Smith

Name: Peter Smith

Title: CEO

SIGNATURE PAGE TO REGISTRATION RIGHTS AND LOCK-UP AGREEMENT

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**NEC CORPORATION**

By: /s/ Yukio Hioki

Name: Yukio Hioki

Title: General Manager, Wireless Solutions Division

SIGNATURE PAGE TO REGISTRATION RIGHTS AND LOCK-UP AGREEMENT

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

### **Manufacturing and Supply Agreement (MSA)**

This Manufacturing and Supply Agreement (this “**Agreement**”) is made and entered into on November 30, 2023 by and among **AVIAT NETWORKS, INC.**, having its principal place of business at 200 Parker Dr, Suite C100a Austin, TX 78728, United States (hereinafter called “**BUYER**”), **NEC Platforms, Ltd.** 2-3, Kanda-Tsukasamachi, Chiyoda-ku, Tokyo 101-8532 Japan (hereinafter called “**NECPF**”) and **NEC Corporation**, having its principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan (hereinafter called “**NEC**”).

#### **WITNESSETH:**

**WHEREAS**, NEC and BUYER have entered into a master sale of business agreement on May 9, 2023, pursuant to which NEC has agreed to sell, and BUYER has agreed to purchase, all right, title and interest to certain assets relating to NEC’s wireless backhaul business, and BUYER has agreed to assume certain liabilities relating to NEC’s wireless backhaul business, subject to the terms of such master sale of business agreement (the “**MBA**”).

**WHEREAS**, pursuant to the MBA, BUYER is willing to purchase from NEC, and NEC is willing to sell, certain product(s) in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, as well as the covenants and understandings hereinafter set forth, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### **SECTION 1. DEFINITIONS**

In addition to the words and the terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is apparent in the context in which the words and terms are used:

- (a) “**Completion**” means completion of the sale and purchase of certain assets as contemplated under and in accordance with the MBA;
- (b) “**Completion Date**” means the date on which the Completion takes place pursuant to the MBA;
- (c) “**Deemed Delivery Date**” means a deemed delivery date of a Product, which shall be the earlier of (i) a date when NEC or NECPF delivers the relevant Products to Buyer or Buyer’s representative at the Destination or (ii) three days after the date when the relevant Product is moved out of NECPF’s factory.

- (d) “**Destination**“ means a specific point at the warehouse area of Haneda airport, Narita airport, Tokyo port or Yokohama port as specified in the Purchase Order under FCA incoterms; or NEC’s Koriyama warehouse as specified in the Purchase Order under Ex Works incoterms as further detailed herein.
- (e) “**Parts**” means parts incorporated or to be incorporated in the Product;
- (f) “**Product**” means certain wireless backhaul hardware products whose type numbers and specifications are listed in Exhibit A attached hereto; and
- (g) “**Purchase Order**” means a purchase order issued by BUYER to NEC for the manufacturing and supply of any of the Products; and
- (h) “**Shipping Administration Fee**” means shipping administration fees for handling a Purchase Order, which will be incurred only if the total net amount of a Purchase Order is less than JPY3,000,000.

## **SECTION 2. SCOPE OF AGREEMENT**

- 2.1 This Agreement sets forth the terms and conditions under which NEC will sell and BUYER will purchase the Products manufactured by NECPF.
- 2.2 NECPF shall not produce, deliver or sell the Product to any third party without the prior written consent of BUYER outside Japan or to resellers and distributors in Japan for resale outside of Japan. For the avoidance of doubt, NECPF may produce, deliver, lease, sell and/or otherwise transfer any Product to any third party in Japan, as long as the third party is not a reseller or distributor for resale outside of Japan.

## **SECTION 3. FORECAST AND PURCHASE ORDER**

- 3.1 BUYER shall provide forecast information to NECPF by e-mail on the third Wednesday Japan Standard Time of each month (or any other date if separately agreed between BUYER and NECPF). The form of such forecast information shall be separately agreed between BUYER and NECPF.
- 3.2 Forecast information to be provided in accordance with Section 3.1 shall provide the number of units of each Product with the specific model number (Universal Code) which will be ordered by BUYER from NEC:
  - (i) for a period of the next 53 weeks; or

- (ii) if the lead time of certain Parts necessary for a Product as determined by NECPF is longer than 53 weeks due to issues of procurement as notified by NECPF to BUYER, for a period of longer than 53 weeks for such Product in line with such longer lead time of the relevant Parts.

The number of units in the forecast information shall be within the production capacity of NECPF, which shall be agreed upon between BUYER and NECPF quarterly but only within the ranges below:

- [...]; and
- [...]

3.3 Upward change to the forecast information provided in accordance with Section 3.1 can be adjusted only within the following ranges in the next forecast information:

- no upward changes to the expected number of units of a Product to be ordered by BUYER for the initial four weeks in the forecast period are allowed;
- only up to 10% upward changes to the expected number of units of a Product to be ordered by BUYER for the period of five to eight weeks in the forecast information are allowed;
- only up to 20% upward changes to the expected number of units of a Product to be ordered by BUYER for the period of nine to 16 weeks in the forecast period are allowed; and
- only up to 30% upward changes to the expected number of units of a Product to be ordered by BUYER for the period after 16 weeks in the forecast period are allowed.

3.4 BUYER and NECPF shall discuss the potential increase of production capacity if requested by BUYER. If the production capacity is increased by NECPF as a result of such BUYER's request, BUYER shall compensate NECPF, through payments of increased prices of the Products to NEC, for (i) any costs for the procurement of additional Parts of the Products, (ii) costs for production equipment for the increased production capacity, and (iii) resource costs associated with NECPF's production capacity increase.

3.5 If the total number of units of ODU (outdoor-unit) or IDU (indoor-unit) actually ordered by BUYER during any calendar six months period (i.e. January to June or July to December in a given year) falls below the minimum number in the range of units of ODU (outdoor-unit) or IDU (indoor-unit) as provided under Section 3.2, BUYER shall pay the following amounts to NEC as compensation for damages:

Amount equal to:

- (i) 0.2

multiplied by:

(ii) (the total price of the Products with the minimum number in the range of units of ODU (outdoor-unit) or IDU (indoor-unit) as provided under Section 3.2 during the six months period) minus (the total price of the Products of ODU (outdoor-unit) or IDU (indoor-unit) actually ordered during the same six months period)

- 3.6 NECPF will confirm and notify BUYER of the information on an annual basis regarding (i) Parts which remain unused due to a mismatch of forecast information provided by BUYER and actual orders made by BUYER and (ii) Parts which remain unused as a result of NECPF's purchase of those Parts due to minimum order quantity at the time of purchase of those Parts by NECPF from the vendors listed in Exhibit B, and BUYER, through its subsidiary in Japan, shall purchase all such Parts at cost basis within 60 days from the notification by NECPF.

#### **SECTION 4. PURCHASE ORDER**

- 4.1 BUYER shall issue a Purchase Order to NEC with a lead time of at least four weeks. All purchase orders issued by BUYER shall provide the following information:
- (i) Universal Code of the Product and its quantities to be manufactured by NECPF and purchased by BUYER;
  - (ii) Universal Code of the Shipping Administration Fee (if applicable),
  - (iii) Destination where NEC shall deliver the Product;
  - (iv) the required date of delivery: the date for NECPF to deliver the Product to the Destination; and
  - (v) a list of prices of the Products ordered by BUYER, with their total price, including the amount of the Shipping Administration Fee (if applicable).
- 4.2 NEC shall acknowledge within seven working days after receiving a Purchase Order by confirming whether (i) it is within the range of forecast information, (ii) there is no issue for NECPF in obtaining relevant Parts for the Products, and (iii) it is within the production capacity of NECPF. The Purchase Order will become valid only upon notification to BUYER by NEC of its acceptance.

- 4.3 NEC shall inform BUYER of any delay in shipment of the Products due to unexpected procurement issues (including failures to deliver the relevant Parts of the Products, on the part of the vendors of the Parts), and in such case, a new delivery date will be discussed and agreed between BUYER and NEC.
- 4.4 A Purchase Order cannot be cancelled once issued, but the delivery date can be changed by BUYER to a date within two weeks after the delivery date provided in the Purchase Order. If, however, the Parties agree to cancel a specific Purchase Order, NEC shall allocate the Products to another open Purchase Order from the BUYER to the extent possible.
- 4.5 If the ordered quantity exceeds the production capacity of NECPF, NEC will inform BUYER and BUYER shall adjust the delivery date of the Purchase Order accordingly.

## **SECTION 5. PRICE**

The price of each of the Products shall be determined by NEC and notified to BUYER quarterly, provided that such price shall be an aggregated amount of (i) all costs for relevant Parts, (ii) all production cost of the Products, (iii) all product maintenance costs, (iv) when applicable, all reasonable FCA related costs and (v) any other relevant costs for NEC and NECPF. Costs for relevant Parts, production cost of the Products, product maintenance costs and other relevant costs will be calculated taking into account, among others, the following:

### ***Costs for relevant parts shall include:***

- price list for Parts of Products prepared by NECPF, provided that if NECPF receives a notice of price change from vendors of the Parts, or in case the exchange rate of purchase currency fluctuates more than 2% against Japanese Yen (¥), the list price shall be updated; and
- costs incurred to secure relevant Parts due to the lengthening of lead times for procurement of Parts; such costs shall be added to the calculation.

### ***Production costs shall include:***

- costs for assembling parts, costs for inspections, equipment costs and mold costs used for manufacturing;
- compensation paid by BUYER for NECPF's capital investment and mold investment when increasing production at BUYER's request;
- cost of remodelling and refurbishment of the Product (work cost, Parts cost) incurred by NECPF according to the change order shall be guaranteed by BUYER; and

- if the actual production is below the minimum capacity agreed upon by BUYER and NECPF, idle time loss incurred by NECPF.

***Production maintenance costs shall include:***

- costs required to maintain the performance and quality of the production. This cost will be determined by BUYER and NEC in consultation.

***FCA related costs shall include:***

- custom related costs;
- packing and labelling costs; and
- inland transport and warehousing costs.

***Other relevant costs shall include:***

- costs of NEC's IT systems for receiving orders from BUYER, provided, that this cost will be determined by BUYER, NEC and NECPF in consultation (and in any event, shall be limited to reasonable, documented and necessary costs).

**SECTION 6. PAYMENT**

- 6.1 All payments to be made in relation to this Agreement shall be made in Japanese Yen (¥). In case the exchange rate of purchase currency fluctuates more than 2% against Japanese Yen (¥), the parties will negotiate in good faith, within fifteen (15) days' notice by either party, a price adjustment.
- 6.2 BUYER shall pay the prices for the Products to NEC by the end of the following month when NEC delivers such Product to BUYER in accordance with Section 7.1. The payment from BUYER to NEC shall be made by Telegraphic Transfer Remittance to a bank account designated by NEC separately. Any amounts not paid when required pursuant to this Agreement shall bear interest on that sum calculated on a daily basis at the rate of 9% per annum from (and including) the required date of payment to the date of actual payment, which interest shall accrue from day to day and be compounded annually.
- 6.3 BUYER and NEC will review and may change the payment terms of the Product, in case there are any outside factors including, but not limited to, fluctuation of interest rate, demand-supply situation and/or stock level.

## **SECTION 7. DELIVERY**

- 7.1 NEC shall deliver the Products to BUYER at the Destination specified in the Purchase Order. The delivery of the Products shall be FCA as defined under INCOTERMS 2020.
- 7.2 Title to and risk of loss of or damage to the Product shall pass from NEC to BUYER on the Deemed Delivery Date of the Product, and all such risks prior to such Deemed Delivery Date shall be borne by NEC.
- 7.3 In the event that there are Products manufactured in accordance with the Purchase Order kept in NEC or NECPF's warehouse or a warehouse at the Destination without being delivered to BUYER after the Deemed Delivery Date, BUYER shall (i) collect and clear all of the Products at such warehouse as soon as possible and (ii) bear the reasonable and documented costs which are incurred by NEC or NECPF in conjunction with such storage, provided, however, that this shall not apply if withholding delivery of the Products is due to the occurrence of quality problems attributed to NEC or NECPF.
- 7.4 Notwithstanding Section 7.1, the Parties hereby agree to change the delivery conditions under this Section 7 to EX Works as defined under INCOTERMS 2020 for Purchase Orders to be issued on or after 1 February 2024.

## **SECTION 8. REPAIR**

- 8.1 If there is any abnormality with a Product purchased by BUYER from NEC within three years after its delivery in accordance with Section 7, BUYER may inform NEC of such issue with the Product by identifying the abnormal device or card (including the identification of relevant software or/and hardware) and deliver the relevant Product to NECPF.
- 8.2 The Product that is for repair or replacement shall be delivered directly to the NECPF factory for collection. BUYER bears the transportation cost of the product to and from the NECPF factory, and BUYER carries out import and export control procedures for the repair or for the replacement product.
- 8.3 After receipt of the defective product by NECPF, NECPF will diagnose the defective Product, consider whether repair and/or replacement is appropriate or possible, and NEC will issue a quotation to BUYER and provide the expected delivery date. After BUYER receives the quotation and expected delivery date, BUYER may issue a purchase order to NEC for the item to be repaired or replaced.

- 8.4 Repair or replacement of the Products under the one-year warranty period in accordance with Section 9.1 shall be carried out by NEC free of charge. If the products are not covered by the warranty under Section 9.1, the cost of repair or replacement will be borne by BUYER.
- 8.5 For (i) Products sold by NEC or its Affiliate to BUYER or its Affiliate in accordance with MSA, (ii) Products sold to a customer in accordance with a sale agreement with the customer transferred from NEC or its Affiliate to BUYER or its Affiliate in accordance with MSA, or (iii) Products supplied under the CPA (Channel Partner Agreement No.4942066-14) or under the other contracts transferred to BUYER prior to this Agreement, if necessary, defective products shall be delivered in the same way as shown in Section 8.2, and NEC will issue a quotation and response delivery date, and BUYER will issue a purchase order in the same way as provided in Section 8.3.
- 8.6 Section 7 shall apply mutatis mutandis to the delivery of any Products repaired or replaced in accordance with this Section 8.
- 8.7 For the avoidance of doubts and irrespective of any other provisions under this Agreement, if some Parts required for repair or replacement of a Product are not available due to discontinuation of supply of the Parts of the vendor, both of NEC and NECPF will not have any obligation to repair or replace such Product. In these cases, NEC will contact BUYER to determine how to respond to the issue.

## **SECTION 9. WARRANTY**

- 9.1 NEC warrants that the Products purchased by BUYER hereunder shall be free from defects caused by manufacturing for a period of one year from the Deemed Delivery Date. If any Product fails to conform to the foregoing warranties, NEC will, as NEC's sole and exclusive responsibility and BUYER's sole and exclusive remedy, either, at the NEC's option, repair or replace the defective Product. In order for this provision to be effective, BUYER must prove that the defect is caused by manufacturing. If BUYER cannot prove that the defect is caused by manufacturing, the defect will be treated as a defect caused by design, specified parts, or causes outside the prescribed inspection conditions, and BUYER will be responsible for the repair and replacement costs of the defective Product.
- 9.2 If the defect which has occurred with the Product is not caused by manufacturing, the costs incurred in isolating the causes of manufacturing problems, relevant Parts' problems, and design problems will be borne by BUYER.
- 9.3 THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## SECTION 10. PRODUCT LIABILITY

- 10.1 In the event of a dispute between BUYER and the third party due to damage to the life, body or property of a third party due to a defect with the Product (as provided for by the Japanese Product Liability Act or similar laws of other countries), BUYER shall resolve such disputes at its own cost, expense and responsibility and both of NEC and NECPF assumes no liability and responsibility whatsoever.
- 10.2 BUYER shall defend, indemnify and hold harmless NEC, NECPF and their affiliates, and their successors and assigns, and their directors, officers, employees, agents, contractors, and suppliers of all of the foregoing (in each case, whether direct or indirect) (“**Indemnified Parties**”) from and against any demands, claims, judgments, awards, settlements, damages, losses, costs, expenses, payments and other liabilities (including attorneys’ fees, other professionals’ fees and related costs and expenses) arising from or relating to a dispute that relates to product liability as provided for by the Japanese Product Liability Act or similar laws of other countries. NEC and NECPF shall promptly notify BUYER of any suit or proceeding from which NEC and NECPF requests BUYER to defend. NEC, NECPF and any other Indemnified Party shall (at BUYER’s cost and expense) provide any information reasonably requested by BUYER to assist in defending such claim.

## SECTION 11. INSPECTION AND ACCEPTANCE TEST

Purchased Products shall be deemed satisfactory and acceptable with respect to quality and quantity when they have passed the tests and inspections performed by NECPF at the premises designated by NECPF in accordance with its standard test procedures and shall be subject to no claim thereafter, except under the warranty obligations of NECPF set forth in Section 9.1.

## SECTION 12. SPECIFICATION CHANGE

- 12.1 If it is necessary for BUYER to change the specifications of the Product (hereinafter referred to as “**Specification Change**”), BUYER shall, after consultation with NECPF, send a written notice of the specification change to NEC.
- 12.2 BUYER, through its subsidiary in Japan, shall purchase from NECPF, or BUYER shall compensate NECPF for reasonable and documented costs of, any Parts for the Products which become unnecessary due to the Specification Change.

### **SECTION 13. SUPPLY OF THE PRODUCT**

If NECPF is unable to produce a Product to the specified specifications agreed in a Purchase Order due to the supply status of the Product or due to the difficulty of obtaining necessary Parts for the Product, NEC will ask BUYER for its instructions.

### **SECTION 14. DISCONTINUANCE OF THE PART**

If NECPF recognises that a vendor of a relevant Part of a Product plans to discontinue the supply of that part, NECPF will report that fact to BUYER as soon as possible and, if necessary, work collaboratively with the BUYER, so that the BUYER may make reasonable efforts to prevent such discontinuation by the vendor at BUYER's costs. If BUYER wishes the vendor to continue the supply of the Parts, NECPF shall cooperate with BUYER in communication of such requests from BUYER to the vendor. BUYER and NECPF may consult further depending on the response from the vendor.

### **SECTION 15. EOL PARTS**

If the supply of any necessary Parts of a Product by a vendor will be stopped, BUYER, through its subsidiary in Japan, shall purchase stock of that Part by final purchase from the vendor and shall supply the Parts to NECPF in the quantity required for lifetime production of the Products. The supply will be provided by the subsidiary in Japan of BUYER to NECPF on a cost basis. If BUYER does not make a final purchase of the Parts from the vendor and instead decides to use other Parts for the Products, the remaining number of the Parts held by NECPF that are no longer required for manufacturing the Products due to the change of Parts by BUYER shall be purchased by BUYER, through its subsidiary in Japan, on a cost basis.

### **SECTION 16. FORCE MAJEURE**

- 16.1 If the whole or any part of the performance by a party of any part of its obligations under this Agreement is prevented, hindered or delayed or otherwise made impracticable by reason of strikes, labor troubles, floods, fires, accidents, earthquakes, tsunamis, riots, explosions, wars, hostilities, acts of government, customs barriers or taxes, export/import control regulations, interruption or shortage of or delay in transportation, inability to obtain key raw materials, components or supplies or other causes of like or different character beyond the reasonable control of such party, such party shall be excused from such performance during the continuance of such contingency and for so long as such contingency shall continue to prevent, hinder or delay such performance.
- 16.2 If the contingency specified in Section 16.1 above shall continue for more than three months from its occurrence, BUYER and NECPF and NEC shall discuss and seek a mutually agreeable solution.

## SECTION 17. INTELLECTUAL PROPERTY

- 17.1 If any problems related to intellectual property rights (including trademark, patent, license infringement or other intellectual property right infringement) occur in the Products manufactured under this Agreement and the manufacturing specifications, the responsibility shall belong to BUYER who is responsible for the manufacturing specifications, and NECPF shall not be held liable for any responsibilities.
- 17.2 Products shall bear PASOLINK trademarks and no other trademark. NEC or NECPF will affix relevant name plates or legends to the Products. BUYER shall not remove, alter or obscure such trademarks, name plates, legends, patent notices or serial numbers affixed to or stamped on Products, nor combine such trademarks with any other mark, figure or character.
- 17.3 BUYER shall not remove, alter or obscure NEC or NECPF's trademarks, name plates, legends, patent notices or serial numbers affixed to or stamped on Products, nor combine such trademarks with any other mark, figure or character unless otherwise agreed by NEC and NECPF. Nothing contained in this Agreement shall be deemed to give BUYER and its affiliates any ownership, right, title or interest in or to any NEC or NECPF's trade name, trademark or service mark. Similarly, nothing contained in this Agreement shall be deemed to give NEC or NECPF and its affiliates any ownership, right, title or interest in or to any BUYER's trade name, trademark or service mark other than as outlined in the MBA.
- 17.4 If BUYER makes any changes to NECPF or NEC's design or products (including software) after delivery, NEC and NECPF shall not be liable or responsible for any issue of any intellectual properties in any way.

## SECTION 18. CONFIDENTIALITY

- 18.1 "**Confidential Information**", as used herein, shall mean any and all confidential information disclosed by a party (hereinafter called the "**Disclosing Party**") to the other parties (hereinafter called the "**Receiving Party**") in a written or other tangible form, or in an electronic form, in connection with or in the performance of this Agreement.
- 18.2 BUYER, NECPF and NEC agree to treat and maintain as confidential and proprietary all Confidential Information furnished pursuant to or in connection with this Agreement to the same extent and with the same degree of care as the Receiving Party uses in handling its own confidential and proprietary information of a similar nature (but with not less than a reasonable degree of care), and further agree not to use the Confidential Information for any purpose other than the performance of any obligation under this Agreement. Neither party shall disclose any Confidential Information to anyone other than its employees who have a need to know the Confidential Information in the performance of this Agreement and are bound by confidentiality obligations similar to those contained herein.

- 18.3 Section 18.2 hereof shall not apply to any information that: (a) on the date of this Agreement was already known to the Receiving Party or generally available within the industry; (b) after the date of this Agreement becomes rightfully known to the Receiving Party without restriction from a source other than the Disclosing Party or becomes generally available in the industry other than by unauthorized disclosure by the Receiving Party; (c) is legally furnished to the Receiving Party by a third party without restriction; (d) was or is developed by the Receiving Party independently without any use of any of the Confidential Information; or (e) is disclosed pursuant to a lawful requirement of a governmental agency or to a court order in connection with a judicial proceeding, but then only to the extent so required or ordered; in such case, the Receiving Party will use reasonable efforts to timely advise the Disclosing Party prior to disclosure so that the Disclosing Party will have an opportunity to seek a protective order or other appropriate relief.
- 18.4 Notwithstanding Section 18.2 above, NEC and NECPF may disclose BUYER's Confidential Information to its subcontractor set forth in Section 19 in order to execute the purpose of this Agreement, as long as any such subcontractor is bound by confidentiality obligations similar to those contained herein.
- 18.5 The Receiving Party's obligation under this Section 18 shall survive for the three (3) years from the termination or expiration of this Agreement.
- 18.6 The Receiving Party shall (i) inform each of its employees and subcontractors receiving Confidential Information of the confidential nature of the Confidential Information and of this Agreement, (ii) direct its employees and subcontractors to treat the Confidential Information confidentially and not to use it other than in connection with the Agreement, and (iii) be responsible for any improper use of the Confidential Information by the Receiving Party or its employees and / or subcontractors.

#### **SECTION 19. LIMITATION OF LIABILITY**

- 19.1 Except as expressly provided herein, NECPF and NEC shall not be liable for any loss or damages claimed to have resulted from the use, operation, or performance of any Product, regardless of the form of action. Notwithstanding any provision contained herein to the contrary, to the extent permitted by applicable law, the maximum liability of NECPF and NEC to BUYER or any person whatsoever arising out of or in connection with any sale, license, use or other employment of the Product delivered to BUYER hereunder, whether such liability arises from any claim based upon contract, warranty, tort, or otherwise, shall in no case exceed the actual amount paid by BUYER to NEC for the specific Products that caused the damages.

- 19.2 IN NO EVENT SHALL ANY OF THE PARTIES BE LIABLE TO ANY OTHER PARTY FOR SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGE RESULTING FROM LOSS OF USE, DATA OR PROFITS WHETHER FOR CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 19.3 NECPF and NEC shall not be liable for any loss or damages claimed to have resulted from the following:
- (a) any specification or parts designated by BUYER;
  - (b) any instruction by BUYER;
  - (c) any combination of any Product and equipment or software provided by BUYER or any third party other than the cases where such combination is conducted by NEC for services to its customers (other than BUYER) ;
  - (d) any repair, change or modification of any Product by BUYER or any third party;
  - (e) any manual, advertisement or publicity issued by BUYER or any third party;
  - (f) any use of any Product for any purpose except for the original purpose;
  - (g) any defect or non-conformity which is not detected by an inspection method or tool designated by BUYER; or
  - (h) any delivery delay of any Product resulting from a delay in delivery of relevant parts of the Product notwithstanding NECPF having ordered such parts in accordance with the ordinary procurement lead time defined by the supplier.

## **SECTION 20. SUBCONTRACTING**

NEC and NECPF may subcontract this contractual work to a third party after receiving approval for using any such subcontractor of BUYER, provided, however, that (i) NEC and NECPF may outsource their obligations under this Agreement to each other without the approval from the BUYER and (ii) NECPF may use the subcontractors listed in Exhibit C without the approval from the BUYER. NEC and NECPF shall be responsible for the subcontractor's business and conduct and shall be responsible for all payments to the subcontractor. If NECPF changes the production location, NECPF will notify BUYER six months in advance. Within 30 days from the receipt of such notification, BUYER may send a notice to NEC and NECPF to terminate this Agreement effective upon the change in production location without penalty.

## SECTION 21. TERM

- 21.1 This Agreement shall come into effect on the Completion Date (such date, the “**Effective Date**”) and shall continue in full force and effect until terminated by either party in accordance with Section 21.2 or Section 22.
- 21.2 After one year from the Effective Date, either party may terminate this Agreement by written notification to the other parties at least 180 days in advance. For the avoidance of doubt, such written notification can be sent after six months from the Effective Date.
- 21.3 The terms and conditions of this Agreement shall apply to all Purchase Orders prior to the expiration or termination of this Agreement.
- 21.4 Even if this Agreement expires or is terminated, this Section 21.4 and Sections 3, 6, 8, 9, 10, 18, 19, 23, 24, 25 and 26 will survive.

## SECTION 22. TERMINATION

- 22.1 If either party hereto commits any material breach of the terms of this Agreement or any individual contract pertaining to this Agreement, and such breach is not corrected within thirty (30) days after notice specifying the nature of the breach, the other party may terminate this Agreement and/or existing individual contract immediately.
- 22.2 If either party hereto files a petition in bankruptcy or makes a general assignment for the benefit of creditors or otherwise acknowledges insolvency, or if either party is adjudged a bankrupt or goes or is placed into a complete liquidation, or if a receiver is appointed for the benefit of either party, the other party hereto may terminate this Agreement and/or any existing individual contract immediately.
- 22.3 In the event that any of the events described in Section 22.2 occurs in respect of either party, all obligations of such party under this Agreement shall be accelerated and become immediately due and payable to the other party.
- 22.4 No termination of this Agreement shall affect any obligation accrued prior to such termination.
- 22.5 The Parties shall provide written notice to the other Parties at least thirty (30) days prior to or as soon as permitted by law or regulation of an anticipated Change of Control in any of the Parties. For the purpose of this Agreement, “**Change of Control**” means any of the following events:
- (a) a sale to a third party, of all or substantially all of the assets of a Party;

- (b) a merger or consolidation in which a Party is not the surviving corporation;
  - (c) a reverse merger in which a Party is the surviving corporation but the shares of that Party's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise;
  - (d) the acquisition of a majority of the shares of a Party by any person, entity or group; or
  - (e) the occurrence of any event as provided in (a), (b), (c) or (d) above in respect of any direct or indirect parent company of a Party.
- 22.6 Any Change of Control without the prior written consent of the other Parties shall give rise to the right of the other Parties to terminate this Agreement during the period of ninety (90) days after receipt of the notice set forth in Section 22.5 above.
- 22.7 Upon termination of this Agreement in accordance with Section 21.2 or this Section 22:
- (a) NEC shall sell, and BUYER shall purchase, any Parts held by NECPF for gross book value, unless the sale of a Part is prohibited under the agreement between NECPF and the vendor of the Part AND consent from such vendor for the sale of the Part to BUYER is not obtained after NECPF's commercially reasonable efforts to obtain such consent; and
  - (b) NEC and BUYER shall discuss in good faith NEC selling certain jigs and tools for the Products that NECPF no longer need after the termination of this Agreement.

### **SECTION 23. GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement and all acts and transactions pursuant hereto shall be governed, construed and interpreted in accordance with the laws of Japan.

### **SECTION 24. ARBITRATION**

- 24.1 This Section 24 shall be governed by the laws of Japan.
- 24.2 Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity, and any dispute relating to any non-contractual obligations arising out of or in connection with it, shall be referred to, and finally resolved by, arbitration under the Rules of Arbitration of the International Chamber of Commerce (for the purpose of this Section 24, the **Rules**).

- 24.3 The Rules are incorporated by reference into this clause and capitalised terms used in this Section 24 which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- 24.4 The number of arbitrators shall be three (3). The arbitrators nominated by the parties shall jointly nominate the third arbitrator who, subject to confirmation by the Court, will act as president of the arbitral tribunal.
- 24.5 The seat or legal place of arbitration shall be Tokyo, Japan.
- 24.6 The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

#### **SECTION 25. IMPORT AND EXPORT CONTROL**

BUYER, NECPF and NEC shall perform their obligations hereunder in strict compliance with export and import control laws, and all other applicable laws, regulations and administrative guidance of any country having competent jurisdiction. Nothing herein shall be construed as requiring any party to take any action contrary to any export control or other applicable laws and regulations of Japan, the United States or any other country having competent jurisdiction. Each party confirms that it shall not transfer, export or re-export, either directly or indirectly, any technical information furnished to it under this Agreement, in contravention of any law or regulation of the country of origin of such technical information or other country having competent jurisdiction.

#### **SECTION 26. NON-ASSIGNABILITY**

None of the parties shall, nor shall it attempt to, assign, transfer or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of the other parties.

#### **SECTION 27. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, proposals, consents, correspondence, commitments and/or representations, whether oral or in writing. There are no understandings, representations or warranties of any kind except as expressly set forth herein. No amendments or modifications of this Agreement shall be valid or binding upon the parties unless in writing and signed by their duly authorized representatives.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed in triplicate by their respective authorized representatives as of the date first above written.

**Aviat Networks, Inc.**

By:  /s/ Peter A. Smith  
Name:  Pete Smith  
Title:  CEO

**NEC Platforms**

By:  /s/ Atsuo Kawamura  
Name:  Atsuo Kawamura  
Title:  President

**NEC Corporation**

By:  /s/ Michio Kiuchi  
Name:  Michio Kiuchi  
Title:  Corporate EVP

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**EXHIBIT A**

**PRODUCT**

[Intentionally omitted]

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**EXHIBIT B**

**List of vendors of Parts subject to minimum order quantity**

[Intentionally omitted]

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**EXHIBIT C**

**List of approved subcontractors**

[Intentionally omitted]

Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K

## GLOBAL TRANSITION SERVICES AGREEMENT

This Global Transition Services Agreement (this “Agreement”), dated as of November 30, 2023, is made by and between NEC Corporation, a Japanese corporation (“Seller”), and Aviat Networks, Inc., a Delaware corporation (the “Purchaser”). Seller and Purchaser are each referred to herein as a “Party” and, collectively, as the “Parties.”

### RECITALS

A. Pursuant to that certain Master Sale of Business Agreement, dated as of May 9, 2023 (the “MBA”), by and among Seller and Purchaser, among other things, Seller agreed to sell, assign, transfer and deliver to Purchaser certain assets relating to the Business (as defined therein) on the terms and conditions set forth in the MBA (the “Purchased Assets”).

B. The MBA provides that, in connection with the consummation of the transactions contemplated thereby, the Parties will enter into this Agreement pursuant to which, Seller will provide certain transition services to and for the benefit of Purchaser, and subject to the conditions, set forth in this Agreement. NOW, THEREFORE, in consideration of the foregoing, the representations, warranties, covenants, and agreements contained herein, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1. Definitions. Capitalized terms used in this Agreement and not otherwise defined in this Agreement have the meanings ascribed thereto in the MBA. As used in this Agreement, the following terms, when used in this Agreement and other documents delivered in connection herewith, have the meanings set forth or referenced below:

“Accessing Party” has the meaning set forth in Section 2.6(a).

“Agreement” has the meaning set forth in the Preamble.

“Authorizations” has the meaning set forth in Section 2.11(a).

“Authorization Expenses” has the meaning set forth in Section 2.11(a).

“Force Majeure Events” means causes beyond Provider’s or Recipient’s reasonable control and that were not foreseen by such party, including any: applicable Law or act of any Governmental Entity (but excluding any act of a Governmental Entity in response to the failure of the party claiming the occurrence of a Force Majeure Event to comply with applicable Law or the negligent or willful misconduct of such party); or conditions resulting from natural disasters, earthquakes, hurricanes, tsunamis, floods, fires, storms, typhoons, lightning, hail storms, blizzards, tornadoes, droughts, cyclones, arctic frosts, mudslides, wildfires, manmade disasters, acts of God, pandemics, endemics, epidemics or diseases outbreak (including COVID-19) or other weather-related or natural conditions, or the commencement, occurrence, continuation or intensification of any geopolitical conditions, war (whether or not declared), sabotage, armed hostilities, civil unrest, military attacks or acts of terrorism (including cyberattack or otherwise) or declaration of national emergency.

“IT” has the meaning set forth in Section 2.8.

“MBA” has the meaning set forth in the Preamble.

“Out-of-Pocket Costs” has the meaning set forth in Section 3.3(a).

“Parties” has the meaning set forth in the Preamble.

“Party” has the meaning set forth in the Preamble.

“Provider”, in relation to specific Services set forth on Schedule A hereto, shall mean the Person designated as the provider of the Services.

“Provider Indemnifying Party” means Provider, its Affiliates and their respective officers, directors, managers, members, employees, agents, partners, representatives, successors and permitted assigns.

“Provider Personnel” means any third party service providers engaged or hired by Provider pursuant to Section 8.3(b), or any Representative or Affiliate of Provider who performs any Services under this Agreement.

“Purchaser” has the meaning set forth in the Preamble.

“Recipient”, in relation to specific Services set forth on Schedule A hereto, shall mean the Person designated as the recipient of the Services together with Purchaser and its Subsidiaries and Affiliates.

“Recipient Party” means Recipient, its Subsidiaries and Affiliates and each of their respective officers, directors, managers, members, employees, agents, partners, representatives, successors and permitted assigns.

“Security Regulations” has the meaning set forth in Section 2.6(a).

“Seller” has the meaning set forth in the Preamble.

“Service Term” means the term for a particular Service as set forth on Schedule A unless such Service is earlier terminated or extended in accordance with ARTICLE IV.

“Services” has the meaning set forth in Section 2.1.

“Technology” means all formulae, algorithms, processes, procedures, designs, ideas, concepts, research, inventions and invention disclosures (whether or not patentable or reduced to practice), know-how, proprietary information and methodologies, trade secrets, technology, computer software (in both object and source code form), systems, databases, specifications and all records relating to any of the foregoing, including documentation, design documents and analyses, studies, programming tools, plans, models, flow charts, reports and drawings, as well as all intellectual property subsisting in each of the foregoing.

“Term” has the meaning set forth in Section 4.1.

“Third Party Contracts” has the meaning set forth in Section 2.11(a).

“Transition Services Team” has the meaning set forth in Section 3.6.

“TST Representative” has the meaning set forth in Section 3.6.

## ARTICLE II TRANSITION SERVICES

Section 2.1 Services. During the applicable Service Term, and subject to the terms and conditions of this Agreement, Seller will cause Provider to provide, or cause to be provided, the services described on Schedule A (the “Services”) to Recipient at Provider’s reasonable and documented cost for provision of the Services unless otherwise noted in Schedule A. Notwithstanding the foregoing, if Provider ceases to provide any service to Provider’s businesses generally, Seller will work in good faith with Purchaser to identify alternative options for Provider, or a third party, to provide a similar service during the applicable Service Term.

Section 2.2 Additional Services. If, during the Term (as defined below), Purchaser identifies any service that is reasonably necessary in order for any Recipient to continue to operate the Business in a manner consistent with the operation of the Business prior to the Closing Date, and such service was not included in the Services described on Schedule A or otherwise provided under a Transaction Document, then Seller shall procure that Provider, acting in good faith and subject to the negotiation of commercially reasonable mutually acceptable terms consistent with this Agreement and to the extent reasonably practicable to do so, provides such requested additional service(s). Any such additional service(s) provided pursuant to the preceding sentence shall be considered Services for all purposes of this Agreement and shall be documented by an amendment to this Agreement signed by a duly authorized representative of each of the Parties.

Section 2.3 Purchase Orders. Purchaser shall procure that Recipient raises a Purchase Order in the form attached to this Agreement as Schedule B (the “Purchase Order”) for any Services it wishes to request from Provider. If a Purchase Order is raised for any Services in accordance with this Agreement, it shall be deemed acceptable and binding on the parties thereto. In the event of any conflict or inconsistency between this Agreement and the terms and conditions of a Purchase Order, the terms and conditions of the relevant Purchase Order shall prevail.

Section 2.4 Access. Purchaser shall procure that Recipient, at the request of Provider, makes available on a timely basis to Provider all assets, books and records, and information with respect to the Purchased Assets, in all cases to the extent necessary for Provider to provide the applicable Services. Purchaser shall procure that Recipient gives Provider and any Provider Personnel, to the extent necessary for Provider to provide the applicable Services, reasonable access, during regular business hours and as reasonably required, to the premises and facilities of Recipient. Seller shall procure that Provider will, and will ensure that any Provider Personnel who have access to Recipient’s facilities limit their access to those areas of Recipient’s facilities for which they are authorized in connection with their provision of the Services. Seller shall ensure that Provider will, and will cause any Provider Personnel to: (a) comply with applicable Law and all access, security, and safety rules and procedures applicable to visitors working in such facilities which are made known to Provider in advance in writing; (b) abide by any rules, agreements or procedures relating to the scheduling and use of shared equipment or systems in such facilities which are made known to Provider in advance in writing; (c) obey the instructions of the site manager or supervisor, security personnel or any other employee of Recipient or its Affiliates (or any of their landlords, if applicable) having authority over such facilities; and (d) comply with the confidentiality obligations set forth in this Agreement. Seller shall procure that Provider cooperates with Recipient in the investigation of any apparent unauthorized access or use by any Provider Personnel to Recipient’s facilities.

Section 2.5 Recipient’s Access to Provider’s Facilities. The Parties acknowledge and agree that Recipient and its Affiliates or Representatives may require access to Provider’s facilities during the Term, during normal business hours and as reasonably requested. Purchaser shall procure that Recipient will, and will ensure that all of Recipient’s Affiliates and Representatives who have access to Provider’s facilities limit their access to those areas of Provider’s facilities for which they are authorized in connection with their receipt and use of the Services. Purchaser shall procure that Recipient will, and will cause its Affiliates and Representatives to: (a) comply with applicable Law and

all access, security, and safety rules and procedures applicable to visitors working in such facilities which are made known to Recipient in advance in writing; (b) abide by any rules, agreements or procedures relating to the scheduling and use of shared equipment or systems in such facilities which are made known to Recipient in advance in writing; (c) obey the instructions of the site manager or supervisor, security personnel or any other employee of Provider or its Affiliates (or any of their landlords, if applicable) having authority over such facilities; and (d) comply with the confidentiality, disclosure and use obligations set forth in this Agreement. Purchaser shall procure that Recipient cooperates with Provider in the investigation of any apparent unauthorized access or use by any of Recipient's Affiliates or Representatives to Provider's facilities.

Section 2.6 Technology Access.

(a) Technology Access. If either Provider or Recipient is given access to the other party's Technology in connection with the Services, Seller (in the case where Provider is the Accessing Party (defined below)) or Purchaser (in the case where Recipient is the Accessing Party (defined below)), as applicable, shall procure that the party receiving access (the "Accessing Party") complies with standard customary security policies and procedures, as well as with all of the other party's system security policies, procedures, and requirements that have been provided to the Accessing Party in advance and in writing (collectively, "Security Regulations"), and shall not knowingly or intentionally tamper with, compromise or circumvent any security or audit measures employed by such other party. The Accessing Party shall access and use only the Technology of the other party for which it has been granted the right to access and use.

(b) Authorized Personnel Restrictions.

(i) Seller and Purchaser shall procure that Provider and Recipient, as applicable, uses commercially reasonable efforts to ensure that only those of its personnel who are specifically authorized to have access to the Technology of the other party gain such access and use commercially reasonable efforts to prevent unauthorized access, use, destruction, alteration, or loss of information contained therein, including notifying its personnel of the restrictions set forth in this Agreement and the Security Regulations. Seller and Purchaser shall procure that Provider and Recipient, as applicable, promptly notifies the other party if they become aware of any unauthorized access, use, destruction, alteration, or loss of information to the Technology of such other party.

(ii) If, at any time, the Accessing Party determines that any of its personnel has sought to circumvent or has circumvented, the Security Regulations, that any unauthorized Accessing Party personnel has or has had access to Technology of the other party, or that any of its personnel has engaged in activities that may lead to the unauthorized access, use, destruction, alteration or loss of data, information or software of the other party, the Seller (in the case where Provider is the Accessing Party) or Purchaser (in the case where Recipient is the Accessing Party), as applicable, shall procure that the Accessing Party promptly terminates any such Person's access to the Technology and immediately notify the other party. In addition, such other party shall have the right to deny personnel of the Accessing Party access to its Technology upon notice to the Accessing Party in the event that the other party reasonably believes that such personnel have engaged in any of the activities set forth in this Section 2.6(b) or otherwise pose a security concern. The Seller (in the case where Provider is the Accessing Party) or Purchaser (in the case where Recipient is the Accessing Party), as applicable, shall procure that the Accessing Party uses commercially reasonable efforts to cooperate with the other party in investigating any apparent unauthorized access, use, destruction, alteration or loss of information to such other party's Technology.

Section 2.7 Data Protection.

(a) Seller and Purchaser shall comply, and shall procure that Provider and Recipient, as applicable, complies with all requirements of the applicable Laws on the protection of personal data in relation to this Agreement.

(b) In order to ensure the confidentiality of personal data, Seller and Purchaser shall (i) implement, or procure the implementation of, and (ii) procure that the Provider and Recipient, as applicable, implements, or procures the implementation of, technical and organizational measures as required by this Agreement and the applicable Laws on the protection of personal data.

Section 2.8 Security. Seller and Purchaser shall comply, and shall procure that each of its Affiliates complies with the other Party's and/or its Affiliates' information technology ("IT") security policy, network standards and other IT policies as amended from time to time and made available to such Party and/or its Affiliates in advance in writing, and, in the absence of such policies and standards, with good industry practices regarding IT security. Such policies include but are not limited to hardware, software and also include any operational procedures.

Section 2.9 Ownership; No Implied Licenses; Residuals. Neither Party nor their Affiliates will gain, by virtue of this Agreement nor the Services provided hereunder, any rights of ownership of any property owned by such other Party or any Affiliate of the other Party. Nothing in this Agreement will be deemed to grant to one Party or its Affiliates, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property of the other Party or any Affiliate of the other Party. Subject to this Section 2.9, Provider will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are required or used in the course of providing the Services.

Section 2.10 Books and Records. For a period of five years following termination, expiration or cancellation of this Agreement, Purchaser shall procure that Recipient keeps books and records of the Services provided hereunder and reasonable supporting documentation of charges and expenses incurred in providing such Services. Purchaser shall procure that Recipient makes such books and records available to Provider for its review, upon reasonable notice, at Provider's expense, during normal business hours, to the extent necessary to verify disputed charges under Section 3.3(b). Following such seven-year period, Recipient will not be obligated to maintain any such books and records.

Section 2.11 Third Party Consents.

(a) Purchaser shall procure that Recipient understands, acknowledges and agrees that certain Services to be provided by Provider may be provided by or through the use of unaffiliated third parties on behalf of Provider pursuant to contracts to which Recipient is not a party (collectively, "Third Party Contracts"). Purchaser shall procure that Recipient also understands, acknowledges and agrees that the continued participation in such Third Party Contracts by such third parties in providing certain Services may require Provider to obtain additional consents, approvals, permissions or licenses (collectively, "Authorizations"), and that obtaining such Authorizations may involve additional costs, expenses, fees, charges or commissions ("Authorization Expenses"). Seller shall procure that Provider agrees to use commercially reasonable efforts to seek and obtain any Authorizations necessary pursuant to such Third Party Contracts to provide applicable Services to Recipient; provided, however, that Provider shall not be required to obtain any Authorizations if such Authorizations would require Provider to modify, amend or otherwise alter a Third Party Contract in a manner that, in Provider's good faith judgment, is not commercially reasonable. Purchaser shall procure that Recipient pays any Authorization Expenses payable pursuant to this Section 2.10(a).

(b) If, as of the date hereof, there are Third Party Contracts where Authorizations have not been received by Provider, then Seller shall procure that Provider (i) continues to use commercially reasonable efforts to obtain such Authorizations or (ii) at Recipient's request, uses commercially reasonable efforts to cooperate with Recipient and reasonably assist it to enter into its own agreements with third parties (including identifying and approaching the applicable vendor (or another third party vendor) with whom Recipient shall enter into its own third party contract at a price and upon terms that are mutually agreeable to Recipient and such vendor relating to such Service). If, despite using commercially reasonable efforts, Provider is unable to obtain an Authorization referred to in this Section 2.11, then unless and until such Authorization is obtained, the Parties will use their commercially reasonable efforts to determine and adopt such alternative approaches as are necessary and sufficient for the Provider to provide the applicable Services without such Authorization.

(c) On termination or expiration of any Third Party Contract during the Term, Provider shall not be obligated to continue to provide, or cause the provision of, the applicable Services to which the relevant Third Party Contract relates unless it is able to do so on substantially similar terms as the terminated or expired Third Party Contract, but at Recipient's request, Seller shall procure that Provider acts in good faith to cooperate with Recipient and reasonably assist Recipient to enter into its own agreements with third parties (including identifying and approaching the applicable vendor (or another third party vendor) with whom Purchaser shall procure that Recipient enters into its own third party contract at a price and upon terms that are mutually agreeable to Recipient and such vendor relating to such Service).

### **ARTICLE III**

#### **SERVICE QUALITY; INDEPENDENT CONTRACTOR; PAYMENT**

Section 3.1 Service Quality. Seller shall procure that Provider performs the Services in compliance with any terms or service levels set forth on Schedule A or the relevant Purchase Order, as applicable, and in any case, in a commercially reasonable manner, in accordance with applicable Law, and in the same manner and on the same basis as Seller and its Affiliates provided the Services with respect to the Purchased Assets and the operation of the Business immediately prior to the Closing Date. Subject to Section 8.3(b), Seller shall procure that Provider agrees to assign sufficient resources and qualified personnel as are reasonably required to perform the Services during the Term in accordance with the standards set forth in the preceding sentence. Provider may perform the Services, as applicable, in such facilities maintained by Provider or its Affiliates as Provider reasonably deems appropriate. Purchaser shall procure that Recipient agrees that Provider is not in the business of providing Services to third parties and is willing to provide the Services only on a transition basis as an accommodation to Recipient and its Affiliates in connection with the transactions contemplated by the Transaction Documents. Except as set forth in this Section 3.1, neither Seller nor Provider makes any representations or warranties, express or implied, with respect to the Services to be provided hereunder.

Section 3.2 Independent Contractor. In providing the applicable Services, Provider will act under this Agreement solely as an independent contractor and not as an agent of Recipient. All Provider Personnel providing the Services, as applicable, will be under the direction, control and supervision of Provider (and not of Recipient), and Provider will have the sole right to exercise all authority with respect to such Provider Personnel, and in no event will such Provider Personnel be deemed to be employees or agents of Recipient. Provider will be solely responsible for compensation of its employees, and for all withholding, employment or payroll Taxes, unemployment insurance, workers' compensation, and any other insurance and fringe benefits with respect to such employees. Provider will have the exclusive right to hire and fire any such personnel in accordance with applicable Law. Recipient will have no right to direct and control any of the employees or representatives of Seller under this Agreement.

### Section 3.3 Payment.

(a) Seller shall procure that statements are rendered each month by Provider to Recipient for applicable Services delivered during the preceding month. Purchaser shall procure that Recipient promptly pays such invoice in accordance with the terms of this Agreement. Each such statement shall set forth in reasonable detail a description of such Services and the amounts charged therefor and, subject to Section 3.3(b), in the case of any bona fide disagreement with any charge, Purchaser shall procure that all such amounts are paid by Recipient within 30 days after receipt of such statement. Except as otherwise expressly set forth on Schedule A or the relevant Purchase Order, the Service costs set forth thereon do not include any third party costs or payments that may be required to be made in connection with the provision of applicable Services hereunder. In the event that Provider incurs reasonable and documented out-of-pocket expenses in the provision of any Service, including, without limitation, license fees and payments to third-party service providers, but excluding payments made to employees of Provider pursuant to Section 3.2 (other than reimbursement for Out-of-Pocket expenses incurred by employees of Provider) (such included expenses, collectively, “Out-of-Pocket Costs”), Purchaser shall procure that Recipient reimburses Provider for all such Out-of-Pocket Costs in accordance with the invoicing procedures set forth in this Section, provided that in the case of any Out-of-Pocket Costs in excess of \$10,000 in the aggregate, such Out-of-Pocket Costs have been approved by Recipient in writing in advance of being incurred. If such third parties provided similar services to Seller prior to the date of this Agreement, or provide similar services to Provider during the Term, Seller shall procure that Provider uses commercially reasonable efforts to manage the costs of such third-party services so that such costs are consistent with the costs of such third-party services provided to Provider (subject to differences resulting from the volume of services provided by such third parties to Recipient under this Agreement). Such costs of third-party services shall be the actual costs charged by such third-party service provider, without markup and reflecting any discounts or rebates received by Provider together with any applicable VAT.

(b) If Recipient has a bona fide disagreement with any charge hereunder, then Purchaser shall procure that Recipient sends written notice to Provider specifying in reasonable detail the reason for such disagreement (but will timely pay any undisputed amount of the applicable invoice when due), and Seller and Purchaser shall procure that Recipient and Provider, as applicable, will negotiate in good faith to promptly resolve any such disagreement for at least 30 days prior to submitting the disagreement for adjudication pursuant to Section 8.5. Seller shall procure that Provider continues performing the Services in accordance with this Agreement pending resolution of any dispute. Any undisputed portion of the charges for Services rendered that are not paid when due under this Agreement will accrue interest at a rate of 1% per month or the maximum rate permitted by applicable Law, whichever is less, from the due date until paid in full. Seller shall procure that Provider agrees to afford Recipient, upon reasonable notice, access to such information, records and documentation of Provider as Recipient may reasonably request in order to verify any invoices and charges for applicable Services. If the Parties mutually resolve any disagreement, or the disagreement is adjudicated pursuant to Section 8.5, such that (i) Recipient has overpaid for any Services, Seller shall procure that Provider promptly, and in any event within ten Business Days of such determination, pays such overpayment to a bank account identified by Recipient, or (ii) any disputed amount is so determined to be payable by Recipient to Provider, Purchaser shall procure that Recipient pays such disputed amount to Provider within ten Business Days of such determination (using the same payment directions as provided by Provider on its most recent invoice).

Section 3.4 Taxes. The amounts for each Service do not include any amounts in respect of Taxes. Purchaser shall procure that any Taxes required to be charged by Provider or incurred by Provider under applicable Law are paid by Recipient and are in addition to the amounts otherwise to be paid by Recipient hereunder for such Services, except for any Taxes on Provider’s income imposed or assessed on Provider solely by reason of Recipient’s payment for such Services.

Section 3.5 Uses of Services. Provider will be required to provide the Services only to Recipient in connection with Purchaser's use of the Purchased Assets or operation of the Business. Purchaser shall procure that Recipient does not resell any Services to any Person whatsoever or permit the use of the Services by any Person other than in connection with the use of the Purchased Assets or operation of the Business in the ordinary course of business by Purchaser.

Section 3.6 Representatives. Seller and Purchaser will each designate a group of individuals (each, a "Transition Services Team"), which will work cooperatively with their counterparts to facilitate and administer this Agreement. Seller and Purchaser will each designate two or more persons (each, a "TST Representative"), who will make reasonable efforts to meet, in person or telephonically during normal business hours and with reasonable notice, from time to time as reasonably requested by the other Party's TST Representatives to discuss the Services generally and any issues relating thereto. Each Party will have the right at any time and from time to time to replace its TST Representatives by giving notice in writing to the other Party setting forth the name of (a) the TST Representative to be replaced and (b) the replacement TST Representative.

#### **ARTICLE IV TERM OF AGREEMENT; EXTENSION**

Section 4.1 Term. The obligations of Provider under this Agreement to provide Services shall terminate with respect to each Service at the end of each Service Term specified under the relevant Purchase Order, provided that if a Service Term is not otherwise agreed, if the relevant Service is associated with the MSA, the Service Term shall terminate on the date on which the MSA terminates and for all other Services the date that is 12 months after the date hereof. The term of this Agreement (the "Term") will commence on the date hereof and end on the earliest to occur of: (a) the date on which Provider shall have no continuing obligation to perform any Services as a result of each of their expiration or termination in accordance with the preceding sentence or Section 4.2; (b) the date on which this Agreement is terminated pursuant to, and to the extent provided in, Section 4.3. Any extension of the Service Term shall require mutual agreement of the Parties hereto; provided, however, that if Recipient desires to continue to receive any of the Services from Provider after the end of the applicable Service Term, Recipient may request an extension from Provider and Seller shall procure that Provider considers any such request in good faith. If Provider is willing to continue to perform such Service after the applicable Service Term, the Parties will negotiate in good faith the price, terms, and conditions for the continuation of such Service, which shall be set out on a new or supplemented Schedule A.

Section 4.2 Partial Termination. Recipient may cancel any applicable Service upon 30 days' written notice to Provider (but only to the extent such Service can be segregated from Provider's other Services that will continue to be provided). During the Term, the Parties shall cooperate, and Seller shall procure that Provider cooperates, in good faith to enable Recipient to transition off of the applicable Services to be provided to it pursuant to Schedule A and to cancel such Services pursuant to this Section 4.2, in each case, as promptly as reasonably practicable.

Section 4.3 Breach of Agreement. If either Party is in material breach of any of its obligations under this Agreement, including any failure to perform any Services or to make payments when due, as applicable, and such Party does not cure such material breach within 20 days after receiving written notice thereof from the nonbreaching Party, the nonbreaching Party may terminate in whole or in part the provision of Services pursuant to this Agreement immediately by providing written notice of termination to the breaching Party. The failure of a Party to exercise its rights hereunder with respect to a breach by the other Party will not be construed as a waiver of such rights nor prevent such Party from subsequently asserting such rights with regard to the same or similar defaults.

Section 4.4 Sums Due.

(a) In the event of any termination of this Agreement, whether in whole or in part, pursuant to the terms hereof, Provider will be entitled to all outstanding amounts due from Recipient for applicable Services rendered in accordance with this Agreement prior to the effective date of such termination.

(b) For any applicable Service that is terminated by Recipient pursuant to Section 4.2, in addition to amounts due with respect to such Service in accordance with Section 4.4(a), Purchaser shall procure that Recipient reimburses Provider for all reasonable and proper termination charges payable to third parties under any Third Party Contracts related to such terminated Service (including termination fees and contractual purchase obligations), to the extent such liabilities are incurred by Provider or any of its Affiliates as a result of the termination of such Service pursuant to Section 4.2.

Section 4.5 Provider Obligations Upon Termination. In connection with the transition of the Services to Recipient, (a) prior to the end of a Service Term, Seller shall procure that Provider cooperates with all reasonable requests by Recipient in connection with the transition of the performance of the Services from Provider to Recipient, and (b) Seller shall procure that Provider returns to Recipient or destroys all confidential information of Recipient that is in Provider's possession or under Provider's control in connection with this Agreement.

Section 4.6 Effect of Termination. Section 2.10, Section 3.3(b), Section 4.4, this Section 4.6, ARTICLE V, ARTICLE VI, ARTICLE VII and ARTICLE VIII (as applicable) will survive any termination, cancellation or expiration of this Agreement. Upon the effective termination date of any Services pursuant to Section 4.2, Provider's obligation to provide such Services to Recipient, and, except as set forth in Section 4.4, Recipient's obligation to pay Provider for such Services, will cease. Termination of this Agreement will not relieve either Party of any liability to the other Party for any breach of any provision of this Agreement occurring prior to such termination.

**ARTICLE V  
DISCLAIMER OF WARRANTIES & FORCE MAJEURE**

Section 5.1 Disclaimer. Except as expressly set forth in Section 3.1 or for any claims based on Fraud: (a) Purchaser acknowledges and agrees, and shall procure that Recipient acknowledges and agrees that neither Seller nor Provider makes warranties of any kind with respect to the applicable Services to be provided by Provider hereunder; and (b) Seller hereby expressly disclaims all warranties with respect to the applicable Services to be provided by Provider hereunder, as further set forth immediately below.

Section 5.2 EXCEPT AS EXPRESSLY SET FORTH IN Section 3.1 OR FOR ANY CLAIMS BASED ON FRAUD, THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT WILL BE PROVIDED BY PROVIDER AS-IS, WHERE-IS, WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, TITLE OR ANY OTHER WARRANTY WHATSOEVER.

Section 5.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither Seller nor Provider shall be liable for any interruption, delay or failure to perform any obligation under this Agreement when such interruption, delay or failure results from Force Majeure Events; provided, however, that Seller shall procure that Provider promptly notifies Recipient upon learning of the occurrence of the Force Majeure Event. Subject to compliance with the foregoing proviso, Provider's obligations hereunder will be postponed for such time as its performance is suspended or delayed on account of the Force Majeure Event, and Seller shall procure that Provider uses commercially reasonable efforts to resume its performance hereunder as soon as practicable following the cessation of the applicable Force Majeure Event. If as a result of a Force Majeure Event,

Provider is unable to allocate sufficient resources to perform all applicable Services required to be provided to Recipient under this Agreement and all requirements of Provider and Provider's Affiliates for similar services, then, during the continuance of such Force Majeure Event, Seller shall procure that Provider uses commercially reasonable efforts to allocate resources to the provision of the applicable Services to Recipient that are at least proportionate to the proportion of resources allocated to the provision of the applicable Services to Provider and Provider's Affiliates for similar services during the three months preceding the commencement of such Force Majeure Event. At Recipient's request, the end of the applicable Service Term for any Service so suspended shall be extended for a period of time equal to the time lost by reason of the suspension.

## **ARTICLE VI LIABILITIES**

Section 6.1 Indemnification of Recipient by Provider. Subject to Section 6.2, Seller shall procure that Provider indemnifies, defends and holds harmless each Recipient Party from and against any Losses actually incurred to the extent resulting from any Provider Indemnifying Party's (a) violation of applicable Law, (b) breach of this Agreement, (c) infringement, misappropriation, or any other violation of third party intellectual property in providing the applicable Services, or (d) willful misconduct in providing the applicable Services; provided that Provider shall not be responsible for any Losses of any Recipient Indemnified Party to the extent such Losses have resulted from a Recipient Indemnified Party's (x) breach of this Agreement, (y) violation of applicable Law, or (z) bad faith, gross negligence or willful misconduct. If Provider fails to provide a Service in breach of this Agreement, Losses shall include Recipient's incremental cost of performing such Service itself or Recipient's incremental cost of obtaining such Service from a third party, including any costs or surcharges relating to obtaining such Service on an expedited basis, if required.

### Section 6.2 Limitation of Liability.

(a) Except for Provider's confidentiality obligations under ARTICLE VII, Provider's indemnification obligations under Section 6.1, or in the case of any infringement of third-party intellectual property rights in providing the applicable Services, claims of personal injury, willful misconduct or Fraud, Purchaser agrees, and shall procure that Recipient agrees, that none of the Provider Indemnifying Parties shall have any liability, whether direct or indirect, in contract or tort or otherwise, to Recipient or its Affiliates under this Agreement or in connection with the applicable Services, except to the extent provided in Section 6.1; provided, however, that in no event (except in the case of any infringement of third-party intellectual property rights in providing the applicable Services, claims of personal injury or Fraud) shall Seller's or Provider's liability hereunder exceed the total fees paid by Recipient to Provider under this Agreement.

(b) Except for Provider's confidentiality obligations under ARTICLE VII, Provider's indemnification obligations under Section 6.1, or in the case of any infringement of third-party intellectual property rights in providing the applicable Services, claims of personal injury, willful misconduct or Fraud, no Provider Indemnifying Party or Recipient Party shall be liable for any exemplary, special or similar damages, indirect damages, or consequential damages of any kind whatsoever in any way due to, resulting from or arising in connection with any of the applicable Services or the performance of or failure to perform Provider's or Recipient's obligations under this Agreement, as applicable. This disclaimer applies, without limitation: (i) to claims arising from the provision of the applicable Services or any failure or delay in connection therewith; (ii) to claims for lost profits; (iii) regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise; and (iv) regardless of whether such damages are foreseeable or whether Provider or Recipient, as applicable, or any of its Affiliates has been advised of the possibility of such damages.

(c) In addition to the foregoing, each Party agrees that, in all circumstances, it shall use, and shall procure that Provider and Recipient, as applicable, uses commercially reasonable efforts to mitigate and otherwise minimize its damages and those of its Affiliates, whether direct or indirect, due to, resulting from or arising in connection with any failure by the other Party to comply fully with its obligations under this Agreement.

## **ARTICLE VII CONFIDENTIALITY**

(a) Each of Seller and Purchaser shall, and each shall cause its respective Affiliates to, hold all information relating to the Services confidential from third parties (other than their respective Affiliates) and will not disclose the same to any Person. In addition, no Party shall, and the Parties shall cause their respective Affiliates not to, disclose to any Person any confidential information concerning the other Party or its Affiliates obtained in connection with the performance of this Agreement. Notwithstanding the foregoing, nothing shall prevent either Party from disclosing the foregoing confidential information (a) if such information becomes generally available to the public, other than as a result of a breach of this ARTICLE VII by the disclosing Party, (b) if such information becomes available to the disclosing Party on a non-confidential basis from a source that is not known by the disclosing Party to be prohibited from disclosing such information, or (c) if such information is required to be produced by Law; provided, however, that, in the event of a disclosure pursuant to clause (c), the disclosing Party shall disclose only that portion of the confidential information which is required to be disclosed by Law.

(b) No Party shall, and the Parties shall cause employees and their respective Affiliates and their employees not to, use any confidential information or non-public information of the other Party received through the provision of Services for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement, or to the extent necessary to conduct the Business.

## **ARTICLE VIII MISCELLANEOUS**

Section 8.1 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via electronic transmission to the e-mail address set out below if the sender sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid) within one Business Day after electronic transmission, or (c) the third day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service. Notices, demands and communications, in each case to the respective Parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

If to Seller:

NEC Corporation  
7-1, Shiba 5-chome Minato-ku,  
Tokyo 108-8001 Japan  
marked for the attention of Senior Director, Wireless Solutions Division, Telecom Service Business Unit ([...]),

With a copy to (which shall not constitute notice):

with a copy (which shall not constitute notice) to:  
Allen & Overy Gaikokuho Kyodo Jigyo Horitsu Jimusho  
JP Tower 22F, 2-7-2 Marunouchi, Chiyoda-ku  
Tokyo 100-7022, Japan  
Attn: Nick Wall [...] and Taro Nakashima [...]; and

If to Purchaser:

Aviat Networks, Inc.  
200 Parker Dr. Ste 100A  
Austin, Texas 78728  
Attn: Erin Boase  
Email: [...]

With a copy to (which shall not constitute notice):

Vinson & Elkins L.L.P.  
200 W 6<sup>th</sup> St., Ste 2500  
Austin, TX 78701  
Attn: Michael Gibson  
Email: [...]

Section 8.2 Amendments; No Waivers. Any provision of this Agreement or the Schedules hereto may be amended or waived only in a writing signed by Purchaser and Seller. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

Section 8.3 Successors and Assigns; Subcontractors.

(a) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated (i) by Purchaser without the prior consent of Seller, or (ii) by Seller without the prior written consent of Purchaser.

(b) Provider may hire or engage one or more third-party service providers to perform any Service; provided, that Seller shall procure that Provider (i) uses the same degree of care in selecting any such third-party service providers as it would if such third-party service providers were being retained to provide similar services to Provider, (ii) causes the standard of service provided by such third-party service providers to be at least equivalent in quality to the standard of service required to be provided by Provider under this Agreement, and (iii) obtains the prior written consent of Recipient to hire such third-party service provider in the event such third-party service is inconsistent with past practices of Seller or such third-party service provider is not already engaged with respect to such Service as of the date hereof. The use by Provider of a third-party service provider shall not relieve Seller of its obligations under this Agreement.

Section 8.4 Governing Law. Except as otherwise provided in this Section 8.4, all issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement, including the Schedules hereto, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

Section 8.5 Arbitration. This section 8.5 shall be governed by the laws of the State of Delaware. Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it, shall be referred to, and finally resolved by, arbitration under the Rules of Arbitration of the International Chamber of Commerce (for the purpose of this clause 27, the Rules). The Rules are incorporated by reference into this section 8.5 and capitalized terms used in this section 8.5 which are not otherwise defined in this Agreement have the meaning given to them in the Rules. The number of arbitrators shall be three. The arbitrators nominated by the parties shall jointly nominate the third arbitrator who will act as president of the arbitral tribunal. The seat or legal place of arbitration shall be London, England. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

Section 8.6 Counterparts. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same instrument.

Section 8.7 No Third-Party Beneficiaries. Each Party agrees that, other than Provider's obligations with respect to any indemnitees expressly set forth in this Agreement, nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement; provided, however, that the Parties hereby designate (i) Purchaser's Subsidiaries and Affiliates, and (ii) Seller's Subsidiaries and Affiliates as expressly intended third-party beneficiaries of this Agreement having the right to enforce this Agreement.

Section 8.8 Entire Agreement. This Agreement, including the Schedules hereto, together with the MBA and the other Transaction Documents, contain the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way.

Section 8.9 Severability; Specificity. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 8.10 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 8.11 Remedies Cumulative; Specific Performance. Except as expressly provided in this Agreement, any and all remedies expressly conferred upon a Party under this Agreement shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law or equity upon such Party, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Purchaser and Seller shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions

of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity. Any requirements for the securing or posting of any bond in connection with such remedy are waived. Each of the Parties hereby irrevocably waives, and agrees not to assert or attempt to assert, by way of motion or other request for leave from the court, as a defense, counterclaim or otherwise, in any action based upon, arising out of or relating to this Agreement, any claim or argument that there is an adequate remedy at Law or that an award of specific performance is not otherwise an available or appropriate remedy.

Section 8.12 Construction. Unless otherwise expressly provided herein, for purposes of this Agreement, the following rules of interpretation shall apply: (a) when calculating the period of time before which, within which or following which any act is to be done or step taken, the date that is the reference date in beginning the calculation of such period shall be excluded (for example, if an action is to be taken within two calendar days of a triggering event and such event occurs on a Tuesday, then the action must be taken by the end of the day on Thursday) and if the last day of such period is a non-business day, the period in question shall end on the next succeeding business day; (b) any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa; (c) the division into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement and all references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of to this Agreement; (d) unless otherwise specified, references to any Law or other statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such Law or other statute, rule, regulation or form as amended, modified, supplemented, replaced or interpreted from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any Section of any statute, rule, regulation or form include any successor to such section; (e) words such as "herein," "hereof," "hereto" and "hereunder" refer to this Agreement as a whole and not merely to any particular section or provision of this Agreement; (f) the word "including" and any variation thereof means "including without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (g) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase shall not simply mean "if;" (h) the word "covenant" means "covenant and agreement;" (i) the use of the words "or," "either," or "any" shall not be exclusive; (j) all references to any period of days are to the relevant number of calendar days unless otherwise specified; (k) each Party and its Representatives have participated in the drafting of this Agreement, which each Party acknowledges is the result of negotiations between the Parties, and consequently, this Agreement shall be interpreted without reference to any Laws to the effect that any ambiguity in a document be construed against the drafter; and (l) where this Agreement provides that a Party shall perform or comply with an obligation or agreement contained herein, such provision shall not be construed as such Party providing a guaranty or warranty with respect to such performance or compliance but shall be construed as requiring such Party to perform or comply to the extent within its control.

Section 8.13 No Set-Off. Except as otherwise provided in this Agreement, neither Party shall be entitled to set off any claims for money that it may have against the other Party against, or otherwise withhold the proper payment of, any claim for money by the other Party under this Agreement, unless and to the extent liability for such claim has (a) been accepted by the other Party in writing or (b) such claim has been confirmed by a final and binding judgment of a competent court or tribunal.

Section 8.14 Discussion on a Separate Local Agreement. The Parties shall discuss in good faith to enter into a separate transition services agreement between their respective Subsidiaries for a given jurisdiction on the same terms (other than any changes strictly required by local law) if it is determined by the Parties that a separate agreement is reasonably necessary or required under the applicable laws in the relevant jurisdiction in order to appropriately document the provision of Services between the respective Subsidiaries.

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*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first written above.

**PURCHASER:**

**AVIAT NETWORKS, INC.**

By: /s/ Peter A. Smith

\_\_\_\_\_  
Name: Pete Smith

Title: CEO

**SELLER:**

**NEC CORPORATION**

By: /s/ Yukio Hioki

\_\_\_\_\_  
Name: Yukio Hioki

Title: General Manager, Wireless Solutions  
Division

*Signature Page to  
Transition Services Agreement*

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**Schedule A**

**Global Transition Services**

[Intentionally omitted]

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**Schedule B**

**Template Purchase Order Form**

[Intentionally omitted]

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

## GLOBAL SELLER TRANSITION SERVICES AGREEMENT

This Global Seller Transition Services Agreement (this “Agreement”), dated as of November 30, 2023, is made by and between, and Aviat Networks, Inc., a Delaware corporation (the “Purchaser”) and NEC Corporation, a Japanese corporation (“Seller”). Seller and Purchaser are each referred to herein as a “Party” and, collectively, as the “Parties.”

### RECITALS

A. Pursuant to that certain Master Sale of Business Agreement, dated as of May 9, 2023 (the “MBA”), by and among Seller and Purchaser, among other things, Seller agreed to sell, assign, transfer and deliver to Purchaser certain assets relating to the Business (as defined therein) on the terms and conditions set forth in the MBA (the “Purchased Assets”).

B. The MBA provides that, in connection with the consummation of the transactions contemplated thereby, the Parties will enter into this Agreement pursuant to which, Purchaser will provide certain transition services to and for the benefit of Seller, and subject to the conditions, set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the representations, warranties, covenants, and agreements contained herein, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1. Definitions. Capitalized terms used in this Agreement and not otherwise defined in this Agreement have the meanings ascribed thereto in the MBA. As used in this Agreement, the following terms, when used in this Agreement and other documents delivered in connection herewith, have the meanings set forth or referenced below:

“Accessing Party” has the meaning set forth in Section 2.6(a).

“Agreement” has the meaning set forth in the Preamble.

“Authorizations” has the meaning set forth in Section 2.11(a).

“Authorization Expenses” has the meaning set forth in Section 2.11(a).

“Force Majeure Events” means causes beyond Provider’s or Recipient’s reasonable control and that were not foreseen by such party, including any: applicable Law or act of any Governmental Entity (but excluding any act of a Governmental Entity in response to the failure of the party claiming the occurrence of a Force Majeure Event to comply with applicable Law or the negligent or willful misconduct of such party); or conditions resulting from natural disasters, earthquakes, hurricanes, tsunamis, floods, fires, storms, typhoons, lightning, hail storms, blizzards, tornadoes, droughts, cyclones, arctic frosts, mudslides, wildfires, manmade disasters, acts of God, pandemics, endemics, epidemics or diseases outbreak (including COVID-19) or other weather-related or natural conditions, or the commencement, occurrence, continuation or intensification of any geopolitical conditions, war (whether or not declared), sabotage, armed hostilities, civil unrest, military attacks or acts of terrorism (including cyberattack or otherwise) or declaration of national emergency.

“IT” has the meaning set forth in [Section 2.8](#).

“MBA” has the meaning set forth in the [Preamble](#).

“Out-of-Pocket Costs” has the meaning set forth in [Section 3.3\(a\)](#).

“Parties” has the meaning set forth in the [Preamble](#).

“Party” has the meaning set forth in the [Preamble](#).

“Provider” shall mean the Purchaser and its Affiliates, as set forth in the relevant Purchase Order.

“Provider Indemnifying Party” means Provider, its Affiliates and their respective officers, directors, managers, members, employees, agents, partners, representatives, successors and permitted assigns.

“Provider Personnel” means any third party service providers engaged or hired by Provider pursuant to [Section 8.3\(b\)](#), or any Representative or Affiliate of Provider who performs any Services under this Agreement.

“Purchaser” has the meaning set forth in the [Preamble](#).

“Recipient”, shall mean the Seller and its Affiliates, as set forth in the relevant Purchase Order together with Seller and its Subsidiaries and Affiliates.

“Recipient Party” means Recipient, its Subsidiaries and Affiliates and each of their respective officers, directors, managers, members, employees, agents, partners, representatives, successors and permitted assigns.

“Security Regulations” has the meaning set forth in [Section 2.6\(a\)](#).

“Seller” has the meaning set forth in the [Preamble](#).

“Service Term” means the term for a particular Service as set forth on [Schedule A](#) unless such Service is earlier terminated or extended in accordance with [ARTICLE IV](#).

“Services” has the meaning set forth in [Section 2.1](#).

“Technology” means all formulae, algorithms, processes, procedures, designs, ideas, concepts, research, inventions and invention disclosures (whether or not patentable or reduced to practice), know-how, proprietary information and methodologies, trade secrets, technology, computer software (in both object and source code form), systems, databases, specifications and all records relating to any of the foregoing, including documentation, design documents and analyses, studies, programming tools, plans, models, flow charts, reports and drawings, as well as all intellectual property subsisting in each of the foregoing.

“Term” has the meaning set forth in [Section 4.1](#).

“Third Party Contracts” has the meaning set forth in Section 2.11(a).

“Transition Services Team” has the meaning set forth in Section 3.6.

“TST Representative” has the meaning set forth in Section 3.6.

## ARTICLE II TRANSITION SERVICES

Section 2.1 Services. During the applicable Service Term, and subject to the terms and conditions of this Agreement, Purchaser will cause Provider to provide, or cause to be provided, the services described on Schedule A (the “Services”) to Recipient at Provider’s reasonable and documented cost for provision of the Services unless otherwise noted in Schedule A. Notwithstanding the foregoing, if Provider ceases to provide any service to Provider’s businesses generally, Purchaser will work in good faith with Seller to identify alternative options for Provider, or a third party, to provide a similar service during the applicable Service Term.

Section 2.2 Additional Services. If, during the Term (as defined below), Seller identifies any service that is reasonably necessary in order for any Recipient to continue to operate the Business in a manner consistent with the operation of the Business prior to the Closing Date, and such service was not included in the Services described on Schedule A or otherwise provided under a Transaction Document, then Purchaser shall procure that Provider, acting in good faith and subject to the negotiation of commercially reasonable mutually acceptable terms consistent with this Agreement and to the extent reasonably practicable to do so, provides such requested additional service(s). Any such additional service(s) provided pursuant to the preceding sentence shall be considered Services for all purposes of this Agreement and shall be documented by an amendment to this Agreement signed by a duly authorized representative of each of the Parties.

Section 2.3 Purchase Orders. Seller shall procure that Recipient raises a Purchase Order in the form attached to this Agreement as Schedule B (the “Purchase Order”) for any Services it wishes to request from Provider. If Provider does not provide reasonable justification for not being able to accept a Purchase Order within 7 Business Days of the Recipient raising such Purchase Order in accordance with this Agreement, it shall be deemed acceptable and binding on the parties thereto, provided however, that any Purchase Orders raised in accordance with this Agreement that relate to the Contracts that (i) are not transferred to the Purchaser or its Affiliates and (ii) are contained in Folder 2.17.1 titled “List of Assets (unredacted)” in the Data Room as of November 28, 2023 shall be automatically deemed effective; provided, however, if the Provider provides reasonable justification for not being able to accept a Purchase Order within 7 Business Days of the Recipient raising such Purchaser Order, the Parties shall discuss in good faith. A Purchase Order shall be automatically cancelled following the transfer of the underlying Contract from Seller to Purchaser. In the event of any conflict or inconsistency between this Agreement and the terms and conditions of a Purchase Order, the terms and conditions of the relevant Purchase Order shall prevail.

Section 2.4 Access. Seller shall procure that Recipient, at the request of Provider, makes available on a timely basis to Provider all assets, books and records, and information with respect to the Purchased Assets, in all cases to the extent necessary for Provider to provide the applicable Services. Seller shall procure that Recipient gives Provider and any Provider Personnel, to the extent necessary for Provider to provide the applicable Services, reasonable access, during regular business hours and as reasonably required, to the premises and facilities of Recipient. Purchaser shall procure that Provider will, and will ensure that any Provider Personnel who have access to Recipient’s facilities limit their access to those areas of Recipient’s facilities for which they are authorized in connection with their provision of the Services.

Purchaser shall ensure that Provider will, and will cause any Provider Personnel to: (a) comply with applicable Law and all access, security, and safety rules and procedures applicable to visitors working in such facilities which are made known to Provider in advance in writing; (b) abide by any rules, agreements or procedures relating to the scheduling and use of shared equipment or systems in such facilities which are made known to Provider in advance in writing; (c) obey the instructions of the site manager or supervisor, security personnel or any other employee of Recipient or its Affiliates (or any of their landlords, if applicable) having authority over such facilities; and (d) comply with the confidentiality obligations set forth in this Agreement. Purchaser shall procure that Provider cooperates with Recipient in the investigation of any apparent unauthorized access or use by any Provider Personnel to Recipient's facilities.

Section 2.5 Recipient's Access to Provider's Facilities. The Parties acknowledge and agree that Recipient and its Affiliates or Representatives may require access to Provider's facilities during the Term, during normal business hours and as reasonably requested. Seller shall procure that Recipient will, and will ensure that all of Recipient's Affiliates and Representatives who have access to Provider's facilities limit their access to those areas of Provider's facilities for which they are authorized in connection with their receipt and use of the Services. Seller shall procure that Recipient will, and will cause its Affiliates and Representatives to: (a) comply with applicable Law and all access, security, and safety rules and procedures applicable to visitors working in such facilities which are made known to Recipient in advance in writing; (b) abide by any rules, agreements or procedures relating to the scheduling and use of shared equipment or systems in such facilities which are made known to Recipient in advance in writing; (c) obey the instructions of the site manager or supervisor, security personnel or any other employee of Provider or its Affiliates (or any of their landlords, if applicable) having authority over such facilities; and (d) comply with the confidentiality, disclosure and use obligations set forth in this Agreement. Seller shall procure that Recipient cooperates with Provider in the investigation of any apparent unauthorized access or use by any of Recipient's Affiliates or Representatives to Provider's facilities.

Section 2.6 Technology Access.

(a) Technology Access. If either Provider or Recipient is given access to the other party's Technology in connection with the Services, the Purchaser (in the case where Provider is the Accessing Party (defined below)) or Seller (in the case where Recipient is the Accessing Party (defined below)), as applicable, shall procure that the party receiving access (the "Accessing Party") complies with standard customary security policies and procedures, as well as with all of the other party's system security policies, procedures, and requirements that have been provided to the Accessing Party in advance and in writing (collectively, "Security Regulations"), and shall not knowingly or intentionally tamper with, compromise or circumvent any security or audit measures employed by such other party. The Accessing Party shall access and use only the Technology of the other party for which it has been granted the right to access and use.

(b) Authorized Personnel Restrictions.

(i) Purchaser and Seller shall procure that Provider and Recipient, as applicable, uses commercially reasonable efforts to ensure that only those of its personnel who are specifically authorized to have access to the Technology of the other party gain such access and use commercially reasonable efforts to prevent unauthorized access, use, destruction, alteration, or loss of information contained therein, including notifying its personnel of the restrictions set forth in this Agreement and the Security Regulations. Purchaser and Seller shall procure that Provider and Recipient, as applicable, promptly notifies the other party if they become aware of any unauthorized access, use, destruction, alteration, or loss of information to the Technology of such other party.

(ii) If, at any time, the Accessing Party determines that any of its personnel has sought to circumvent or has circumvented, the Security Regulations, that any unauthorized Accessing Party personnel has or has had access to Technology of the other party, or that any of its personnel has engaged in activities that may lead to the unauthorized access, use, destruction, alteration or loss of data, information or software of the other party, the Purchaser (in the case where Provider is the Accessing Party) or Seller (in the case where Recipient is the Accessing Party), as applicable, shall procure that the Accessing Party promptly terminates any such Person's access to the Technology and immediately notify the other party. In addition, such other party shall have the right to deny personnel of the Accessing Party access to its Technology upon notice to the Accessing Party in the event that the other party reasonably believes that such personnel have engaged in any of the activities set forth in this [Section 2.6\(b\)](#) or otherwise pose a security concern. The Purchaser (in the case where Provider is the Accessing Party) or Seller (in the case where Recipient is the Accessing Party), as applicable, shall procure that the Accessing Party uses commercially reasonable efforts to cooperate with the other party in investigating any apparent unauthorized access, use, destruction, alteration or loss of information to such other party's Technology.

#### Section 2.7 [Data Protection](#).

(a) Purchaser and Seller shall comply, and shall procure that Provider and Recipient, as applicable, complies with all requirements of the applicable Laws on the protection of personal data in relation to this Agreement.

(b) In order to ensure the confidentiality of personal data, Purchaser and Seller shall (i) implement, or procure the implementation of, and (ii) procure that the Provider and Recipient, as applicable, implements, or procures the implementation of, technical and organizational measures as required by this Agreement and the applicable Laws on the protection of personal data.

Section 2.8 [Security](#). Purchaser and Seller shall comply, and shall procure that each of its Affiliates complies with the other Party's and/or its Affiliates' information technology ("[IT](#)") security policy, network standards and other IT policies as amended from time to time and made available to such Party and/or its Affiliates in advance in writing, and, in the absence of such policies and standards, with good industry practices regarding IT security. Such policies include but are not limited to hardware, software and also include any operational procedures.

Section 2.9 [Ownership; No Implied Licenses; Residuals](#). Neither Party nor their Affiliates will gain, by virtue of this Agreement nor the Services provided hereunder, any rights of ownership of any property owned by such other Party or any Affiliate of the other Party. Nothing in this Agreement will be deemed to grant to one Party or its Affiliates, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property of the other Party or any Affiliate of the other Party. Subject to this [Section 2.9](#), Provider will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are required or used in the course of providing the Services.

Section 2.10 [Books and Records](#). For a period of five years following termination, expiration or cancellation of this Agreement, Seller shall procure that Recipient keeps books and records of the Services provided hereunder and reasonable supporting documentation of charges and expenses incurred in providing such Services. Seller shall procure that Recipient makes such books and records available to Provider for its review, upon reasonable notice, at Provider's expense, during normal business hours, to the extent necessary to verify disputed charges under [Section 3.3\(b\)](#). Following such seven-year period, Recipient will not be obligated to maintain any such books and records.

### Section 2.11 Third Party Consents.

(a) Seller shall procure that Recipient understands, acknowledges and agrees that certain Services to be provided by Provider may be provided by or through the use of unaffiliated third parties on behalf of Provider pursuant to contracts to which Recipient is not a party (collectively, "Third Party Contracts"). Seller shall procure that Recipient also understands, acknowledges and agrees that the continued participation in such Third Party Contracts by such third parties in providing certain Services may require Provider to obtain additional consents, approvals, permissions or licenses (collectively, "Authorizations"), and that obtaining such Authorizations may involve additional costs, expenses, fees, charges or commissions ("Authorization Expenses"). Seller shall procure that Provider agrees to use commercially reasonable efforts to seek and obtain any Authorizations necessary pursuant to such Third Party Contracts to provide applicable Services to Recipient; provided, however, that Provider shall not be required to obtain any Authorizations if such Authorizations would require Provider to modify, amend or otherwise alter a Third Party Contract in a manner that, in Provider's good faith judgment, is not commercially reasonable. Seller shall procure that Recipient pays any Authorization Expenses payable pursuant to this Section 2.10(a).

(b) If, as of the date hereof, there are Third Party Contracts where Authorizations have not been received by Provider, then Purchaser shall procure that Provider (i) continues to use commercially reasonable efforts to obtain such Authorizations or (ii) at Recipient's request, uses commercially reasonable efforts to cooperate with Recipient and reasonably assist it to enter into its own agreements with third parties (including identifying and approaching the applicable vendor (or another third party vendor) with whom Recipient shall enter into its own third party contract at a price and upon terms that are mutually agreeable to Recipient and such vendor relating to such Service). If, despite using commercially reasonable efforts, Provider is unable to obtain an Authorization referred to in this Section 2.11, then unless and until such Authorization is obtained, the Parties will use their commercially reasonable efforts to determine and adopt such alternative approaches as are necessary and sufficient for the Provider to provide the applicable Services without such Authorization.

(c) On termination or expiration of any Third Party Contract during the Term, Provider shall not be obligated to continue to provide, or cause the provision of, the applicable Services to which the relevant Third Party Contract relates unless it is able to do so on substantially similar terms as the terminated or expired Third Party Contract, but at Recipient's request, Purchaser shall procure that Provider acts in good faith to cooperate with Recipient and reasonably assist Recipient to enter into its own agreements with third parties (including identifying and approaching the applicable vendor (or another third party vendor) with whom Seller shall procure that Recipient enters into its own third party contract at a price and upon terms that are mutually agreeable to Recipient and such vendor relating to such Service).

## **ARTICLE III SERVICE QUALITY; INDEPENDENT CONTRACTOR; PAYMENT**

Section 3.1 Service Quality. Purchaser shall procure that Provider performs the Services in compliance with any terms or service levels set forth on Schedule A or the relevant Purchase Order, as applicable, and in any case, in a commercially reasonable manner, in accordance with applicable Law, and in the same manner and on the same basis as Seller and its Affiliates used in the operation of the Business immediately prior to the Closing Date. Subject to Section 8.3(b), Purchaser shall procure that Provider agrees to assign sufficient resources and qualified personnel as are reasonably required to perform the Services during the Term in accordance with the standards set forth in the preceding sentence. Provider

may perform the Services, as applicable, in such facilities maintained by Provider or its Affiliates as Provider reasonably deems appropriate. Seller shall procure that Recipient agrees that Provider is not in the business of providing Services to third parties and is willing to provide the Services only on a transition basis as an accommodation to Recipient and its Affiliates in connection with the transactions contemplated by the Transaction Documents. Except as set forth in this Section 3.1, neither Purchaser nor Provider makes any representations or warranties, express or implied, with respect to the Services to be provided hereunder.

Section 3.2 Independent Contractor. In providing the applicable Services, Provider will act under this Agreement solely as an independent contractor and not as an agent of Recipient. All Provider Personnel providing the Services, as applicable, will be under the direction, control and supervision of Provider (and not of Recipient), and Provider will have the sole right to exercise all authority with respect to such Provider Personnel, and in no event will such Provider Personnel be deemed to be employees or agents of Recipient. Provider will be solely responsible for compensation of its employees, and for all withholding, employment or payroll Taxes, unemployment insurance, workers' compensation, and any other insurance and fringe benefits with respect to such employees. Provider will have the exclusive right to hire and fire any such personnel in accordance with applicable Law. Recipient will have no right to direct and control any of the employees or representatives of Purchaser under this Agreement.

### Section 3.3 Payment.

(a) Purchaser shall procure that statements are rendered each month by Provider to Recipient for applicable Services delivered during the preceding month. Seller shall procure that Recipient promptly pays such invoice in accordance with the terms of this Agreement. Each such statement shall set forth in reasonable detail a description of such Services and the amounts charged therefor and, subject to Section 3.3(b), in the case of any bona fide disagreement with any charge, Seller shall procure that all such amounts are paid by Recipient within 30 days after receipt of such statement. Except as otherwise expressly set forth on Schedule A or the relevant Purchase Order, the Service costs set forth thereon do not include any third party costs or payments that may be required to be made in connection with the provision of applicable Services hereunder. In the event that Provider incurs reasonable and documented out-of-pocket expenses in the provision of any Service, including, without limitation, license fees and payments to third-party service providers, but excluding payments made to employees of Provider pursuant to Section 3.2 (other than reimbursement for Out-of-Pocket expenses incurred by employees of Provider) (such included expenses, collectively, "Out-of-Pocket Costs"), Seller shall procure that Recipient reimburses Provider for all such Out-of-Pocket Costs in accordance with the invoicing procedures set forth in this Section, provided that in the case of any Out-of-Pocket Costs in excess of \$10,000 in the aggregate, such Out-of-Pocket Costs have been approved by Recipient in writing in advance of being incurred. Purchaser shall procure that Provider uses commercially reasonable efforts to manage the costs of such third-party services so that such costs are consistent with the costs of such third-party services provided to Provider (subject to differences resulting from the volume of services provided by such third parties to Recipient under this Agreement). Such costs of third-party services shall be the actual costs charged by such third-party service provider, without markup and reflecting any discounts or rebates received by Provider together with any applicable VAT.

(b) If Recipient has a bona fide disagreement with any charge hereunder, then Seller shall procure that Recipient sends written notice to Provider specifying in reasonable detail the reason for such disagreement (but will timely pay any undisputed amount of the applicable invoice when due), and Purchaser and Seller shall procure that Recipient and Provider, as applicable, will negotiate in good faith to promptly resolve any such disagreement for at least 30 days prior to submitting the disagreement for adjudication pursuant to Section 8.5. Purchaser shall procure that Provider continues performing the Services in accordance with this Agreement pending resolution

of any dispute. Any undisputed portion of the charges for Services rendered that are not paid when due under this Agreement will accrue interest at a rate of 1% per month or the maximum rate permitted by applicable Law, whichever is less, from the due date until paid in full. Purchaser shall procure that Provider agrees to afford Recipient, upon reasonable notice, access to such information, records and documentation of Provider as Recipient may reasonably request in order to verify any invoices and charges for applicable Services. If the Parties mutually resolve any disagreement, or the disagreement is adjudicated pursuant to Section 8.5, such that (i) Recipient has overpaid for any Services, Purchaser shall procure that Provider promptly, and in any event within ten Business Days of such determination, pays such overpayment to a bank account identified by Recipient, or (ii) any disputed amount is so determined to be payable by Recipient to Provider, Seller shall procure that Recipient pays such disputed amount to Provider within ten Business Days of such determination (using the same payment directions as provided by Provider on its most recent invoice).

#### Section 3.4 Taxes.

(a) The amounts for each Service do not include any amounts in respect of Taxes. Seller shall procure that any Taxes required to be charged by Provider or incurred by Provider under applicable Law are paid by Recipient and are in addition to the amounts otherwise to be paid by Recipient hereunder for such Services, except for any Taxes on Provider's income imposed or assessed on Provider solely by reason of Recipient's payment for such Services provided that Recipient receives a valid tax invoice or equivalent document from Provider.

(b) The amounts for Purchaser and its Affiliates' supply of products do not include any amounts in respect of Taxes. Purchaser shall procure that any Taxes required to be charged by Provider or incurred by Provider under applicable Law are paid by Recipient and are in addition to the amounts otherwise to be paid by Recipient hereunder for such Supply, except for any Taxes on Provider's income imposed or assessed on Provider solely by reason of Recipient's payment for such Services provided that Recipient receives a valid tax invoice or equivalent document from Provider.

Section 3.5 Uses of Services. Provider will be required to provide the Services only to Recipient in connection with its operation of the Business from and after Completion. Seller shall procure that Recipient does not resell any Services to any Person whatsoever or permit the use of the Services by any Person other than in connection with the Business (including any aspects of the Business that remain with Seller's Group following Completion) in the ordinary course of business by Seller.

Section 3.6 Representatives. Seller and Purchaser will each designate a group of individuals (each, a "Transition Services Team"), which will work cooperatively with their counterparts to facilitate and administer this Agreement. Seller and Purchaser will each designate two or more persons (each, a "TST Representative"), who will make reasonable efforts to meet, in person or telephonically during normal business hours and with reasonable notice, from time to time as reasonably requested by the other Party's TST Representatives to discuss the Services generally and any issues relating thereto. Each Party will have the right at any time and from time to time to replace its TST Representatives by giving notice in writing to the other Party setting forth the name of (a) the TST Representative to be replaced and (b) the replacement TST Representative.

**ARTICLE IV**  
**TERM OF AGREEMENT; EXTENSION**

Section 4.1 Term. The obligations of Provider under this Agreement to provide Services shall terminate with respect to each Service at the end of each Service Term specified under the relevant Purchase Order. The term of this Agreement (the "Term") will commence on the date hereof and end on the earliest to occur of: (a) the date on which Provider shall have no continuing obligation to perform any Services as a result of each of their expiration or termination in accordance with the preceding sentence or Section 4.2; (b) the date on which this Agreement is terminated pursuant to, and to the extent provided in, Section 4.3. Any extension of the Service Term shall require mutual agreement of the Parties hereto; provided, however, that if Recipient desires to continue to receive any of the Services from Provider after the end of the applicable Service Term, Recipient may request an extension from Provider and Purchaser shall procure that Provider considers any such request in good faith. If Provider is willing to continue to perform such Service after the applicable Service Term, the Parties will negotiate in good faith the price, terms, and conditions for the continuation of such Service, which shall be set out on a new or supplemented Schedule A.

Section 4.2 Partial Termination. Recipient may cancel any applicable Service upon 30 days' written notice to Provider (but only to the extent such Service can be segregated from Provider's other Services that will continue to be provided). During the Term, the Parties shall cooperate, and Purchaser shall procure that Provider cooperates in good faith to enable Recipient to transition off of the applicable Services to be provided to it pursuant to Schedule A and to cancel such Services pursuant to this Section 4.2, in each case, as promptly as reasonably practicable. Notwithstanding anything herein to the contrary, the Recipient may not terminate the Services set forth in clause 3 of Schedule A and such Services shall survive the termination of this Agreement.

Section 4.3 Breach of Agreement. If either Party is in material breach of any of its obligations under this Agreement, including any failure to perform any Services or to make payments when due, as applicable, and such Party does not cure such material breach within 20 days after receiving written notice thereof from the nonbreaching Party, the nonbreaching Party may terminate in whole or in part the provision of Services pursuant to this Agreement immediately by providing written notice of termination to the breaching Party. The failure of a Party to exercise its rights hereunder with respect to a breach by the other Party will not be construed as a waiver of such rights nor prevent such Party from subsequently asserting such rights with regard to the same or similar defaults. The provisions of this Section 4.3 shall survive the termination of this Agreement.

Section 4.4 Sums Due.

(a) In the event of any termination of this Agreement, whether in whole or in part, pursuant to the terms hereof, Provider will be entitled to all outstanding amounts due from Recipient for applicable Services rendered in accordance with this Agreement prior to the effective date of such termination.

(b) For any applicable Service that is terminated by Recipient pursuant to Section 4.2, in addition to amounts due with respect to such Service in accordance with Section 4.4(a), Seller shall procure that Recipient reimburses Provider for all reasonable and proper termination charges payable to third parties under any Third Party Contracts related to such terminated Service (including termination fees and contractual purchase obligations), to the extent such liabilities are incurred by Provider or any of its Affiliates as a result of the termination of such Service pursuant to Section 4.2.

Section 4.5 Provider Obligations Upon Termination. In connection with the transition of the Services to Recipient, (a) prior to the end of a Service Term, Purchaser shall procure that Provider cooperates with all reasonable requests by Recipient in connection with the transition of the performance of the Services from Provider to Recipient, and (b) Purchaser shall procure that Provider returns to Recipient or destroys all confidential information of Recipient that is in Provider's possession or under Provider's control in connection with this Agreement.

Section 4.6 Effect of Termination. Section 2.10, Section 3.3(b), Section 4.4, this Section 4.6, ARTICLE V, ARTICLE VI, ARTICLE VII and ARTICLE VIII (as applicable) will survive any termination, cancellation or expiration of this Agreement. Upon the effective termination date of any Services pursuant to Section 4.2, Provider's obligation to provide such Services to Recipient, and, except as set forth in Section 4.4, Recipient's obligation to pay Provider for such Services, will cease. Termination of this Agreement will not relieve either Party of any liability to the other Party for any breach of any provision of this Agreement occurring prior to such termination.

## **ARTICLE V DISCLAIMER OF WARRANTIES & FORCE MAJEURE**

Section 5.1 Disclaimer. Except as expressly set forth in Section 3.1 or for any claims based on Fraud: (a) Seller acknowledges and agrees, and shall procure that Recipient acknowledges and agrees that neither Purchaser nor Provider makes warranties of any kind with respect to the applicable Services to be provided by Provider hereunder; and (b) Seller hereby expressly disclaims all warranties with respect to the applicable Services to be provided by Provider hereunder, as further set forth immediately below.

Section 5.2 EXCEPT AS EXPRESSLY SET FORTH IN Section 3.1 OR FOR ANY CLAIMS BASED ON FRAUD, THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT WILL BE PROVIDED BY PROVIDER AS-IS, WHERE-IS, WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, TITLE OR ANY OTHER WARRANTY WHATSOEVER.

Section 5.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither Seller nor Provider shall be liable for any interruption, delay or failure to perform any obligation under this Agreement when such interruption, delay or failure results from Force Majeure Events; provided, however, that Purchaser shall procure that Provider promptly notifies Recipient upon learning of the occurrence of the Force Majeure Event. Subject to compliance with the foregoing proviso, Provider's obligations hereunder will be postponed for such time as its performance is suspended or delayed on account of the Force Majeure Event, and Purchaser shall procure that Provider uses commercially reasonable efforts to resume its performance hereunder as soon as practicable following the cessation of the applicable Force Majeure Event. If as a result of a Force Majeure Event, Provider is unable to allocate sufficient resources to perform all applicable Services required to be provided to Recipient under this Agreement and all requirements of Provider and Provider's Affiliates for similar services, then, during the continuance of such Force Majeure Event, Purchaser shall procure that Provider uses commercially reasonable efforts to allocate resources to the provision of the applicable Services to Recipient that are at least proportionate to the proportion of resources allocated to the provision of the applicable Services to Provider and Provider's Affiliates for similar services during the three months preceding the commencement of such Force Majeure Event. At Recipient's request, the end of the applicable Service Term for any Service so suspended shall be extended for a period of time equal to the time lost by reason of the suspension.

## ARTICLE VI LIABILITIES

Section 6.1 Indemnification of Recipient by Provider. Subject to Section 6.2, Purchaser shall procure that Provider indemnifies, defends and holds harmless each Recipient Party from and against any Losses actually incurred to the extent resulting from any Provider Indemnifying Party's (a) violation of applicable Law, (b) breach of this Agreement, (c) infringement, misappropriation, or any other violation of third party intellectual property in providing the applicable Services, or (d) willful misconduct in providing the applicable Services; provided that Provider shall not be responsible for any Losses of any Recipient Indemnified Party to the extent such Losses have resulted from a Recipient Indemnified Party's (x) breach of this Agreement, (y) violation of applicable Law, or (z) bad faith, gross negligence or willful misconduct. If Provider fails to provide a Service in breach of this Agreement, Losses shall include Recipient's incremental cost of performing such Service itself or Recipient's incremental cost of obtaining such Service from a third party, including any costs or surcharges relating to obtaining such Service on an expedited basis, if required.

### Section 6.2 Limitation of Liability.

(a) Except for Provider's confidentiality obligations under ARTICLE VII, Provider's indemnification obligations under Section 6.1, or in the case of any infringement of third-party intellectual property rights in providing the applicable Services, claims of personal injury, willful misconduct or Fraud, Seller agrees, and shall procure that Recipient agrees that none of the Provider Indemnifying Parties shall have any liability, whether direct or indirect, in contract or tort or otherwise, to Recipient or its Affiliates under this Agreement or in connection with the applicable Services, except to the extent provided in Section 6.1; provided, however, that in no event (except in the case of any infringement of third-party intellectual property rights in providing the applicable Services, claims of personal injury or Fraud) shall Purchaser's or Provider's liability hereunder exceed the total fees paid by Recipient to Provider under this Agreement.

(b) Except for Provider's confidentiality obligations under ARTICLE VII, Provider's indemnification obligations under Section 6.1, or in the case of any infringement of third-party intellectual property rights in providing the applicable Services, claims of personal injury, willful misconduct or Fraud, no Provider Indemnifying Party or Recipient Party shall be liable for any exemplary, special or similar damages, indirect damages, or consequential damages of any kind whatsoever in any way due to, resulting from or arising in connection with any of the applicable Services or the performance of or failure to perform Provider's or Recipient's obligations under this Agreement, as applicable. This disclaimer applies, without limitation: (i) to claims arising from the provision of the applicable Services or any failure or delay in connection therewith; (ii) to claims for lost profits; (iii) regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise; and (iv) regardless of whether such damages are foreseeable or whether Provider or Recipient, as applicable, or any of its Affiliates has been advised of the possibility of such damages.

(c) In addition to the foregoing, each Party agrees that, in all circumstances, it shall use, and shall procure that Provider and Recipient, as applicable, uses commercially reasonable efforts to mitigate and otherwise minimize its damages and those of its Affiliates, whether direct or indirect, due to, resulting from or arising in connection with any failure by the other Party to comply fully with its obligations under this Agreement.

**ARTICLE VII  
CONFIDENTIALITY**

(a) Each of Seller and Purchaser shall, and each shall cause its respective Affiliates to, hold all information relating to the Services confidential from third parties (other than their respective Affiliates) and will not disclose the same to any Person. In addition, no Party shall, and the Parties shall cause their respective Affiliates not to, disclose to any Person any confidential information concerning the other Party or its Affiliates obtained in connection with the performance of this Agreement. Notwithstanding the foregoing, nothing shall prevent either Party from disclosing the foregoing confidential information (a) if such information becomes generally available to the public, other than as a result of a breach of this ARTICLE VII by the disclosing Party, (b) if such information becomes available to the disclosing Party on a non-confidential basis from a source that is not known by the disclosing Party to be prohibited from disclosing such information, or (c) if such information is required to be produced by Law; provided, however, that, in the event of a disclosure pursuant to clause (c), the disclosing Party shall disclose only that portion of the confidential information which is required to be disclosed by Law.

(b) No Party shall, and the Parties shall cause employees and their respective Affiliates and their employees not to, use any confidential information or non-public information of the other Party received through the provision of Services for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement, or to the extent necessary to conduct the Business.

**ARTICLE VIII  
MISCELLANEOUS**

Section 8.1 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via electronic transmission to the e-mail address set out below if the sender sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid) within one Business Day after electronic transmission, or (c) the third day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service. Notices, demands and communications, in each case to the respective Parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

If to Seller:

NEC Corporation  
7-1, Shiba 5-chome Minato-ku,  
Tokyo 108-8001 Japan  
marked for the attention of Senior Director, Wireless Solutions Division, Telecom Service Business Unit ([...]),

With a copy to (which shall not constitute notice):

*with a copy (which shall not constitute notice) to:*  
Allen & Overy Gaikokuho Kyodo Jigyo Horitsu Jimusho  
JP Tower 22F, 2-7-2 Marunouchi, Chiyoda-ku  
Tokyo 100-7022, Japan  
Attn: Nick Wall ([...]) and Taro Nakashima ([...]); and

If to Purchaser:

Aviat Networks, Inc.  
200 Parker Dr. Ste 100A  
Austin, Texas 78728  
Attn: Erin Boase  
Email: [...]

With a copy to (which shall not constitute notice):

Vinson & Elkins L.L.P.  
200 W 6<sup>th</sup> St., Ste 2500  
Austin, TX 78701  
Attn: Michael Gibson  
Email: [...]

Section 8.2 Amendments; No Waivers. Any provision of this Agreement or the Schedules hereto may be amended or waived only in a writing signed by Purchaser and Seller. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

Section 8.3 Successors and Assigns; Subcontractors.

(a) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated (i) by Purchaser without the prior consent of Seller, or (ii) by Seller without the prior written consent of Purchaser.

(b) Provider may hire or engage one or more third-party service providers to perform any Service; provided, that Purchaser shall procure that Provider (i) uses the same degree of care in selecting any such third-party service providers as it would if such third-party service providers were being retained to provide similar services to Provider, (ii) causes the standard of service provided by such third-party service providers to be at least equivalent in quality to the standard of service required to be provided by Provider under this Agreement, and (iii) obtains the prior written consent of Recipient to hire such third-party service provider. The use by Provider of a third-party service provider shall not relieve Purchaser of its obligations under this Agreement.

Section 8.4 Governing Law. Except as otherwise provided in this Section 8.4, all issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement, including the Schedules hereto, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

Section 8.5 Arbitration. This section 8.5 shall be governed by the laws of the State of Delaware. Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it, shall be referred to, and finally resolved by, arbitration under the Rules of Arbitration of the International Chamber of Commerce (for the purpose of this clause 27, the Rules). The Rules are incorporated by reference into this section 8.5 and capitalized terms used in this section 8.5 which are not otherwise defined in this Agreement have the meaning given to them in the Rules.

The number of arbitrators shall be three. The arbitrators nominated by the parties shall jointly nominate the third arbitrator who will act as president of the arbitral tribunal. The seat or legal place of arbitration shall be London, England. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

Section 8.6 Counterparts. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same instrument.

Section 8.7 No Third-Party Beneficiaries. Each Party agrees that, other than Provider's obligations with respect to any indemnitees expressly set forth in this Agreement, nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement; provided, however, that the Parties hereby designate (i) Purchaser's Subsidiaries and Affiliates, and (ii) Seller's Subsidiaries and Affiliates as expressly intended third-party beneficiaries of this Agreement having the right to enforce this Agreement.

Section 8.8 Entire Agreement. This Agreement, including the Schedules hereto, together with the MBA and the other Transaction Documents, contain the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way.

Section 8.9 Severability; Specificity. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 8.10 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 8.11 Remedies Cumulative; Specific Performance. Except as expressly provided in this Agreement, any and all remedies expressly conferred upon a Party under this Agreement shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law or equity upon such Party, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Purchaser and Seller shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this

being in addition to any other remedy to which they are entitled at law or in equity. Any requirements for the securing or posting of any bond in connection with such remedy are waived. Each of the Parties hereby irrevocably waives, and agrees not to assert or attempt to assert, by way of motion or other request for leave from the court, as a defense, counterclaim or otherwise, in any action based upon, arising out of or relating to this Agreement, any claim or argument that there is an adequate remedy at Law or that an award of specific performance is not otherwise an available or appropriate remedy.

Section 8.12 Construction. Unless otherwise expressly provided herein, for purposes of this Agreement, the following rules of interpretation shall apply: (a) when calculating the period of time before which, within which or following which any act is to be done or step taken, the date that is the reference date in beginning the calculation of such period shall be excluded (for example, if an action is to be taken within two calendar days of a triggering event and such event occurs on a Tuesday, then the action must be taken by the end of the day on Thursday) and if the last day of such period is a non-business day, the period in question shall end on the next succeeding business day; (b) any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa; (c) the division into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement and all references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of to this Agreement; (d) unless otherwise specified, references to any Law or other statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such Law or other statute, rule, regulation or form as amended, modified, supplemented, replaced or interpreted from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any Section of any statute, rule, regulation or form include any successor to such section; (e) words such as "herein," "hereof," "hereto" and "hereunder" refer to this Agreement as a whole and not merely to any particular section or provision of this Agreement; (f) the word "including" and any variation thereof means "including without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (g) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase shall not simply mean "if;" (h) the word "covenant" means "covenant and agreement;" (i) the use of the words "or," "either," or "any" shall not be exclusive; (j) all references to any period of days are to the relevant number of calendar days unless otherwise specified; (k) each Party and its Representatives have participated in the drafting of this Agreement, which each Party acknowledges is the result of negotiations between the Parties, and consequently, this Agreement shall be interpreted without reference to any Laws to the effect that any ambiguity in a document be construed against the drafter; and (l) where this Agreement provides that a Party shall perform or comply with an obligation or agreement contained herein, such provision shall not be construed as such Party providing a guaranty or warranty with respect to such performance or compliance but shall be construed as requiring such Party to perform or comply to the extent within its control.

Section 8.13 No Set-Off. Except as otherwise provided in this Agreement, neither Party shall be entitled to set off any claims for money that it may have against the other Party against, or otherwise withhold the proper payment of, any claim for money by the other Party under this Agreement, unless and to the extent liability for such claim has (a) been accepted by the other Party in writing or (b) such claim has been confirmed by a final and binding judgment of a competent court or tribunal.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first written above.

**PURCHASER:**

**AVIAT NETWORKS, INC.**

By: /s/ Peter A. Smith

Name: Pete Smith

Title: CEO

*Signature Page to  
Seller Transition Services Agreement*

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**SELLER:**

**NEC CORPORATION**

By: /s/ Yukio Hioki

Name: Yukio Hioki

Title: General Manager, Wireless Solutions Division

*Signature Page to  
Seller Transition Services Agreement*

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**Schedule A**

**Transition Services**

[Intentionally omitted]

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**Schedule B**

**Template Purchase Order Form**

[Intentionally omitted]

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

**DISTRIBUTION AGREEMENT**

BETWEEN

**NEC XON SYSTEMS PROPRIETARY LIMITED**  
(hereinafter called “**NEC XON**” or “**Distributor**”)

Registration Number:  
1998/004786/07

and

**AVIAT NETWORKS (S) PTE.LTD**  
(hereinafter after called “**Supplier**”)

Registration Number:  
199901592C

Contract Number: XSY\_4436\_2023

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This Distribution Agreement (hereinafter referred to as the “**Agreement**”) is made on the date as defined on Annexure A (the “**Effective Date**”) between **NEC XON HOLDINGS PROPRIETARY LIMITED**, a private company with registration number stated on the cover page and its principal place of business at Old Mint Park, 1 Mints Street, Louwlandia, 0157 (hereinafter referred to as “**NEC XON**” or “**Distributor**”) and Aviat Networks (S) Pte.Ltd , a limited liability corporation with its principal place of business at 51, Changi Business Park Central 2 #08-03The Signature Singapore 486066 (hereinafter referred to as the “**Supplier**”).

WHEREAS:

- (A) The Supplier supplies wireless network products.
- (B) NEC XON is a renowned systems integrator providing custom ICT technology solutions and services in the Territory.
- (C) The Supplier wishes to authorize and appoint NEC XON, and NEC XON wishes to accept the authorization and appointment as the Supplier’s distributor on an exclusive basis (as set out in clause 3 hereof), to market, distribute, sell, or incorporate for distribution, the Products listed in Annexure A , within the Territory in each case on the terms and subject to the conditions set out in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1 Definitions**

In this Agreement:

“**Business**” means the wireless backhaul business.

“**Business Day**” means a day other than a Saturday, a Sunday, or any public holiday in the Republic of South Africa.

“**Confidential Information**” means all non-public, confidential or proprietary information disclosed by one Party to the other Party, in any tangible or intangible form, such as but not limited to written, oral, visual, audio, those produced by electronic media, or through any other means, that is designated as confidential or that by its nature or circumstances surrounding its disclosure, should be reasonably considered as confidential, including but not limited to products or planned products, processes and/or procedures, technological achievements and interests, customers and potential customers, business prospects, financial statements and information, financial situation and corporate plans, internal activities, future plans of the disclosing party, and other information deemed proprietary or confidential by the disclosing party or any other matter in which the disclosing party may have any interest whatsoever, which may include, without limitation, trade secrets, engineering designs, architecture and other technical data, as well as business plans, financial data. For the avoidance of doubt, for the purposes of this Agreement, all information disclosed by a Party to the other Party shall be treated as Confidential Information

“**Defect**” means Hardware failures that constitutes operational defects as per the customer requirements and technical data sheets from the supplier. Software and firmware bugs, known or unknown at the time of sale of the hardware or software, as per the customer requirements and technical data sheets from the supplier;

“**Delivery Date**” means the date at which the risk of loss or damage to the Products transfers to NEC, in accordance with the risk transfer rules of the applicable Incoterm.

“**Effective Date**” is defined in the introduction to this Agreement.

“**Encumbrances**” means any pledges, liens, charges, security interests, leases, title retention agreements, mortgages, restrictions, easements, rights-of-way, title defects, options, adverse claims, or encumbrances of any kind.

“**Enhancement**” means the addition of additional peripheral fans for improved cooling performance; or addition of a UPS (uninterruptible power supply) for power backup; or the mining of data from the Hardware or existing EMS to produce management reports;

“**End Customer**” means the final customer in the Territory that purchases the Products and/or Services listed in Annexure A from NEC XON for its own internal use and not for resale.

“**FOSS**” means Free and Open-Source Software.

“**Governmental Authority**” means

- (a) any national, regional, local, or foreign government, and any political subdivision of any of them,
- (b) any agency or instrumentality of any such government or political subdivision,
- (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), and
- (d) any arbitrator, court or tribunal of competent jurisdiction.

“**Initial Term**” is defined in clause 13.1.

“**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world:

- (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
- (b) copyrights, including all applications and registrations related to the foregoing,
- (c) trade secrets and confidential know-how,
- (d) patents and patent applications,
- (e) websites and internet domain name registrations, and
- (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present, and future infringement, and any other rights relating to any of the foregoing).
- (g) Should any Enhancement be made by NEC XON to the product, such enhance will remain the intellectual property of NEC XON.

“**Inspection Period**” is defined in clause 6.1.

“**Law**” means:

(a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and

(b) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

“**Legal Proceeding**” means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).

“**Parties**” means both the Supplier and NEC XON, collectively.

“**Party**” means either the Supplier or NEC XON, individually.

“**Permits**” means all material licenses, franchises, permits, certificates, approvals, and authorizations, from Governmental Authorities necessary for the ownership and operation of the Party’s business.

“**Person**” includes

(a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and

(b) any individual.

“**Products**” means the goods listed in Annexure A, attached to this Agreement.

“**Purchase Order**” is defined in clause 4.1.

“**Renewal Term**” is defined in clause 13.2.

“**Scope Specific Agreement**” means the separate agreement entered into by the Supplier and NEC XON in respect of the scope of Services to be rendered by the Supplier on behalf of NEC XON to the End Customer.

“**Services**” means the services listed in Annexure A, attached to this Agreement.

“**Support Service Charges**” means the charges to be paid for the Support Services under clause 12.

“**Support Services**” means the support services listed in Annexure B, attached to this Agreement.

“**Taxes**” includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind for which a Party may have any liability imposed by any Governmental Authority, whether disputed or not, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

“**Territory**” means Sub-Saharan Africa.

“USD” means the United States dollar.

## 2 Interpretation

### 2.1 References to Specific Terms

2.1.1 *Accounting Principles*. Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the International Financial Reporting Standards defined by the professional accounting industry in effect in the Republic of South Africa (“IFRS”).

2.1.2 *Currency*. Unless otherwise specified, all dollar amounts expressed in this Agreement refer to United States Dollars.

2.1.3 “*Including*”. Where this Agreement uses the word “including,” it means “including without limitation” and where it uses the word “includes,” it means “includes without limitation.”

2.1.4 “*Knowledge*”. Where any representation, warranty, or other statement in this Agreement, or in any other document entered into or delivered under this Agreement, is expressed by a Party to be “to its knowledge” or is otherwise expressed to be limited in scope to facts or matters known to the Party or of which the Party is aware, it means:

2.1.4.1 the then-current, actual knowledge of the directors and officers of that Party, and

2.1.4.2 the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.

2.1.5 *Statutes, etc*. Unless specified otherwise, any reference in this Agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.

2.2 *Number and Gender*. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

2.3 *Headings*. The headings used in this Agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

2.4 *Internal References*. References in this Agreement to sections and other subdivisions are to those parts of this Agreement.

2.5 *Calculation of Time*. In this Agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. Central African Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. Central African Time on the next Business Day.

- 2.6 *Construction of Terms.* The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting Party will not apply in interpreting this Agreement.
- 2.7 *Conflict of Terms.* If there is any inconsistency between the terms of this Agreement and those in any schedule to this Agreement or in any document entered into under this Agreement, the terms of this Agreement will prevail. The Parties shall take all necessary steps to conform the inconsistent terms to the terms of this Agreement.
- 2.8 *Binding Effect.* This Agreement will benefit and bind the Parties and their respective heirs, successors, and permitted assigns.

### **3 Appointment of NEC XON**

- 3.1 NEC XON shall, for the Initial Term or Renewal Term (as applicable), be the Supplier's distributor on an exclusive basis of the Products for the designated customers as listed in Annex C excluding the MTN Group (and its subsidiaries) within the Territory subject to the foregoing. For the avoidance of doubt the exclusivity granted to NEC XON is based on customers listed in Annex C excluding MTN and not the territory. For the purpose of clarity Supplier shall supply the Products and associated Services directly to the MTN Group (and its subsidiaries). With effect from the end of the 9<sup>th</sup> (ninth) calendar month after signature of this Agreement, the Airtel Group (and its subsidiaries) shall be removed from the exclusivity granted in this clause 3.1. For the avoidance of doubt, the MTN Group shall be excluded from the exclusivity and the Airtel Group shall also become excluded from the exclusivity after a period of 9 (nine) calendar months from the effective date of this Agreement. The 9 (nine) calendar month period is carved out to allow NEC XON to realise the pipeline set out in Annexure C.
- 3.2 Supplier appoints NEC XON to act as its Distributor on an exclusive basis for the designated Customers as listed in Annex C, and NEC XON accepts such appointment and exclusive distributor status. In that capacity, NEC shall purchase for resale or arrange for the sale of the Products listed in Annexure A "List of Products, Services and Discounts" for the designated customers within the Territory in accordance with the terms and conditions set forth in this Agreement. The Supplier will sell to NEC XON, or on Distributor's order as herein set forth. For the purposes of exclusivity, NEC XON shall enjoy such exclusive distributor status for the designated Customers during the term of this Agreement and Supplier shall not appoint any other distributor related to the subject matter hereof provided that NEC XON complies with clause 3.4 herein. It is further agreed between the Parties that any territorial exclusivity in respect of the Products, is subject to any previously agreed upon distribution agreements entered by NEC Corporation or any of NEC Corporation's affiliates prior to the Closing of the Asset Purchase Transaction between NEC Corporation and Aviat Networks Inc.
- 3.3 In addition, such exclusivity is granted by Aviat to NEC subject to the following conditions:
- 3.3.1 NEC shall endeavour to the best of its reasonable abilities to maintain its Broad Based Black Economic Empowerment ("BBBEE") Credentials to at least level 3 contributor during the term of this Agreement. NEC XON shall submit its BBBEE certificate to Supplier on an annual basis to indicate its compliance with this clause. If NEC XON's BBBEE certificate does not meet the BBBEE compliance credentials stated in this clause, the Parties shall agree on a plan of action for improvement of NEC XON's BBBEE Compliance. Should NEC XON's BBBEE compliance credentials not improve by the agreed next review, such non-compliance shall be regarded as a ground for the removal of the exclusivity and Supplier shall remove the exclusivity granted to NEC XON via an addendum to this Agreement signed by both Parties.

- 3.3.2 Should NEC XON have to submit a bid in response to a Request for Proposal issued by one of the customers in the territory it shall always submit and position Pasolink's products as the primary product offered for Microwave Solution unless Supplier acknowledges in writing that it cannot provide a solution to the requirement and do not have the Pasolink products required by the designated customers.
- 3.3.3 In the event NEC XON is awarded a Project by the designated customers listed which includes the supply of PASOLINK it shall always sub-contract the PASOLINK supply portion from Supplier subject to the conclusion of the relevant Sub-Contracting Agreement.
- 3.3.4 NEC XON and Supplier shall conclude separately a Teaming Agreement for their cooperation and collaboration in responding to the above-mentioned customers RFPs which will govern their contractual relationship.
- 3.4 Reseller commits on an annual basis to a minimum purchase of PASOLINK Products of a value of USD 2,000,000.00 by its customers with a quarterly review period measuring the trailing quarters. Failure to meet the 4 quarters threshold within the year and not remedying such failure within one quarter will result in the exclusivity being removed.
- 3.5 For the Initial Term or Renewal Term (as applicable), the Supplier agrees to supply NEC XON with Products and Services on a continuous basis in line with NEC XON' Purchase Orders.
- 3.6 NEC XON shall act as an independent contractor, purchasing the Products from the Supplier and reselling them in its own name, on its own behalf and on its own account. NEC XON shall have no authority to enter into any contract or commitment in the name of or for the account of the Supplier or to bind the Supplier in any manner whatsoever.
- 3.7 The Parties may revise the list of Products and Services at any time during the Initial Term or Renewal Term (as applicable) by agreement in writing.
- 3.8 To the extent not specifically covered in this Agreement, sales transactions between the Parties shall be covered by Supplier's standard Terms and Conditions of Sale in effect at the time of Supplier's acceptance of a Purchase Order issued by NEC ("Supplier's Terms"), incorporated by reference in this Agreement, which shall prevail over any terms and conditions included on any purchase order submitted by NEC. In the event of any conflict between this Agreement and Supplier's Terms, the order of precedence is as follows: (a) this Agreement; (b) Supplier's Terms.

#### **4 Orders**

- 4.1 *Purchase Orders.* From time to time, NEC XON shall submit orders for Products to the Supplier in writing and in accordance with the respective quotation provided by the Supplier to Supplier's address listed in the introduction to this Agreement or as the Supplier otherwise specifies in writing (each, a "**Purchase Order**") and include in each Purchase Order:
  - 4.1.1 each Product and/or Service it is ordering, identified by model, part number or service description;
  - 4.1.2 the amount of each Product and/or Service it is ordering;
  - 4.1.3 the unit price of each Product and/or Service it is ordering;
  - 4.1.4 the Incoterm applicable to the Purchase Order;

4.1.5 the location for delivery; and

4.1.6 the delivery date (the “**Delivery Date**”).

4.2 **Accepting, Modifying, and Rejecting Purchase Orders**

4.2.1 *By Notice.* Within 3 (three) Business Days’ of receiving a Purchase Order from NEC XON, the Supplier shall accept, reject, or propose a modification to the Purchase Order by sending NEC XON written notice of its acceptance, rejection, or proposed modification (as applicable).

4.2.2 *Modification of Purchase Order.* The Supplier may propose a modification to a Purchase Order by including in its notice to NEC XON a modified Purchase Order format for NEC XON to process and re-send to Supplier for acceptance or rejection according to the acceptance and rejection procedure under clause 4.2.1.

4.3 *Cancelling Purchase Orders.* NEC XON may, at no expense to itself, cancel part or all of a Purchase Order before it is accepted in writing by the Supplier. After the acceptance of a Purchase Order by Supplier in writing, any Order cancellation shall entitle Supplier to charge reasonable cancellation charges based on re-stocking and handling costs incurred up to the full amount of the Purchase Order.

4.4 **License Keys**

The current License key platform SKSS operates in full transparency to the Supplier and NEC XON in that:

- A. At the beginning of the month NEC XON shall request from Supplier in writing a certain number of licences for its customers. Then Supplier shall make the number of licenses available to NEC XON and a reconciliation shall be done on the 15<sup>th</sup> of each month between Supplier and NEC XON to determine the licences that have been issued by NEC XON to its end customers.
- B. As an example, NEC XON shall request in writing at the beginning of the month 500 license keys. Then, Supplier shall make available those licences to NEC XON. On the 15<sup>th</sup> of the month Supplier and NEC XON shall conduct a reconciliation of the licences issued to end customers by NEC XON. Thereafter, a Purchase Order for those issued licences shall be created by NEC XON and sent to the Supplier. The Supplier shall then send an invoice to NEC XON for payment of the issued licenses. NEC XON shall pay the Supplier’s invoice according to the agreed terms of payment.

5 **Delivery of Products or Services and Scope Specific Agreement**

5.1 *Delivery.* The Supplier shall, in accordance with the Incoterm, deliver each order of Products or Services to NEC XON:

5.1.1 on the Delivery Date and to the location specified in the applicable Purchase Order; and

5.1.2 using any delivery method and Incoterm that the Parties shall agree to in writing.

- 5.2 *Risk of Loss Shifts on Delivery.* The Supplier will remain liable for any damages, losses, or defects to the Products until the risk of loss or damage to the Products is transferred to NEC in accordance with the Incoterm that is applicable to a Purchase Order, after which NEC XON will assume the risk of loss or damage to the Products.
- 5.3 *Title transfer:* The title in the Products (including software media, where applicable) shall transfer from Supplier to NEC XON upon shipment of the Products from the Supplier's manufacturing facilities.
- 5.4 *Scope Specific Agreement.* In the event that NEC XON resells Supplier's Services, Supplier and NEC may agree, by entering into a Scope Specific Agreement, the terms and conditions under which Supplier shall render the Services to the End Customer directly on behalf of NEC XON in accordance with the Scope Specific Agreement; however the Supplier shall have no direct relationship with the End Customer. NEC XON shall at all times remain liable for payment of the Services provided by Supplier under the Scope Specific Agreement. NEC XON shall enter into a similar back-to-back agreement with the End Customer for the relevant Services, provided always that NEC shall not give any promise, guarantee, condition, or warranty about the Services beyond those given by Supplier in the Scope Specific Agreement or make any representation, pledge any credit, commit to any contract, or incur any liability for or on behalf of Supplier.
- 6 Acceptance and Rejection of Product Deliveries**
- 6.1 *Inspection Period.* NEC XON will have 15 (fifteen) Business Days after the Products reach the named place of destination to inspect and test the Products for defects missing items, items shipped in error, items damaged in transit (the "**Issues**") and to ensure the order meets the specifications of the applicable Purchase Order (the "**Inspection Period**").
- 6.2 *Acceptance.* For the Products which satisfy the specifications of the applicable Purchase Order, NEC XON shall accept the Products and notify the Supplier in writing of such acceptance within 2 days after the end of the Inspection Period.
- 6.3 *Deemed Acceptance.* NEC XON will be deemed to have accepted Products if
- 6.3.1 NEC XON fails to notify the Supplier on or before the expiration of the Inspection Period; or
- 6.3.2 if during the Inspection Period, NEC XON sells and receives payment for, runs, or otherwise uses the Products beyond what is necessary for inspection and testing, and in a way a reasonable Person would consider consistent with NEC XON having accepting the delivery from the Supplier.
- 6.4 *Rejection and Cure.* For the Product defects supported by undisputed evidence:
- 6.4.1 NEC XON shall deliver to the Supplier a written list detailing each Issue and the affected Products;
- 6.4.2 On NEC XON returning the Products having a defect at Supplier's cost and in accordance with Supplier's Return Material Authorization process, the Supplier shall promptly deliver to NEC XON any Products necessary to remedy each defect, at no expense to NEC XON.

**7 Changes to Products.**

The Supplier may not discontinue, modify, or replace Products or Services that are subject to an accepted and outstanding Purchase Order, unless:

- 7.1 required by Law;
- 7.2 the Supplier is able to replace such Products and Services with similar or better products or services that achieve the same purpose and/or outcome;
- 7.3 the End Customer has agreed to such replacement of the Products and Services; and
- 7.4 the replacement products are no more expensive than the Products being replaced.

**8 Price**

8.1 *Price.* NEC XON shall pay the Supplier's listed price for each Product or Service as advised by the Supplier *less* the standard discount offered to NEC XON as set out in Annexure A attached to this Agreement. The Supplier's price is in U.S. dollars and is exclusive of all sales, use, excise, and other taxes, duties, or charges of any kind imposed by a governmental authority on any amount payable by the Distributor under this Agreement and represent net amounts the Supplier is entitled to receive and shall not be subject to any deductions for any reason whatsoever.

8.2 *Resale Prices.* NEC XON may determine its own resale prices.

8.3 Changes to Prices

- 8.3.1 *Notice of Upcoming Price Changes.* If the Supplier changes its pricing, the Supplier shall give NEC XON at least ninety (90) calendar days' notice before implementing such changes.
- 8.3.2 *No Effect on Outstanding Purchase Orders.* Changes to the Supplier's prices will not affect any Purchase Orders already submitted prior to the effective date of such price changes.

**9 Payment of Prices**

9.1 *Invoice Delivery.* The Supplier shall invoice NEC XON for Product purchases at the time of shipment of the Products from Supplier's manufacturing facilities. In the case of Services, and unless differently agreed in a Purchase Order for Services, the Supplier shall invoice NEC XON monthly in arrears on completion of the Services or, in the case of Support Services, quarterly in advance provided that such quarterly Support Services invoices are paid with 7 (seven) days of receipt after the commencement of such quarter.

9.2 *Invoice Procedure and Requirements.* The Supplier shall:

- 9.2.1 issue each invoice to NEC XON in writing, including:
  - 9.2.1.1 an invoice date and number;
  - 9.2.1.2 the total amount due;
  - 9.2.1.3 the calculation of the total amount; and

9.2.1.4 the details of its nominated bank account; and

9.2.2 send each invoice to the nominated recipient of NEC XON as advised by NEC XON in writing.

9.3 *Payment.* NEC XON shall pay each invoice within 60 (sixty) calendar days after receiving each invoice to the account whose details are set out in the relevant invoice in accordance with clause 9.2.1.4. If Distributor fails to timely pay any outstanding undisputed amounts, Supplier may, in its sole discretion, and in addition to any other rights and remedies it may have under this Agreement and at law, including the right to suspend any delivery and to terminate any outstanding Purchase Order after 30 days of suspension, charge interest on such unpaid amounts equal to a rate of 1,5% per month or the maximum rate permitted by law, whichever is the lesser, from the date such amounts become due until the date such amounts are received in full.

9.4 If NEC XON disputes any invoice or other request for payment, NEC XON shall immediately notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within 30 days of NEC XON giving notice to the Supplier, the dispute shall be resolved in accordance with clause 33.15.

9.5 Unless differently agreed between the Parties in writing, the Supplier shall be responsible for the payment of all invoices due to third party suppliers of the Supplier in connection with the provision of the Support Services.

9.6 NEC XON shall be entitled to require the Supplier to provide all such evidence as may be reasonably necessary to verify the Support Service Charges and any other matters set out in an invoice.

## **10 Taxes.**

10.1 Subject to the Incoterm that applies to the Purchase Order, both NEC XON and the Supplier shall bear and pay any tax that may be imposed on each payment hereunder in their own countries.

10.2 If the payment by NEC XON of any sum due under this Agreement is subject by law to withholding tax, NEC XON shall:

10.2.1 withhold such legislated levied amount from the payment to the Supplier;

10.2.2 account to the relevant tax authority for that withholding tax; and

10.2.3 supply to the Supplier a certificate certifying such payment of withholding tax.

## **11 Services to be provided by Supplier**

11.1 Where NEC issues a Purchase Order for Support Services, the Supplier shall provide the Support Services to NEC XON in accordance with this Agreement.

11.2 Where NEC issues an upfront Purchase Order for Support Services covering the Initial Term and/or one or more Renewal Terms, the Supplier shall provide the Support Services for the duration covered by NEC's Purchase Order.

**12 Support Services Charges**

- 12.1 In consideration of Supplier providing the Support Services to NEC XON, NEC XON shall pay the Support Service Charges to Supplier. The charges for the Support Services and the basis for their calculation are set out in Annexure B attached to this Agreement.
- 12.2 The Supplier shall invoice NEC XON at the beginning of each year for the Support Services to be provided to NEC XON during the invoiced year. NEC XON shall pay the Support Service Charges within 30 calendar days of receipt of Supplier's invoice to the bank account nominated in writing by Supplier.

**13 Term**

- 13.1 *Initial Term.* The initial term of this Agreement will begin on the Effective Date and continue for 36 (thirty-six) months thereafter (the "**Initial Term**") with an automatic renewal or extension for an additional 2 years should the performance targets set out herein be met by the Distributor, unless terminated earlier in accordance with the provisions of this Agreement.
- 13.2 *Automatic Renewal.* Subject to clause 13.3, at the end of each Initial Term, this Agreement will automatically renew for a renewal term of 12 (twelve) months, unless terminated earlier in accordance with the provisions of this Agreement ("**Renewal Term**").
- 13.3 *Election Not to Renew.* Either Party may elect not to renew this Agreement, by providing notice of at least 6 (six) calendar months to the other Party before the end of the Initial Term or Renewal Term, as the case may be.
- 13.4 Save for the termination provisions as set out in clause 28, neither Party may terminate this Agreement prior to the end of the Initial Term or the Renewal Term.

**14 Marketing Development Funds / Sales Development Funds**

- 14.1 It is specifically recorded between the Parties that any marketing development funds/sales development funds shall be dependent on the Supplier's Partner Program Guide which can be made available upon request.

**15 Representations**

- 15.1 Mutual Representations
  - 15.1.1 *Existence.* The Parties are corporations incorporated and existing under the Laws of the jurisdictions of their respective incorporation.
  - 15.1.2 *Authority and Capacity.* The Parties have the authority and capacity to enter into this Agreement.
  - 15.1.3 *Execution and Delivery.* The Parties have duly executed and delivered this Agreement.
  - 15.1.4 *Enforceability.* This Agreement constitutes a legal, valid, and binding obligation, enforceable against the Parties according to its terms.
  - 15.1.5 *No Conflicts.* Neither Party is under any restriction or obligation that the Party could reasonably expect might affect the Party's performance of its obligations under this Agreement.

- 15.1.6 *No Breach.* Neither Party's execution, delivery, or performance of its obligations under this Agreement will breach or result in a default under:
  - 15.1.6.1 its articles, bylaws, or any unanimous shareholders agreement;
  - 15.1.6.2 any Law to which it is subject;
  - 15.1.6.3 any judgment, Order, or decree of any Governmental Authority to which it is subject; or
  - 15.1.6.4 any agreement to which it is a Party or by which it is bound.
- 15.1.7 *Permits, Consents, and Other Authorizations.* Each Party holds all Permits and other authorizations necessary to:
  - 15.1.7.1 own, lease, and operate its properties, and
  - 15.1.7.2 conduct its business as it is now carried on.
- 15.1.8 *No Disputes or Proceedings.* Each Party confirms, represents and warrants that there are no Legal Proceedings pending, threatened, or foreseeable against itself, which would affect its ability to complete its obligations under this Agreement.
- 15.1.9 *No Bankruptcy.* Neither Party has taken or authorized any proceedings related to that Party's bankruptcy, insolvency, liquidation, dissolution, or winding up.

15.2 **Supplier's Representations**

- 15.2.1 *Ownership.* The Supplier is the sole owner or rightful licensee of the Products, free of any claims by a third party or any Encumbrance.
- 15.2.2 *Legal Right.* The Supplier has the necessary right to transfer or license the Products.
- 15.2.3 *No Infringement.* The Supplier's sale of the Products does not infringe on or constitute a misappropriation of the Intellectual Property or other rights of any third party.

**16 Limited Warranties**

- 16.1 *Products.* All Products are covered by the Supplier's warranty statements that are provided with the Products or Services, otherwise made available or advised by the Supplier from time to time. The Parties may mutually agree additional warranty terms on a case-by-case basis.
- 16.2 *Third Party Products.* Non-Supplier branded products or services receive warranty coverage as provided by the relevant third-party supplier.
- 16.3 *Software Warranty.* The Supplier hereby warrants that for the Software Warranty Period, which shall be 90 days from the date of shipment of the Software License by Supplier, that when operated according to the documentation and other instructions the Supplier provides, software will perform substantially according to the functional specifications listed in the documentation.
- 16.4 *Support Services Warranty.* The Supplier hereby warrants any repairs performed by Supplier as part of the Product Warranty and/or Support Services purchased by NEC for a period which is the longer of (a) the balance of the initial Product Warranty Period or (b) 6 months from the return shipment date.

- 16.5 The limited warranties listed in clauses 16.1 to 16.4 apply only to the Distributor and its End Customers. Supplier shall provide the above-mentioned warranties for the most current version of Supplier's products. Supplier shall have no obligation to provide warranty if a material defect in the Supplier's product is caused by the malfunction of non-Supplier hardware or Software, by modification of the Supplier's product not made the Supplier, by use of the Supplier's products that is not in accordance with the Supplier's written instructions for the Supplier's products. Supplier will accept warranty returns only from Distributor and Distributor must arrange all details of such returns with End Customers, eligible under the aforementioned warranties. EXCEPT FOR THE WARRANTIES STATED ABOVE, SUPPLIER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES ON SUPPLIER'S PRODUCTS FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 16.5 *Compliance with Laws.* The Supplier hereby warrants that the Products and Support Services comply with any applicable laws, statutes and regulations relevant to the manufacture, design, packaging, sale and use of the Products or Support Services (as applicable) in connection with this Agreement.
- 16.6 The following provisions relating to the Products, shall be addressed in accordance with the Supplier's Global Customer Services Support Guidelines:
- 16.6.1 *Upgrades/Updates.*
  - 16.6.2 *Return Material Authorisation/RMA.*
  - 16.6.3 *Support.*
  - 16.6.4 *Dead on Arrival / Out-of-box Failures.*
  - 16.6.5 *Service Level Agreement on warranties.*
- 17 Intellectual Property.**
- 17.1 The Supplier hereby grants to NEC XON a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute the Products solely for use by the End Customers, and in connection with their use of the Products under this Agreement, within the Territory.
- 17.2 Except for rights expressly granted under this Agreement:
- 17.2.1 nothing in this Agreement will function to transfer any of either Party's Intellectual Property rights to the other Party, and
  - 17.2.2 each Party will retain exclusive interest in and ownership of its Intellectual Property developed before this Agreement or developed outside the scope of this Agreement.

- 17.3 The Supplier indemnifies and holds NEC XON harmless against all losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by NEC XON in connection with any claims, actions or proceedings arising out of or in connection with any actual or alleged infringement by the Products sold or licensed by Supplier to NEC XON and/or by the Support Services provided by Supplier to NEC XON of the Intellectual Property or other rights of a third Party. The preceding indemnification obligation shall not apply (i) to any Products and/or Support Services, or portion thereof, manufactured and/or provided to specifications furnished by NEC XON or on NEC XON's behalf, or (ii) to any infringement arising out of the use of such Products and/or Support Services in combination with other equipment, software or services not sold or recommended by Supplier, or (iii) to use in a manner not normally intended, or (iv) to any patent, copyright, trademark or trade secret in which NEC XON, or any of NEC XON's affiliates has a direct or indirect interest, or (v) if NEC XON has not provided Supplier with prompt notice, authority, information and assistance necessary to defend the action, or (vi) to any claim alleging infringement of any intellectual property right or interest in FOSS.
- 17.4 The Supplier shall retain the right, in its sole discretion, to modify or replace the infringing Products or Services with non-infringing Products or Services and the Supplier shall give NEC XON reasonable advance notice of such action.
- 17.5 The provisions of this clause 17 shall survive the termination of this Agreement, irrespective of the reasons for termination.

**18 Supplier Responsibilities**

- 18.1 *Supply of Products and Support Services.* The Supplier shall supply the Products and Support Services to NEC XON in accordance with the provisions of this Agreement but no more than 8 (eight) to 12 (twelve) weeks from receipt of Purchase Order.
- 18.2 *Insurance.* The Supplier shall put in place and maintain appropriate public liability insurance for in respect of each claim as well as appropriate product liability insurance in respect of each claim for the duration of this Agreement or such longer period, as the case may be. The Supplier shall promptly provide copies of the insurance certificates to NEC XON as NEC XON's request.
- 18.3 *Licences and permits.* The Supplier shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Products and Support Services in accordance with this Agreement.
- 18.4 *Personnel.* The Supplier shall employ a sufficient number of competent and qualified personnel to carry out its obligations under this Agreement.

**19 NEC XON Responsibilities**

- 19.1 *Marketing.* Subject to clause 14 hereof, NEC XON shall use reasonable efforts to market, advertise, and otherwise promote and sell the Products in the Territory.
- 19.2 *Employee Training.* NEC XON shall ensure that any of its employees who are responsible for the marketing, sales, and technical support services for the Products have proper skill, training, and background to enable them to provide these services in a competent and professional manner.
- 19.3 *Sales Forecast.* NEC XON shall provide the Supplier with a non-binding quarterly sales forecast, in a mutually agreed-upon format.
- 19.4 *Markings and Notices.* NEC XON will not remove or alter any trademarks, Product identification, notices of any proprietary or copyright restrictions, or other markings or notices that appear on the Products or their packaging.

19.5 *No Reverse Engineering.* NEC XON will not:

- 19.5.1 create or attempt to, or aid or permits others to, create by reverse engineering, disassembly, de-compilation, reverse engineering or otherwise, the internal structure, the source code, hardware design, or organization of any Product, unless expressly permitted by Law;
- 19.5.2 copy, modify, translate, or create derivative works of software included in any Product, unless the Supplier consents in writing; or
- 19.5.3 separate the Product into component parts for distribution or transfer to a third party.

**20 License Grants**

20.1 *Software License Grant.* Supplier hereby grants NEC XON a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute any software incorporated in Products solely for use by the End Customers in the Territory in and in connection with their use of Products and always subject to such End Customers abiding by the terms of Supplier's End-User License Agreement included in Supplier's Terms.

20.2 *Documentation License Grant.* Supplier hereby grants to NEC XON a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to:

- 20.2.1 reproduce or transmit documentation Supplier provides NEC XON for marketing, selling, and distributing the Products (provided such documentation is not modified and Supplier's proprietary notices are not removed); and
- 20.2.2 reproduce and transmit any user manuals and other documentation Supplier creates for customers in connection with the Products.

20.3 *Supplier Trademark License Grant.* Supplier hereby grants to NEC XON a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use Supplier's name, trademarks, logos, and other identifying information on marketing literature, advertising, promotions, customer information, and programs NEC XON creates in connection with the Products, subject to Supplier's written approval as well as guidelines for use, in each instance.

20.4 *Trademark Use.* NEC XON shall comply with all of Supplier's policies regarding the use and display of Supplier's name, trademarks, logos, and other identifying information that Supplier provides to NEC XON in writing.

**21 Compliance with Laws.**

Each Party shall:

- 21.1 At its own expense comply with all applicable Laws relating to the subject matter of the Agreement and in the performance of its duties under this Agreement, and
- 21.2 notify the other Party if it becomes aware of any non-compliance in connection with this clause 21.

Export Controls:

A. It is expressly understood that this Agreement, and all obligations arising hereunder are subject to U.S. Government export control laws and regulations, as amended, including without limitation, the requirement to obtain necessary approvals and licenses prior to the acceptance of any Purchase Orders, or the export of Products hereunder. Such shall also apply, by way of example only, to spare parts, warranty items delivered by Supplier in connexion with the Products, and the in-country transfer or re-export of any such Products by Distributor or an End Customer thereafter. Any Products purchased by or provided to Distributor, including any technical data or documentation pertaining thereto, shall not be sold, leased or assigned, transferred, conveyed or in any manner disposed of, either directly or indirectly, without the prior written approval of the United States Government, in accordance with U.S. Law.

B. Each Party agrees to use reasonable efforts to obtain all necessary U.S Government approvals or licenses for the export and/or import of the Products hereunder for resale within the Territory. Distributor agrees to provide timely and accurate End User Statements to Supplier, as appropriate, prior to Supplier's application for export license and submission of this Agreement to the appropriate U.S. Government Authority to secure the appropriate export approval

C. Supplier shall be excused from performance, and not be liable for damages, including the assessment of late deliveries penalties, for failure to deliver the Products hereunder resulting from the U.S Government's delay, denial, or withdrawal of approval to export Products to Distributor or an End Customer.

D. If Supplier has reason to believe that NEC XON has misrepresented, or failed to properly disclose, any fact regarding end use, End Customers or country of ultimate destination or any other information supplied or requested pursuant to the End Use Statement, Supplier may without liability to NEC XON terminate this Agreement for default immediately and discontinue all performance hereunder.

E. NEC XON is responsible for obtaining any necessary import licences or permits required for the entry of the Products into the Territory or their delivery to NEC XON. Further, NEC XON is responsible for any customs, duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products into the Territory.

**22 Data Protection**

All personal data contained in this Agreement shall be processed in accordance with the relevant data protection laws in force in the Territory.

**23 Compliance With Code of Conduct:**

By entering into this agreement, the Supplier hereby confirms its compliance with the NEC Group's Code of Conduct Policy, which can be found at <https://www.nec.xon.co.za/wp-content/uploads/2022/02/Code-of-Conduct.pdf>. NEC undertakes to comply at all times with Supplier's Code of Conduct available at : <https://investors.aviatnetworks.com/code-conduct-0> and as may be updated by Supplier from time to time.

**24 Confidentiality Obligations.**

24.1 Each Party ("Recipient") undertakes to the other Party ("Disclosing Party") that:

24.1.1 it will treat all Confidential Information as confidential and will not disclose such Confidential Information to any third Party, other than its auditors and other professional advisers, without the Disclosing Party's prior written consent;

24.1.2 if it discloses any Confidential Information to its auditors and other professional advisers, it will ensure that such auditors and professional advisers are bound by obligations of confidentiality no less onerous than those contained in this clause 24;

- 24.1.3 it will only disclose the Confidential Information to those of its employees, contractors and agents who require such Confidential Information to perform their duties and all such employees, contractors and agents will be bound by obligations of confidentiality no less onerous than those contained in this clause 24; and
- 24.1.4 will not use such Confidential Information other than for the purposes of this Agreement.
- 24.2 The provisions of clause 24.1 shall not apply to Confidential Information which:
  - 24.2.1 was developed by Recipient independently of the Confidential Information disclosed by the Disclosing party which can be verified by independent evidence; or
  - 24.2.2 has been or becomes now or in the future published in the public domain without breach of this Agreement or breach of a similar agreement by a third party; or
  - 24.2.3 is disclosed or used by Recipient after receiving express written consent from an authorized representative of the Disclosing party to disclose or use; or
  - 24.2.4 is required to be disclosed by law or in terms of a court order of a court of competent jurisdiction or otherwise in accordance with any direction or request issued by any governmental or regulatory body, in which event the recipient shall (i) only disclose such of the Confidential Information as is strictly required; (ii) use its reasonable endeavours to seek confidential treatment of such Confidential Information; and (iii) notify the disclosing Party as soon as reasonably possible (and if possible prior to any disclosure) of its obligation to so disclose.
- 24.3 The obligations contained in this clause 24 shall survive termination of this Agreement.

**25 Publicity**

- 25.1 *Consent.* Save for the use as set out in this Agreement, neither Party will use the other Party's name, logo, or trademarks, or issue any press release or public announcement regarding this Agreement, without the other Party's written consent, unless specifically permitted under this Agreement or required by Law.
- 25.2 *Cooperation.* The Parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this Agreement and the relationship between the Parties.

**26 Force Majeure**

- 26.1 Notwithstanding any other provision of this Agreement, neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party (or its Affiliates) as a result of any delay or other failure in the performance of its obligations under this Agreement (other than an obligation to pay money, including the Fees) if and to the extent that such delay or other failure is caused by an event or circumstance which was unforeseeable and not within the reasonable control of the Party concerned ("**Force Majeure Event**"). The Party affected by a Force Majeure event shall be granted with an equitable extension of time for performance of the relevant obligation(s) *provided that* it complies with clause 26.2.
- 26.2 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event shall:

- 26.2.1 notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event as soon as reasonably practicable; and
- 26.2.2 after cessation of the Force Majeure Event, as soon as reasonably practicable notify the other Party thereof and resume full performance of its obligations under this Agreement.

**27 Non-Solicitation**

- 27.1 Neither Party shall, whether directly or indirectly and whether for its own benefit or the benefit of any third party, at any time while this Agreement is in force and for a period of 12 (twelve) months from the date on which this Agreement terminates encourage, entice, induce, solicit, offer employment or employ any person employed by the other Party who has had a material role in the performance of this Agreement, other than via a job advertisement to the general public.

**28 Termination**

- 28.1 *Termination for Material Breach.* Each Party may terminate this Agreement with immediate effect by delivering written notice of the termination to the other Party, if:
  - 28.1.1 the other Party fails to materially perform, has made or makes any material inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations in this Agreement; and
  - 28.1.2 such failure, inaccuracy, or breach is either non-remediable or continue unremedied for a period of more than 14 (fourteen) Business Days' after the injured Party delivers notice to the breaching Party reasonably detailing the breach.
- 28.2 *Termination for Insolvency.* If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this Agreement with immediate effect by delivering notice of the termination to the first Party.
- 28.3 *Termination due to Force Majeure.* If due to Force Majeure, a Party is or shall be unable to perform a material obligation under this Agreement or is delayed or prevented from performing its obligations for a continuous period exceeding 90 Business Days or a total of more than 180 Business Days in any year, NEC XON may terminate this Agreement with immediate effect by delivering notice of the termination to the Supplier.
- 28.4 *Termination for convenience.* Either Party shall be entitled to terminate this Agreement without cause and without liability to the other Party by observing a 12 months' prior written notice if such termination occurs during the Initial Term and an additional two (2) months period per Renewal Term if the termination occurs during a Renewal Term.

**29 Effect of Termination**

- 29.1 *Termination of Obligations.*
- 29.2 On termination for any reason or expiry of this Agreement, the following shall occur:
  - a. NEC XON shall cease to represent itself as Supplier's authorized distributor, cease to use Supplier's trademarks, and promptly return to Supplier any demonstration equipment or Products not intended for sale.

- b. Except for termination for cause, Supplier agrees to fill NEC XON's Purchase Orders accepted by Supplier prior to the effective date of termination, provided that NEC XON can and will comply with all provisions of the Agreement, and NEC XON agrees to make full payment for such Purchase Orders, all in accordance with this Agreement, to the same extent as if termination had not occurred. Supplier's acceptance of any Purchase Orders from NEC XON after the effective date of termination (or payment therefor), will not have the effect of renewing, or extending the Term of this Agreement.
  - c. Neither Supplier nor NEC XON shall be liable to the other by reason of expiration or termination of this Agreement including, without limitation, any liability for compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases, or commitments made in connection with the business or goodwill of Supplier or NEC XON, or otherwise.
- 29.3 *No Further Liability.* On termination or expiration of this Agreement, neither Party will be liable to the other Party, except for liability that arose before the termination or expiration of this Agreement.
- 29.4 *Continued Assistance.* Subject to the issuance by NEC XON of one or more Purchase Orders for Support Services, the scope and terms of which shall be agreed between the Parties, the Supplier shall provide such assistance as NEC XON may reasonably require after the termination or expiry of this Agreement.
- 29.5 *Return or Destroy of Materials Confidential Information.* Each Party shall promptly cease to use and shall return or (at the other Party's reasonable request) securely destroy all Confidential Information and other equipment, materials and property of the other Party then in its possession or control in connection with the supply of the Products and Support Services under this Agreement and shall on request certify in writing that this has been done.
- 29.6 *Continuing Provisions.* Any provision of this Agreement which expressly or by implication is intended to continue in force after termination shall do so notwithstanding termination or expiry of this Agreement.

### **30 Indemnification**

- 30.1 *Indemnification :* Each Party ("**Indemnifying Party**") shall indemnify, hold harmless, and defend the other Party ("**Indemnified Party**") and Indemnified Party's affiliates against any and all losses, damages, actions, judgments, or expenses of whatever kind, including attorneys' fees, fees, and other costs of defending or enforcing its indemnification rights under this Agreement, (collectively, "**Losses**"), arising out of or relating to any third-party claim relating to or alleging:
- 30.1.1 a breach of any provision of this Agreement by Indemnifying Party or Indemnifying Party's representatives;
  - 30.1.2 any negligence or act or omission, wilful misconduct, or other tortious conduct of Indemnifying Party or Indemnifying Party's representatives, including any resulting bodily injury, death of any person, or damage to real or tangible personal property;
  - 30.1.3 any promotion, demonstration, implementation, or integration made by Indemnifying Party and not expressly directed by Indemnified Party infringes any Intellectual Property Right of a third party;

- 30.1.4 a purchase of the Products by any person or entity purchasing Indemnifying Party or Indemnifying Party's representatives and not directly relating to a claim of Limited Warranties breach;
  - 30.1.5 any representations or statements made by Indemnifying Party or Indemnifying Party's representatives not specifically authorized by Indemnified Party herein or in writing;
  - 30.1.6 any failure by Indemnifying Party or Indemnifying Party's representatives to comply with any applicable laws;
  - 30.1.7 a breach by Indemnifying Party or Indemnifying Party's representatives of its agreement with a third party as a result of, or in connection with, entering into, performing under, or terminating this Agreement; or
  - 30.1.8 incidental or consequential damages of any kind.
- 30.2 *Exclusions.* Neither Party will be required to indemnify the other Party against losses to the extent such losses are caused or contributed to by the other Party.
- 31 Limitation on Liability**
- 31.1 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; or (b) fraud or fraudulent misrepresentation.
- 31.2 Subject to clause 31.1, Each Party's total liability to the other Party ("**Aggrieved Party**") or any third party claiming through the Aggrieved Party shall not exceed the actual value of Purchase Orders issued to Supplier by NEC XON under this Agreement in the 12 (twelve) months immediately preceding the date upon which the claim arose. Each Party's total and liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement.
- 31.3 Notwithstanding any provision to the contrary of this Agreement, the following types of loss are wholly excluded: (a) loss of revenue, (b) loss of profits, (c) loss of sales or business, (d) loss of agreements or contracts, (e) loss of use, (f) loss of anticipated savings, (g) loss of or damage to goodwill, (h) lost or corrupted data, (i) losses resulting from system shutdown, failure to accurately transfer, read or transmit information, failure to update or provide correct information, (j) system incompatibility or providing incorrect compatibility information, (k) breaches in system security, and (l) special, indirect, incidental, punitive or consequential losses of any party, including third parties, even if Supplier has been advised of the possibility of such losses. The exclusions stated in this clause 31.3 shall apply to any claim or cause of action whether in contract or tort (including negligence, strict liability or breach of warranty).
- 31.2 This clause shall survive the termination or expiration of this Agreement. Save in the event of claims for loss of life and personal injury due to negligence or wilful misconduct of either Party or for fraud or fraudulent misrepresentation, neither Party will in any event be liable in any way for any indirect, special or consequential damages, including but not limited to, lost business and lost profits, lost business opportunities, loss of anticipated savings, loss of goodwill or loss of data.

**32 Anti-Corruption Obligation**

- 32.1 Each Party shall not, and shall procure that its employees and agents shall not, offer, give or agree to give any person, or accept or agree to accept from any person, whether for itself or on behalf of another, any gift, payment, consideration, financial or non-financial advantage or benefit of any kind, which constitutes an illegal or corrupt practice under the laws of any country, either directly or indirectly in connection with this Agreement, or otherwise than in connection with this Agreement (the “**Anti-Corruption Obligation**”).
- 32.2 Each Party shall immediately disclose in writing to the other Party details of any breach of the Anti-Corruption Obligation. This is an ongoing obligation.
- 32.3 Each Party shall:
  - 32.3.1 always maintain strict compliance with the Anti-Corruption Obligation;
  - 32.3.2 monitor its employees, agents and sub-contractors who are acting in connection with this Agreement to ensure compliance with the Anti-Corruption Obligation; and
  - 32.3.3 make clear, in all its dealings in connection with this Agreement, that it is required by the other Party to act, and is acting, in accordance with the Anti-Corruption Obligation.
- 32.4 Any breach of this clause 32 by a Party shall entitle the other Party to immediately terminate this Agreement by delivering notice of the termination to the Party in breach and the Party in breach hereby indemnifies the other Party in full for any damages and losses of any nature incurred, caused, arising out of or in connection to such breach.

**33 General Provisions**

- 33.1 *Entire Agreement.* The Parties intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement:
  - 33.1.1 represent the final expression of the Parties’ intent relating to the subject matter of this Agreement;
  - 33.1.2 contain all the terms the Parties agreed to relating to the subject matter; and
  - 33.1.3 replace all of the Parties’ previous memorandums of understanding, discussions, understandings and agreements relating to the subject matter of this Agreement.
- 33.2 *Counterparts*
  - 33.2.1 *Signed in Counterparts.* This Agreement may be signed in any number of counterparts.
  - 33.2.2 *All Counterparts Original.* Each counterpart when signed and dated is an original.
  - 33.2.3 *Counterparts Form One Document.* Together, all counterparts shall constitute one single document.
  - 33.2.4 *Electronic exchange.* Each Party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement.

- 33.3 **Severability.** If any part of this Agreement is declared illegal, unenforceable or invalid, the remainder will continue to be legal, valid and enforceable. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 33.4 **Amendment.** This Agreement can be amended only by a writing signed by both Parties.
- 33.5 **Waiver**
- 33.5.1 **Affirmative Waivers.** No Party's failure, delay or neglect to enforce any rights, power or remedy provided by law or under this Agreement will operate as a waiver of that Party's right, power or remedy nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 33.5.2 **Written Waivers.** A waiver of any term, provision, condition or breach of this Agreement is only effective if it is in writing and signed by the Party granting the waiver and then only in the instance and for the purpose for which it is given.
- 33.5.3 **No Course of Dealing.** No single or partial exercise of any right, power or remedy provided by law or under this Agreement will preclude any further exercise of it or the exercise of any other right, power or remedy.
- 33.6 **No Relationship.** Save for the provisions set out in this Agreement, nothing herein creates any special relationship between the Parties, such as a partnership, joint venture, or employee/employer relationship between the Parties.
- 33.7 **No Authority.** Save for the provisions set out in this Agreement, neither Party will have the authority to, and will not, act as agent for or on behalf of the other Party or represent or bind the other Party in any manner.
- 33.8 **Assignment.** Neither Party may assign this Agreement or any of their rights or obligations under this Agreement without the other Party's written consent, such consent shall not be unreasonably withheld; provided, that the Supplier may assign to one or more of its affiliates, provided that such affiliate and the Supplier are jointly and severally liable for all of the Supplier's obligations under this Agreement. Notwithstanding the foregoing, NEC XON may perform any of its obligations and exercise any of its rights granted under this Agreement through any Affiliate, provided that it gives Supplier prior written notice of such arrangement, including the identity of the relevant Affiliate. NEC XON acknowledges and agrees that any act or omission of its Affiliate in relation to NEC XON's rights or obligations under this Agreement shall be deemed to be an act or omission of NEC XON itself.
- 33.9 **Further Assurance.** Each Party shall do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 33.10 **Conflict.** In the event of any conflict between this Agreement and its Annexures or between this Agreement and any other terms of a Purchase Order, the provisions of this Agreement (including Supplier's Terms incorporated by reference into this Agreement) shall prevail.

- 33.11 *Costs and expenses.* Each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).
- 33.12 *Language.* The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.
- 33.13 *Third party rights.* Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights to enforce any of the provisions of this Agreement.
- 33.14 Notices
- 33.14.1 *Method of Notice.* The Parties shall give all notices and communications between the Parties in writing by: (i) personal delivery; (ii) a nationally-recognized, next-day courier service; (iii) first-class registered or certified mail, postage prepaid; or (iv) electronic mail to the Party's address specified in this Agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section.
- 33.14.2 *Receipt of Notice.* A notice given under this Agreement will be effective on
- 33.14.2.1 the other Party's receipt of it; or
- 33.14.2.2 if mailed, the earlier of the other Party's receipt of it and the fifth business day after mailing it.
- 33.15 Dispute Resolution
- 33.15.1 *Arbitration.* Any dispute or controversy arising out of or in connection with this Agreement will be settled by arbitration in Gauteng according to the rules of the Arbitration Foundation of Southern Africa then in effect, and by 1 (one) arbitrator.
- 33.15.2 *Judgment.* Judgment may be entered on the arbitrator's award in any court having jurisdiction.
- 33.15.3 *Arbitrator's Authority.* The arbitrator will not have the power to award any punitive or consequential damages.
- 33.16 *Governing Law.* This Agreement shall be governed, construed, and enforced in accordance with the laws of England and Wales.
- 33.17 Domicilium Citandi ex Executandi
- 33.17.1 Any notice in terms of this Agreement may be hand delivered to the physical address of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice, together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in which event proof of postage issued by the relevant postal authority will serve as proof.
- 33.17.2 The Parties respectively choose their domicilium citandi ex executandi for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature at the following addresses:

|           |   |   |
|-----------|---|---|
| Supplier: | Physical Address<br>51 Changi Business Park<br>Central 2, #08-03<br>The Signature | Postal Address<br>Shenton Way #18-01,<br>SGX Centre1, Singapore<br>Singapore 068804 |
|           | Facsimile number: [...]   |   |
|           | Email Address: [...]  |   |
| NEC XON:  | Physical Address<br>Old Mint Park<br>1 Mints Street<br>Louwlandia<br>1683         | Postal Address<br>PO Box 6973<br>Halfway House<br>1685                              |
|           | Facsimile number: [...]   |   |
|           | Email Address: [...]  |   |

**SIGNATORIES IN EXECUTION**

SIGNED at Midrand on this 12 day of November 2023 in the presence of the undersigned witness

/s/ Mbali Mzimela

As witness

**Name:** Mbali Mzimela

/s/ Kavish Naidoo

for and on behalf of the **NEC XON SYSTEMS (PTY) LTD**  
*(who warrants that he/she is duly authorised)*

**Name:** Kavish Naidoo (Director)

SIGNED at Austin, TX on this 30 day of November 2023 in the presence of the undersigned witness

/s/ Didier Mbayo

As witness

**Name:** Didier Mbayo

/s/ Erin Boase

for and on behalf of AVIAT NETWORKS (S) PTE.LTD  
*(who warrants that he/she is duly authorised)*

**Name:** Erin Boase

[Signature Page to South Africa Distribution Agreement]

**Annexure A – List of Products, Services and Discounts**

[Intentionally omitted]

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*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

**FRAMEWORK AGREEMENT**

BETWEEN

**NEC Saudi Arabia Limited**  
(hereinafter called "NEC")

Registration Number:  
403302689

and

**AVIAT NETWORKS (S) PTE. LTD.**  
(hereinafter after called "Supplier")

Registration Number:  
199901592C

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This Distribution Agreement (hereinafter referred to as the “**Agreement**”) is made on December 1, 2023 (the “**Effective Date**”) between **NEC SAUDI ARABIA LIMITED**, a private company with registration number 403302689 and its principal place of business at P.O. box 15534, Riyadh, 11454, Saudi Arabia (hereinafter referred to as “**NEC**”) and Aviat Networks (S) Pte.Ltd, a limited liability corporation with registration number 199901592C and its principal place of business at 51, Changi Business Park Central 2 #08-03 The Signature, Singapore 486066 (hereinafter referred to as the “**Supplier**”).

WHEREAS:

- (A) The Supplier supplies wireless network products.
- (B) NEC is a renowned systems integrator providing custom ICT technology solutions and services in the Territory.
- (C) The Supplier wishes to authorize and appoint NEC, and NEC wishes to accept the authorization and appointment as the Supplier’s exclusive distributor, to market, distribute, sell, or incorporate for distribution, the Products listed in Annexure A attached to this Agreement, within the Territory in each case on the terms and subject to the conditions set out in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1 Definitions**

In this Agreement:

“**Business**” means the wireless backhaul business.

“**Business Day**” means a day other than a Friday, a Saturday, a Sunday, or any public holiday in the Territory.

“**Confidential Information**” means all non-public, confidential or proprietary information disclosed by one Party to the other Party, in any tangible or intangible form, such as but not limited to written, oral, visual, audio, those produced by electronic media, or through any other means, that is designated as confidential or that by its nature or circumstances surrounding its disclosure, should be reasonably considered as confidential, including but not limited to products or planned products, processes and/or procedures, technological achievements and interests, customers and potential customers, business prospects, financial statements and information, financial situation and corporate plans, internal activities, future plans of the disclosing party, and other information deemed proprietary or confidential by the disclosing party or any other matter in which the disclosing party may have any interest whatsoever, which may include, without limitation, trade secrets, engineering designs, architecture and other technical data, as well as business plans, financial data. For the avoidance of doubt, for the purposes of this Agreement, all information disclosed by a Party to the other Party shall be treated as Confidential Information.

“**Delivery Date**” means the date at which the Products transfers to NEC, in accordance with the transfer rules of the applicable Incoterm.

“**Effective Date**” is defined in the introduction to this Agreement.

“**Encumbrances**” means any pledges, liens, charges, security interests, leases, title retention agreements, mortgages, restrictions easements, rights-of-way, title defects, options, adverse claims, or encumbrances of any kind.

“**End Customer**” means the final customer in the Territory that purchases the Products and/or Services listed in Annexure A from NEC for its own internal use and not for resale.

“**Governmental Authority**” means

- (a) any national, regional, local, or foreign government, and any political subdivision of any of them,
- (b) any agency or instrumentality of any such government or political subdivision,
- (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), and
- (d) any arbitrator, court or tribunal of competent jurisdiction.

“**Initial Term**” is defined in clause 14.1.

“**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world:

- (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
- (b) copyrights, including all applications and registrations related to the foregoing,
- (c) trade secrets and confidential know-how,
- (d) patents and patent applications,
- (e) websites and internet domain name registrations, and
- (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

“**Inspection Period**” is defined in clause 7.1.

“**Law**” means:

- (a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
- (b) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

“**Legal Proceeding**” means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).

“**Parties**” means both the Supplier and NEC, collectively.

“**Party**” means either the Supplier or NEC, individually.

“**Permits**” means all material licenses, franchises, permits, certificates, approvals, and authorizations, from Governmental Authorities necessary for the ownership and operation of the Party’s business.

“**Person**” includes:

(a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and

(b) any individual.

“**Products**” means the goods listed in Annexure A, attached to this Agreement.

“**Purchase Order**” is defined in clause 5.1.

“**Renewal Term**” is defined in clause 14.2.

“**Scope Specific Agreement**” means the separate agreement entered into by the Supplier and NEC in respect of the scope of Services to be rendered by the Supplier on behalf of NEC to the End Customer.

“**Services**” means the services listed in Annexure A, attached to this Agreement.

“**Service Charges**” means the charges to be paid for the Services under clause 12.

“**Support Services**” means the support services listed in Annexure B, attached to this Agreement.

“**Taxes**” includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind for which a Party may have any liability imposed by any Governmental Authority, whether disputed or not, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

“**Territory**” means Saudi Arabia, Bahrain and the United Arab Emirates .

“**USD**” means the United States dollar.

## 2 Interpretation

### 2.1 References to Specific Terms

2.1.1 *Accounting Principles.* Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the International Financial Reporting Standards defined by the professional accounting industry in effect in the Territory (“**IFRS**”).

2.1.2 *Currency.* Unless otherwise specified, all dollar amounts expressed in this Agreement refer to United States Dollars.

- 2.1.3 *“Including”*. Where this Agreement uses the word “including,” it means “including without limitation” and where it uses the word “includes,” it means “includes without limitation.”
- 2.1.4 *“Knowledge”*. Where any representation, warranty, or other statement in this Agreement, or in any other document entered into or delivered under this Agreement, is expressed by a Party to be “to its knowledge” or is otherwise expressed to be limited in scope to facts or matters known to the Party or of which the Party is aware, it means:
- 2.1.4.1 the then-current, actual knowledge of the directors and officers of that Party, and
- 2.1.4.2 the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.
- 2.1.5 *Statutes, etc.* Unless specified otherwise, any reference in this Agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.
- 2.2 *Number and Gender*. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.
- 2.3 *Headings*. The headings used in this Agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.
- 2.4 *Internal References*. References in this Agreement to sections and other subdivisions are to those parts of this Agreement.
- 2.5 *Calculation of Time*. In this Agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. Saudi Arabia Standard Time ( Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. Saudi Standard Time on the next Business Day.
- 2.6 *Construction of Terms*. The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting Party will not apply in interpreting this Agreement.
- 2.7 *Conflict of Terms*. If there is any inconsistency between the terms of this Agreement and those in any schedule to this Agreement or in any document entered into under this Agreement, the terms of this Agreement will prevail. The Parties shall take all necessary steps to conform the inconsistent terms to the terms of this Agreement.
- 2.8 *Binding Effect*. This Agreement will benefit and bind the Parties and their respective heirs, successors, and permitted assigns.
- 3 Appointment of NEC**
- 3.1 NEC shall, for the Initial Term or Renewal Term (as applicable), be the Supplier’s exclusive distributor of the Products within the Territory as said in Clause 4.1

- 3.2 For the Initial Term or Renewal Term (as applicable), the supplier hereby appoints NEC as its exclusive distributor for NEC products within the specified territory NEC acknowledges and accepts this appointment, including the exclusive distributor status for the sale of the products listed in Annexure A- titled "List of products, services and discounts". NEC shall maintain its exclusive distributor status within the territory for the duration of this agreement. Subject to clause 4.2 the Supplier shall refrain from appointing any other distributor for the subject matter during this period.
- 3.3 NEC shall act as an independent contractor, purchasing the Products from the Supplier and reselling them in its own name, on its own behalf and on its own account. NEC shall have no authority to enter into any contract or commitment in the name of or for the account of the Supplier or to bind the Supplier in any manner whatsoever.
- 3.4 The Parties may revise the list of Products and Support Services at any time during the Initial Term or Renewal Term (as applicable) by agreement in writing.
- 3.5 To the extent not specifically covered in this Agreement, sales transactions between the Parties shall be covered by Supplier's standard Terms and Conditions of Sale in effect at the time of Supplier's acceptance of a Purchase Order issued by NEC ("**Supplier's Terms**"), incorporated by reference in this Agreement, which shall prevail over any terms and conditions included on any purchase order submitted by NEC. In the event of any conflict between this Agreement and Supplier's Terms, the order of precedence is as follows: (a) this Agreement; (b) Supplier's Terms.

#### **4 SCOPE OF THE EXCLUSIVITY**

- 4.1 NEC agrees to act as a Distributor of Supplier on an exclusive basis for the designated End Customers and Internet Service Providers ('ISP') End Customers in the territory of Saudi Arabia, Bahrain, and the United Arab Emirates , and in that capacity NEC shall purchase for resale or arrange for the sale of PASOLINK Products and Support Services provided by Supplier of a type listed in Annexure A "List of Products, Support Services and Discounts.
- 4.2 In addition, such exclusivity is granted by Supplier to NEC subject to the following conditions:
- A. NEC shall only sell PASOLINK's Products and not Supplier competitor products regarding Point-to-point licensed Microwave needed by the designated customers in the territory. Should Reseller have to submit a bid in response to a Request for Proposal issued by one of the customers in the territory it shall always submit and position Pasolink's products as the primary product offered for Microwave Solution unless Aviat Singapore acknowledges in writing they cannot provide a solution to the requirement and do not have the products needed by the designated End Customers.
  - B. Reseller commits on an annual basis to a minimum purchase of PASOLINK Products of a value of USD 3.0 Million per annum USD by the designated Customers with a quarterly review period measuring the 4 trailing quarters. Failure to meet the 4 trailing quarters threshold within the year and not remedying such failure within two quarters will result in the exclusivity being removed.
- 4.3 It is further agreed between the Parties that any territorial exclusivity is subject to any previously agreed upon distribution agreements entered into by NEC Corporation or any of NEC Corporation's affiliates prior to the Closing of the Asset Purchase Transaction between NEC Corporation and Aviat Networks Inc.

**5 Orders**

- 5.1 *Purchase Orders.* From time to time, NEC shall submit orders for Products to the Supplier in writing and in accordance with the respective quotation provided by the Supplier to Supplier’s address listed in the introduction to this Agreement or as the Supplier otherwise specifies in writing (each, a “**Purchase Order**”) and include in each Purchase Order:
  - 5.1.1 each Product and/or Support Service it is ordering, identified by model, part number or service description;
  - 5.1.2 the amount of each Product and/or Support Service it is ordering;
  - 5.1.3 the unit price of each Product and/or Support Service it is ordering;
  - 5.1.4 the Incoterm applicable to the Purchase Order, provided always that such Incoterm shall not be CIF Incoterms 2020 at the designated Sea Port;
  - 5.1.5 the location for delivery (N/A); and
  - 5.1.6 the delivery date (the “**Delivery Date**”).
- 5.2 **Accepting, Modifying, and Rejecting Purchase Orders**
  - 5.2.1 *By Notice.* Within 5 (Five) Business Days’ of receiving a Purchase Order from NEC, the Supplier shall accept, reject, or propose a modification to the Purchase Order by sending NEC written notice of its acceptance, rejection, or proposed modification (as applicable). Otherwise the order should be consider accepted by supplier if no response received within five business days from PO receipt.
  - 5.2.2 *Modification of Purchase Order.* The Supplier may propose a modification to a Purchase Order by including in its notice to NEC a modified Purchase Order format for NEC to process and re-send to Supplier for acceptance or rejection according to the acceptance and rejection procedure under clause 4.2.1.
- 5.3 *Cancelling Purchase Orders.* NEC may, at no expense to itself, cancel part or all of a Purchase Order before it is accepted by Supplier within 7 calendar days from receipt of the Purchase Order. After the acceptance of a Purchase Order by Supplier, any Order cancellation shall entitle Supplier to charge cancellation charges up to the full amount of the Purchase Order.
- 5.4 **Deal Registration**
  - 5.4.1 NA
- 5.5 **License Keys**
  - 5.5.1 Regarding the licence keys NEC shall be responsible for managing licence keys issued to existing customers. In other words, NEC shall download and grant full access to customers and NEC Saudi Arabia. In addition, NEC shall have the right to activating the licence keys to future customers. To be specific the current License key platform SKSS operates in full transparency to the Supplier and NEC in that:

- A. At the beginning of the month NEC shall request to Supplier in writing a number of licences for its customers. Then Supplier shall issue the licenses to NEC and a reconciliation shall be done on the 15th of each month between Supplier and NEC to determine the licences that have been issued by NEC to customers.
- B. As an example NEC shall request in writing at the beginning of the month ; 500 capacity license keys or/and 500 interface enable licenses. Then, Supplier shall issues those licences to NEC is r. On the 15th of the month Supplier and NEC shall conduct a reconciliation of the licences issued to Customers by NEC . Thereafter, a PO for those issued licences shall be created by NEC and sent to the Supplier. The Supplier shall then sends an invoice to NEC for payment of the issued licenses. NEC shall pay the Supplier’s invoice according to the agreed terms of payment.

**6 Delivery of Products or Services and Scope Specific Agreement**

- 6.1 *Delivery.* The Supplier shall deliver each order of Products or Services to NEC:
  - 6.1.1 on the Delivery Date and to the location specified in the applicable Purchase Order; and
  - 6.1.2 using any delivery method and Incoterm (save for DDP) that the Parties shall agree to in writing.
- 6.2 *Risk of Loss Shifts on Delivery.* The Supplier will remain liable for any damages, losses to the Products until the risk of loss or damage to the Products is transferred to NEC in accordance with the Incoterm that is applicable to a Purchase Order, after which NEC will assume the risk of loss or damage to the Products.
- 6.3 *Title transfer:* The title in the Products (including software media, where applicable) shall transfer from Supplier to NEC upon shipment of the Products from the Supplier’s manufacturing facilities.
- 6.4 *Scope Specific Agreement.* In the event that NEC resells Supplier’s Services, Supplier and NEC may agree, by entering into a Scope Specific Agreement, the terms and conditions under which Supplier shall render such Services to the End Customer directly on behalf of NEC in accordance with the Scope Specific Agreement; however the Supplier shall have no direct relationship with the End Customer. NEC shall at all times remain liable for payment of the Services provided by Supplier under the Scope Specific Agreement. NEC shall enter into a similar back-to-back agreement with the End Customer for the relevant Services, provided always that NEC shall not give any promise, guarantee, condition, or warranty about the Services beyond those given by Supplier in the Scope Specific Agreement or make any representation, pledge any credit, commit to any contract, or incur any liability for or on behalf of Supplier.

**7 Acceptance and Rejection of Product Deliveries**

- 7.1 *Inspection Period.* NEC will have 10 (ten) Business Days after the Products reach the named place of destination to inspect and test the Products for defects, missing items, items shipped in error, items damaged in transit (the “**Issues**”) and to ensure the deliveries meet the specifications of the applicable Purchase Order (the “**Inspection Period**”).
- 7.2 *Acceptance.* For the Products which satisfy the specifications of the applicable Purchase Order, NEC shall accept the Products and notify the Supplier in writing of such acceptance within 2 days after the end of the Inspection Period.

- 7.3 *Deemed Acceptance.* NEC will be deemed to have accepted Products if
- 7.3.1 NEC fails to notify the Supplier on or before the expiration of the Inspection Period of 10 Business Days; or
  - 7.3.2 if during the Inspection Period, NEC sells, runs, or otherwise uses the Products beyond what is necessary for inspection and testing, and in a way a reasonable Person would consider consistent with NEC having accepting the delivery from the Supplier.
- 7.4 *Rejection and Cure.* For the Product Issues supported by undisputed evidence, a delivery of Products fails to meet the specifications of the applicable Purchase Order:
- 7.4.1 NEC shall deliver to the Supplier a written list detailing each Issue;
  - 7.4.2 On NEC returning the Products having an Issue at Supplier's cost and in accordance with **Supplier's Return Material Authorization process**, the Supplier shall promptly deliver to NEC any Products necessary to remedy each Issue, at no expense to NEC; and
  - 7.4.3 The Supplier shall arrange for the collection of the defective Products in accordance with the Return Material Authorisation Process.

## **8 Changes to Products.**

The Supplier may not discontinue, modify, or replace Products or Services that are subject to an accepted and outstanding Purchase Order, unless:

- 8.1 required by Law;
- 8.2 the Supplier is able to replace such Products and Services with similar or better products or services that achieve the same purpose and/or outcome;
- 8.3 the End Customer has agreed to such replacement of the Products and Services; and
- 8.4 the replacement products are no more expensive than the Products being replaced.

## **9 Price**

- 9.1 *Price.* NEC shall pay the Supplier's listed price for each Product or Service as advised by the Supplier. Any discount or incentive on the Supplier's listed price shall be discussed and agreed mutually between the Parties. All prices are quoted, shall be invoiced and paid in United States Dollars. Supplier's listed price for each Product or Service are exclusive of all sales, use, excise, and other taxes, duties, assessments, or fees or charges. All prices given by Supplier pursuant to this Agreement represent net amounts the Supplier is entitled to receive and shall not be subject to any deductions for any reason whatsoever.
- 9.2 *Resale Prices.* NEC may determine its own resale prices to its end customers in the agreed territories.
- 9.3 *Changes to Prices*
  - 9.3.1 *Notice of Upcoming Price Changes.* In the event that the Supplier intends to modify its pricing structure, the Supplier is required to provide NEC with a minimum of 90 (Ninety) calendar days' advance notice before implementing any such changes.

9.3.2 (A) The Supplier acknowledges that NEC may have existing long-term contracts with certain customers within the designated territory. If, after Completion (as defined in the Master Sale of Business Agreement made on May 9, 2023 by and between NEC Corporation and Aviat Networks, Inc.), NEC believes that the prices proposed by Supplier it is not viable and sustainable for NEC to continue its business relationship with existing customers then Supplier and NEC must negotiate and discuss a revised pricing book which will be satisfactory to both Parties.

(B) In the event NEC and Supplier cannot reach a consensus regarding the pricing the Parties mutually agree to approach the customers to negotiate the price adjustment jointly.

(C) In the event NEC and the Supplier do not reach a consensus with the Customers, NEC shall have the option to terminate these customer contracts. The Supplier and NEC shall make all reasonable efforts to minimize any financial or operational impacts resulting from contract terminations and work collaboratively to ensure a smooth transition for affected customers.

9.3.3 *No Effect on Outstanding Purchase Orders.* Changes to the Supplier's prices will not affect any Purchase Orders already submitted prior to the effective date of such price changes.

## **10 Payment of Prices**

10.1 *Invoice Delivery.* The Supplier shall invoice NEC for Products purchases at the time of shipment of the Products from Supplier's manufacturing facilities. In the case of Services, and unless differently agreed in a Purchase Order for Services, the Supplier shall invoice NEC monthly in arrears on completion of the Services or, in the case of Support Services, quarterly in advance.

10.2 *Invoice Procedure and Requirements.* The Supplier shall:

10.2.1 issue each invoice to NEC in writing, including:

10.2.1.1 an invoice date and number;

10.2.1.2 the total amount due;

10.2.1.3 the calculation of the total amount; and

10.2.1.4 the details of its nominated bank account; and

10.2.2 send each invoice to the nominated recipient of NEC as advised by NEC in writing.

10.3 *Payment.* NEC shall pay each invoice within 60 (sixty) calendar days after receiving each invoice to the account whose details are set out in the relevant invoice in accordance with clause 9.2.1.4.

## **11 Taxes.**

11.1 Subject to the Incoterm that applies to the Purchase Order, both NEC and the Supplier shall bear and pay any tax that may be imposed on each payment hereunder in their own countries.

11.2 If the payment by NEC of any sum due under this Agreement is subject by law to withholding tax, NEC shall:

- 11.2.1 withhold such legislated levied amount from the payment to the Supplier;
- 11.2.2 account to the relevant tax authority for that withholding tax; and
- 11.2.3 supply to the Supplier a certificate certifying such payment of withholding tax.

**12 Services to be provided by Supplier**

- 12.1 Where NEC issues a Purchase Order for Services, the Supplier shall provide the Services to NEC in accordance with this Agreement.
- 12.2 Where NEC issues an upfront Purchase Order for Services covering the Initial Term and/or one or more Renewal Terms, the Supplier shall provide the Services for the duration covered by NEC's Purchase Order.

**13 Services Charges**

- 13.1 In consideration of Supplier providing the Services to NEC, NEC shall pay the Service Charges to Supplier. The charges for the Services and the basis for their calculation are set out in Annexure A attached to this Agreement.
- 13.2 The Supplier shall invoice in advance NEC at the beginning of each quarter for the Services to be provided to NEC during the quarter. NEC shall pay the Service Charges within 60 days of receipt of Supplier's invoice to the bank account nominated in writing by Supplier.
- 13.3 If NEC disputes any invoice or other request for payment, NEC shall immediately notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within 30 days of NEC giving notice to the Supplier, the dispute shall be resolved in accordance with clause 34.15.
- 13.4 Unless differently agreed between the Parties in writing, the Supplier shall be responsible for the payment of all invoices due to third party suppliers of the Supplier in connection with the provision of the Services.
- 13.5 NEC shall be entitled to require the Supplier to provide all such evidence as may be reasonably necessary to verify the Service Charges and any other matters set out in an invoice.

**14 Term**

- 14.1 *Initial Term.* The initial term of this Agreement will begin on the Effective Date and continue for 36 (thirty-six) months thereafter (the "**Initial Term**"), unless terminated earlier in accordance with the provisions of this Agreement.
- 14.2 *Automatic Renewal.* Subject to clause 14.3, at the end of each Initial Term, this Agreement will automatically renew for a renewal term of 12 (twelve) months, unless terminated earlier in accordance with the provisions of this Agreement ("**Renewal Term**").
- 14.3 *Election Not to Renew.* Either Party may elect not to renew this Agreement, by providing notice of at least 6 (six) calendar months to the other Party before the end of the Initial Term or Renewal Term, as the case may be.

14.4 Save for the termination provisions as set out in clause 29, neither Party may terminate this Agreement prior to the end of the Initial Term or the Renewal Term.

**15 Marketing Development Funds / Sales Development Funds**

15.1 It is specifically recorded between the Parties that any marketing development funds/sales development funds shall be dependent on the Supplier's Partner Program Guide which can be made available upon request.

**16 Representations**

16.1 Mutual Representations

16.1.1 *Existence.* The Parties are corporations incorporated and existing under the Laws of the jurisdictions of their respective incorporation.

16.1.2 *Authority and Capacity.* The Parties have the authority and capacity to enter into this Agreement.

16.1.3 *Execution and Delivery.* The Parties have duly executed and delivered this Agreement.

16.1.4 *Enforceability.* This Agreement constitutes a legal, valid, and binding obligation, enforceable against the Parties according to its terms.

16.1.5 *No Conflicts.* Neither Party is under any restriction or obligation that the Party could reasonably expect might affect the Party's performance of its obligations under this Agreement.

16.1.6 *No Breach.* Neither Party's execution, delivery, or performance of its obligations under this Agreement will breach or result in a default under:

16.1.6.1 its articles, bylaws, or any unanimous shareholders agreement;

16.1.6.2 any Law to which it is subject;

16.1.6.3 any judgment, Order, or decree of any Governmental Authority to which it is subject; or

16.1.6.4 any agreement to which it is a Party or by which it is bound.

16.1.7 *Permits, Consents, and Other Authorizations.* Each Party holds all Permits and other authorizations necessary to:

16.1.7.1 own, lease, and operate its properties, and

16.1.7.2 conduct its business as it is now carried on.

16.1.8 *No Disputes or Proceedings.* Each Party confirms, represents and warrants that there are no Legal Proceedings pending, threatened, or foreseeable against itself, which would affect its ability to complete its obligations under this Agreement.

16.1.9 *No Bankruptcy.* Neither Party has taken or authorized any proceedings related to that Party's bankruptcy, insolvency, liquidation, dissolution, or winding up.

16.2 Supplier's Representations

16.2.1 *Ownership.* The Supplier is the sole owner or rightful licensee of the Products, free of any claims by a third party or any Encumbrance.

16.2.2 *Legal Right.* The Supplier has all rights necessary to supply or license the Products to NEC.

16.2.3 *No Infringement.* The Supplier's sale of the Products does not infringe on or constitute a misappropriation of the Intellectual Property or other rights of any third party.

17 **Limited Warranties<sup>1</sup>**

17.1 *Products.* All Products are covered by the Supplier's warranty statements that are provided with the Products or Services, otherwise made available or advised by the Supplier from time to time.

17.2 *Third Party Products.* Non-Supplier branded products or services receive warranty coverage as provided by the relevant third party supplier.

*Software Warranty.* The Supplier hereby warrants that for the Software Warranty Period which, shall be 90 days from the date of download of the Software Licensed, when operated according to the documentation and other instructions the Supplier provides, software will perform substantially according to the functional specifications listed in the documentation. If goods supplied as part of the Support Services do not comply with this warranty, the Supplier shall repair the relevant goods in accordance with the agreed warranty.

17.3 *Hardware Warranty.* The hardware warranty for products delivered to customers in Saudi Arabia is 24 months. The hardware warranty for products delivered to customers in United Arab Emirates and Bahrain is 12 months.

17.4 The limited warranties listed in clauses 17.1 to 17.5 apply only to NEC and its End Customers. Supplier shall provide the above-mentioned warranties for the most current version of Supplier's products. Supplier shall have no obligation to provide warranty if a material defect in the Supplier's product is caused by the malfunction of non-Supplier hardware or Software, by modification of the Supplier's product not made the Supplier, by use of the Supplier's products that is not in accordance with the Supplier's written instructions for the Supplier's products. Supplier will accept warranty returns only from NEC and NEC must arrange all details of such returns with End Customers, eligible under the aforementioned warranties. **EXCEPT FOR THE WARRANTIES STATED ABOVE, SUPPLIER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES ON SUPPLIER'S PRODUCTS FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

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<sup>1</sup> **Note to draft:** Warranties and Support services to be uninterrupted, aligned and precise with customer requirements.

- 17.5 *Compliance with Laws.* The Supplier hereby warrants that the Products and Services comply with any applicable laws, statutes and regulations relevant to the manufacture, design, packaging, sale and use of the Products or Support Services (as applicable) in connection with this Agreement
- 17.6 *Upgrades/Updates.* As covered in Aviat's Global Services Guidelines.
- 17.7 *Return Material Authorisation/RMA.* As covered in Aviat's Global Services Guidelines.
- 17.8 *Support.* As agreed separately between the Parties in the support and maintenance agreement.
- 17.9 *Dead on Arrival / Out-of-box Failures:* dead on arrival shall mean that the equipment never worked. Out of box failure requires the customer to notify us 180 days from shipping or manufacturing.
- 17.10 *Service Level Agreement on warranties.* As agreed separately between the Parties in the support and maintenance agreement.
- 18 Intellectual Property.**
- 18.1 The Supplier hereby grants to NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute the Products solely for use by the End Customers, and in connection with their use of the Products under this Agreement, within the Territory.
- 18.2 Except for rights expressly granted under this Agreement:
- 18.2.1 nothing in this Agreement will function to transfer any of either Party's Intellectual Property rights to the other Party, and
- 18.2.2 each Party will retain exclusive interest in and ownership of its Intellectual Property developed before this Agreement or developed outside the scope of this Agreement.
- 18.3 The Supplier indemnifies and holds NEC harmless against all losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by NEC in connection with any claims, actions or proceedings arising out of or in connection with any actual or alleged infringement by the Products sold or licensed by Supplier to NEC and/or by the Services provided by Supplier to NEC of the Intellectual Property or other rights of a third Party. The preceding indemnification obligation shall not apply (i) to any Products and/or Services, or portion thereof, manufactured and/or provided to specifications furnished by NEC or on NEC's behalf, or (ii) to any infringement arising out of the use of such Products and/or Services in combination with other equipment, software or services not sold or recommended by Supplier, or (iii)
- 18.4 The Supplier shall retain the right, in its sole discretion, to modify or replace the infringing Products or Services with non-infringing Products or Services and the Supplier shall give NEC reasonable advance notice of such action.
- 18.5 The provisions of this clause 18 shall survive the termination of this Agreement, irrespective of the reasons for termination.

**19 Supplier Responsibilities**

- 19.1 *Supply of Products and Services.* The Supplier shall supply the Products and Services to NEC in accordance with the provisions of this Agreement.
- 19.2 *Insurance.* The Supplier shall put in place and maintain public liability insurance and product liability insurance for an amount of 25 Million USD in respect of each claim and product liability insurance for not less than USD in respect of each claim for the Initial Term and/or Renewal Term, as the case may be. The Supplier shall promptly provide copies of the insurance certificates to NEC as NEC's request.
- 19.3 *Licences and permits.* The Supplier shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Products and Services in accordance with this Agreement.
- 19.4 *Personnel.* The Supplier shall employ a sufficient number of competent and qualified personnel to carry out its obligations under this Agreement.

**20 NEC Responsibilities**

- 20.1 *Marketing.* Subject to clause 15 hereof, NEC shall use reasonable efforts to market, advertise, and otherwise promote and sell the Products in the Territory.
- 20.2 *Employee Training.* NEC shall ensure that any of its employees who are responsible for the marketing, sales, and technical support services for the Products have proper skill, training, and background to enable them to provide these services in a competent and professional manner.
- 20.3 *Sales Forecast.* NEC shall provide the Supplier with a non-binding quarterly sales forecast, in a mutually agreed-upon format.
- 20.4 *Markings and Notices.* NEC will not remove or alter any trademarks, Product identification, notices of any proprietary or copyright restrictions, or other markings or notices that appear on the Products or their packaging.
- 20.5 *No Reverse Engineering.* NEC will not:
  - 20.5.1 create or attempt to, or aid or permits others to, create by reverse engineering, disassembly, de-compilation, reverse engineering or otherwise, the internal structure, the source code, hardware design, or organization of any Product, unless expressly permitted by Law;
  - 20.5.2 copy, modify, translate, or create derivative works of software included in any Product, unless the Supplier consents in writing; or
  - 20.5.3 separate the Product into component parts for distribution or transfer to a third party.

**21 License Grants**

- 21.1 *Software License Grant.* Supplier hereby grants NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute any software incorporated in Products solely for use by the End Customers in the Territory in and in connection with their use of Products and always subject to such End Customers abiding by the terms of Supplier's End-User License Agreement included in Supplier's Terms.
- 21.2 *Documentation License Grant.* Supplier hereby grants to NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to:
  - 21.2.1 reproduce or transmit documentation Supplier provides NEC for marketing, selling, and distributing the Products (provided such documentation is not modified and Supplier's proprietary notices are not removed); and
  - 21.2.2 reproduce and transmit any user manuals and other documentation Supplier creates for customers in connection with the Products.

- 21.3 *Supplier Trademark License Grant.* Supplier hereby grants to NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use Supplier's name, trademarks, logos, and other identifying information on marketing literature, advertising, promotions, customer information, and programs NEC creates in connection with the Products listed in Annex A, subject to Supplier's written approval as well as guidelines for use, in each instance.
- 21.4 *Trademark Use.* NEC shall comply with all of Supplier's policies regarding the use and display of Supplier's name, trademarks, logos, and other identifying information that Supplier provides to NEC in writing.
- 22 Compliance with Laws.**
- Each Party shall:
- 22.1 comply with all applicable Laws relating to the subject matter of the Agreement and in the performance of its duties under this Agreement, and
- 22.2 notify the other Party if it becomes aware of any non-compliance in connection with this clause 22.

Export Controls:

A. It is expressly understood that this Agreement, and all obligations arising hereunder are subject to U.S. Government export control laws and regulations, as amended, including without limitation, the requirement to obtain necessary approvals and licenses prior to the acceptance of any Purchase Orders, or the export of Products hereunder. Such shall also apply, by way of example only, to spare parts, warranty items delivered by Supplier in connexion with the Products, and the in-country transfer or re-export of any such Products by NEC or an End Customer thereafter. Any Products purchased by or provided to NEC, including any technical data or documentation pertaining thereto, shall not be sold, leased or assigned, transferred, conveyed or in any manner disposed of, either directly or indirectly, without the prior written approval of the United States Government, in accordance with U.S. Law.

B. Each Party agrees to use reasonable efforts to obtain all necessary U.S Government approvals or licenses for the export and/or import of the Products hereunder for resale within the Territory. NEC agrees to provide timely and accurate End User Statements as per the End-User Template available upon request) to Supplier, as appropriate, prior to Supplier's application for export license and submission of this Agreement to the appropriate U.S. Government Authority to secure the appropriate export approval

C. Supplier shall be excused from performance, and not be liable for damages, including the assessment of late deliveries penalties, for failure to deliver the Products hereunder resulting from the U.S Government's delay, denial, or withdrawal of approval to export Products to NEC or an End Customer.

D. Based on evidence that NEC has misrepresented, or failed to properly disclose, any fact regarding end use, End Customers or country of ultimate destination or any other information supplied or requested pursuant to the End Use Statement, Supplier may without liability to NEC terminate this Agreement for default immediately and discontinue all performance hereunder.

**23 Data Protection**

All personal data contained in this Agreement shall be processed in accordance with the relevant data protection laws in force in the Territory.

**24 Compliance With Code of Conduct:**

By entering into this agreement, the Supplier hereby confirms its compliance with the NEC Group's Code of Conduct Policy. NEC undertakes to comply at all times with Supplier's Code of Conduct available at : <https://investors.aviatnetworks.com/code-conduct-0> and as may be updated by Supplier from time to time

**25 Confidentiality Obligations.**

25.1 Each Party ("Recipient") undertakes to the other Party ("Disclosing Party") that:

- 25.1.1 it will treat all Confidential Information as confidential and will not disclose such Confidential Information to any third Party, other than its auditors and other professional advisers, without the Disclosing Party's prior written consent;
- 25.1.2 if it discloses any Confidential Information to its auditors and other professional advisors, it will ensure that such auditors and professional advisors are bound by obligations of confidentiality no less onerous than those contained in this clause 25;
- 25.1.3 it will only disclose the Confidential Information to those of its employees, contractors and agents who require such Confidential Information to perform their duties and all such employees, contractors and agents will be bound by obligations of confidentiality no less onerous than those contained in this clause 25; and
- 25.1.4 will not use such Confidential Information other than for the purposes of this Agreement.

25.2 The provisions of clause 25.1 shall not apply to Confidential Information which:

- 25.2.1 was developed by Recipient independently of the Confidential Information disclosed by the Disclosing party which can be verified by independent evidence; or
- 25.2.2 has been or becomes now or in the future published in the public domain without breach of this Agreement or breach of a similar agreement by a third party;
- 25.2.3 is disclosed or used by Recipient after receiving express written consent from an authorized representative of the Disclosing party to disclose or use; or
- 25.2.4 is required to be disclosed by law or in terms of a court order of a court of competent jurisdiction or otherwise in accordance with any direction or request issued by any governmental or regulatory body, in which event the recipient shall (i) only disclose such of the Confidential Information as is strictly required; (ii) use its reasonable endeavours to seek confidential treatment of such Confidential Information; and (iii) notify the disclosing Party as soon as reasonably possible (and if possible prior to any disclosure) of its obligation to so disclose.

25.3 The obligations contained in this clause 25 shall survive termination of this Agreement.

**26 Publicity**

26.1 *Consent.* Save for the use as set out in this Agreement, neither Party will use the other Party's name, logo, or trademarks, or issue any press release or public announcement regarding this Agreement, without the other Party's written consent, unless specifically permitted under this Agreement or required by Law.

26.2 *Cooperation.* The Parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this Agreement and the relationship between the Parties.

**27 Force Majeure**

27.1 Notwithstanding any other provision of this Agreement, neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party (or its Affiliates) as a result of any delay or other failure in the performance of its obligations under this Agreement (other than an obligation to pay money, including the Fees) if and to the extent that such delay or other failure is caused by an event or circumstance which was unforeseeable and not within the reasonable control of the Party concerned ("**Force Majeure Event**"), and the Party concerned shall be granted with an equitable extension of time for performance of the relevant obligation(s) *provided that* it complies with clause 27.2.

27.2 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event shall:

27.2.1 notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event as soon as reasonably practicable; and

27.2.2 after cessation of the Force Majeure Event, as soon as reasonably practicable notify the other Party thereof and resume full performance of its obligations under this Agreement.

**28 Non-Solicitation**

28.1 Neither Party shall, whether directly or indirectly and whether for its own benefit or the benefit of any third party, at any time while this Agreement is in force and for a period of 12 (twelve) months from the date on which this Agreement terminates encourage, entice, induce, solicit, offer employment or employ any person employed by the other Party who has had a material role in the performance of this Agreement, other than via a job advertisement to the general public.

**29 Termination**

29.1 *Termination for Material Breach.* Each Party may terminate this Agreement subject to 29.1.2 by delivering written notice of the termination to the other Party, if:

29.1.1 the other Party fails to materially perform, has made or makes any material inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations in this Agreement; and

29.1.2 such failure, inaccuracy, or breach is either non-remediable or continue unremedied for a period of more than 14 (fourteen) Business Days' after the injured Party delivers notice to the breaching Party reasonably detailing the breach.

29.2 *Termination for Insolvency.* If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this Agreement with immediate effect by delivering notice of the termination to the first Party.

29.3 *Termination due to Force Majeure.* If due to Force Majeure, a Party is or shall be unable to perform a material obligation under this Agreement or is delayed or prevented from performing its obligations for a continuous period exceeding 90 Business Days or a total of more than 180 Business Days in any year, NEC may terminate this Agreement with immediate effect by delivering notice of the termination to the Supplier.

29.4 *Termination for convenience.* Either Party shall be entitled to terminate this Agreement without cause and without liability to the other Party by observing a 60 days prior written notice if such termination occurs during the Initial Term and an additional two (2) months period per Renewal Term if the termination occurs during a Renewal Term.

### **30 Effect of Termination**

30.1 *Termination of Obligations.* On termination for any reason or expiry of this Agreement, the following shall occur:

- a. NEC shall cease to represent itself as Supplier's authorized distributor, cease to use Supplier's trademarks, and promptly return to Supplier any demonstration equipment or Products not intended for sale.
- b. Except for termination for cause, Supplier agrees to fill NEC's Purchase Orders accepted by Supplier prior to the effective date of termination, and NEC agrees to make full payment for such Purchase Orders, all in accordance with this Agreement
- c. Neither Supplier nor NEC shall be liable to the other by reason of expiration or termination of this Agreement including, without limitation, any liability for compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases, or commitments made in connection with the business or goodwill of Supplier or NEC, or otherwise.
- d. NEC shall restrain from engaging into anti-competitive practice aiming to reduce considerably the price of equipment and services towards their end-customers.

30.2 *No Further Liability.* On termination or expiration of this Agreement, neither Party will be liable to the other Party, except for liability that arose before the termination or expiration of this Agreement.

30.3 *Continued Assistance.* Subject to the issuance by NEC of one or more Purchase Orders for Support Services, the scope and terms of which shall be agreed between the Parties, the Supplier shall provide such assistance as NEC may reasonably require to effect a full and orderly transfer of the Support Services to NEC or to a third party nominated by NEC

30.4 *Return or Destroy of Materials Confidential Information.* Each Party shall promptly cease to use and shall return or (at the other Party's reasonable request) securely destroy all Confidential Information and other equipment, materials and property of the other Party then in its possession or control in connection with the supply of the Products and Support Services under this Agreement and shall on request certify in writing that this has been done.

30.5 *Continuing Provisions.* Any provision of this Agreement which expressly or by implication is intended to continue in force after termination shall do so notwithstanding termination or expiry of this Agreement.

**31 Indemnification**

31.1 *Indemnification by Supplier.* The Supplier (as an indemnifying Party) shall indemnify NEC (as an indemnified Party) against all losses, damages, liability, costs and expenses (including reasonable professional fees) arising out of any claims, actions or proceedings:

31.1.1 brought by a third party, and

31.1.2 arising out of a claim for loss of damage howsoever caused by the Supplier's supply of Products, Services, Support Services or any defects therein solely attributable to Supplier.

31.1.3 any failure by Supplier or Supplier's representatives to comply with any applicable laws;

31.2 *Indemnification by NEC:* NEC shall indemnify, hold harmless, and defend Supplier and Supplier's affiliates against any and all losses, damages, actions, judgments, or expenses of whatever kind, including attorneys' fees, fees, and other costs of defending or enforcing its indemnification rights under this Agreement, (collectively, "Losses"), arising out of or relating to any third-party claim relating to or alleging:

31.2.1 any promotion, demonstration, implementation, or integration made by NEC and not expressly directed by Supplier infringes any Intellectual Property Right of a third party;

31.2.2 a purchase of the Products by any person or entity purchasing through NEC or NEC's representatives and not directly relating to a claim of Limited Warranties breach;

31.2.3 any representations or statements made by NEC or NEC's representatives not specifically authorized by Supplier herein or in writing;

31.2.4 any failure by NEC or NEC's representatives to comply with any applicable laws;

31.3 *Exclusions.* Neither Party will be required to indemnify the other Party against losses to the extent such losses are caused or contributed to by the other Party acted fraudulently, unlawfully, negligently, or intentionally to cause those losses.

**32 Limitation on Liability**

32.1 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; or (b) fraud or fraudulent misrepresentation.

32.2 Subject to clause 32.1, Supplier's total liability to NEC or any third party claiming through NEC shall not exceed the actual price paid by NEC to Supplier under this Agreement. Supplier's total and liability includes liability in contract, tort, or otherwise, arising under or in connection with the Agreement.

- 32.3 Notwithstanding any provision to the contrary of this Agreement, the following types of loss are wholly excluded: (a) loss of revenue, (b) loss of profits, (c) loss of sales or business, (d) loss of agreements or contracts, (e) loss of use, (f) loss of anticipated savings, (g) loss of or damage to goodwill, (h), (i), (j) system incompatibility or providing incorrect compatibility information, (k), and (l) special, indirect, incidental, punitive or consequential losses of any party, including third parties, even if parties has been advised of the possibility of such losses. The exclusions stated in this clause 31.3 shall apply to any claim or cause of action whether in contract or tort (including negligence, strict liability or breach of warranty).
- 32.3 Subject to clauses 321.1, the maximum aggregate liability of NEC to the Supplier under the terms of this Agreement, whether as a result of breach of contract, delict, or for any other reason whatsoever, shall be limited to the aggregate of the amount actually received from NEC by Supplier under the Agreement in the 6 (six) months immediately preceding the date upon which the claim arose. Neither of the party excludes or limits its liability arising out of death, injury to body or health arising from that party's negligence.
- 32.4 This clause shall survive the termination or expiration of this Agreement.
- 33 Anti-Corruption Obligation**
- 33.1 Each Party shall not, and shall procure that its employees and agents shall not, offer, give or agree to give any person, or accept or agree to accept from any person, whether for itself or on behalf of another, any gift, payment, consideration, financial or non-financial advantage or benefit of any kind, which constitutes an illegal or corrupt practice under the laws of any country, either directly or indirectly in connection with this Agreement, or otherwise than in connection with this Agreement (the "**Anti-Corruption Obligation**").
- 33.2 Each Party shall immediately disclose in writing to the other Party details of any breach of the Anti-Corruption Obligation. This is an ongoing obligation.
- 33.3 Each Party shall:
- 33.3.1 always maintain strict compliance with the Anti-Corruption Obligation;
  - 33.3.2 monitor its employees, agents and sub-contractors who are acting in connection with this Agreement to ensure compliance with the Anti-Corruption Obligation; and
  - 33.3.3 make clear, in all its dealings in connection with this Agreement, that it is required by the other Party to act, and is acting, in accordance with the Anti-Corruption Obligation.
- 33.4 Any breach of this clause 33 by a Party shall entitle the other Party to immediately terminate this Agreement by delivering notice of the termination to the Party in breach and the Party in breach hereby indemnifies the other Party in full for any damages and losses of any nature incurred, caused, arising out of or in connection to such breach.

**34 General Provisions**

- 34.1 *Entire Agreement.* The Parties intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement:
- 34.1.1 represent the final expression of the Parties' intent relating to the subject matter of this Agreement;
  - 34.1.2 contain all the terms the Parties agreed to relating to the subject matter; and
  - 34.1.3 replace all of the Parties' previous memorandums of understanding, discussions, understandings and agreements relating to the subject matter of this Agreement.
- 34.2 *Counterparts*
- 34.2.1 *Signed in Counterparts.* This Agreement may be signed in any number of counterparts.
  - 34.2.2 *All Counterparts Original.* Each counterpart when signed and dated is an original.
  - 34.2.3 *Counterparts Form One Document.* Together, all counterparts shall constitute one single document.
  - 34.2.4 *Electronic exchange.* Each Party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement.
- 34.3 **Severability.** If any part of this Agreement is declared illegal, unenforceable or invalid, the remainder will continue to be legal, valid and enforceable. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 34.4 *Amendment.* This Agreement can be amended only by a writing signed by both Parties.
- 34.5 *Waiver*
- 34.5.1 *Affirmative Waivers.* No Party's failure, delay or neglect to enforce any rights, power or remedy provided by law or under this Agreement will operate as a waiver of that Party's right, power or remedy nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
  - 34.5.2 *Written Waivers.* A waiver of any term, provision, condition or breach of this Agreement is only effective if it is in writing and signed by the Party granting the waiver and then only in the instance and for the purpose for which it is given.
  - 34.5.3 *No Course of Dealing.* No single or partial exercise of any right, power or remedy provided by law or under this Agreement will preclude any further exercise of it or the exercise of any other right, power or remedy.

- 34.6 *No Relationship.* Save for the provisions set out in this Agreement, nothing herein creates any special relationship between the Parties, such as a partnership, joint venture, or employee/employer relationship between the Parties.
- 34.7 *No Authority.* Save for the provisions set out in this Agreement, neither Party will have the authority to, and will not, act as agent for or on behalf of the other Party or represent or bind the other Party in any manner.
- 34.8 *Assignment.* Neither Party may assign this Agreement or any of their rights or obligations under this Agreement without the other Party's written consent, such consent not to be unreasonably withheld or delayed.
- 34.9 *Further Assurance.* Each Party shall do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 34.10 *Conflict.* In the event of any conflict between this Agreement and its Annexures or between this Agreement and any other terms of a Purchase Order, the provisions of this Agreement shall prevail.
- 34.11 *Costs and expenses.* Each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).
- 34.12 *Language.* The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.
- 34.13 *Third party rights.* Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights to enforce any of the provisions of this Agreement.
- 34.14 Notices
- 34.14.1 *Method of Notice.* The Parties shall give all notices and communications between the Parties in writing by: (i) personal delivery; (ii) a nationally-recognized, next-day courier service; (iii) first-class registered or certified mail, postage prepaid; or (iv) electronic mail to the Party's address specified in this Agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section.
- 34.14.2 *Receipt of Notice.* A notice given under this Agreement will be effective on
- 34.14.2.1 the other Party's receipt of it; or
- 34.14.2.2 if mailed, the earlier of the other Party's receipt of it and the fifth business day after mailing it.
- 34.15 Dispute Resolution
- 34.15.1 *Senior Management Executive:* Should a dispute arise between the Parties the duly appointed Senior Management Executive of each Party shall meet within 15 calendar days of the dispute being reported. Both Senior Management Executives shall mutually meet at the agreed place or remotely to resolve the dispute within a period of 20 calendar days. If the Senior Management Executives cannot reach a consensus within the above timeline then the dispute remains unresolved then either Party may then proceed to initiate legal proceedings.

34.15.2 *Arbitration.* Any dispute or controversy arising out of or in connection with this Agreement will be settled by arbitration in London according to the rules of the LCIA then in effect, and by 1 (one) arbitrator.

34.15.3 *Judgment.* Judgment may be entered on the arbitrator's award in any court having jurisdiction.

34.15.4 *Arbitrator's Authority.* The arbitrator will not have the power to award any punitive or consequential damages.

34.16 *Governing Law.* This Agreement shall be governed, construed, and enforced in accordance with the laws of England & Wales.

34.17 Notice

34.17.1 All notices must be in writing and will be effective when received by (i) personal delivery, (ii) registered, certified, or nationally recognized overnight mail, proof of receipt requested, and (iii) facsimile, if confirmed within three (3) business days by one of the other methods herein, at the addresses or facsimile numbers indicated or to such other addresses or facsimile numbers as the parties may specify by giving notice pursuant hereto.

34.17.2 Any notice in terms of this Agreement may be hand delivered to the physical address of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice, together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in which event proof of postage issued by the relevant postal authority will serve as proof.

34.17.3 The Parties respectively choose their domicilium citandi ex executandi for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature at the following addresses:

Supplier: Physical Address

51 Changi Business Park  
Central 2, #08-03  
The Signature

Facsimile number: [...]

Email Address: [...]

NEC: Physical Address

**Building No,8913**  
**Al Olaya St. Riyadh SA**

Postal Address

ShentonWay#18-01,  
SGX CentreI,Singapore  
Singapore068804

Postal Address

**P.O. box 15534, Riyadh,**  
**11454, Saudi Arabia**

**SIGNATORIES IN EXECUTION**

SIGNED at Dubai, UAE on this 28th day of November 2023 in the presence of the undersigned witness

/s/ Manish Kaushik

As witness

Name: Manish Kaushik

/s/ Masaharu Hasegawa

for and on behalf of the **NEC Saudi Arabia Limited**

*(who warrants that he/she is duly authorised)*

Name: Masaharu Hasegawa

SIGNED at Austin, TX on this 30 day of November 2023 in the presence of the undersigned witness

/s/ Didier Mbayo

As witness

Name: Didier Mbayo

/s/ Erin Boase

for and on behalf of AVIAT NETWORKS (S) PTE.LTD

*(who warrants that he/she is duly authorised)*

Name: Erin Boase

[Signature Page to Saudi Arabia Distribution Agreement]

**Annexure A Products, Services and Discounts**

[Intentionally omitted]

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**Annexure B Support Services and Support Service Charges**

[Intentionally omitted]

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**Annexure C List of Designated Customers**

[Intentionally omitted]

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

**DISTRIBUTION AGREEMENT**

BETWEEN

**NEC New Zealand Ltd.**  
(hereinafter called “NEC”)

NZ Company Registration Number:  
948339

and

**AVIAT NETWORKS (S) Pte. Ltd.**  
(hereinafter after called “Supplier”)

Registration Number:  
199901592C

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This Distribution Agreement (hereinafter referred to as the “**Agreement**”) is made on December 1<sup>st</sup>, 2023 (the “**Effective Date**”) between **NEC**, a private company with the registration number stated on the cover page and its principal place of business at Level 1, 1 Willeston Street, Wellington, 6011, New Zealand and **Supplier**, a limited liability corporation with its principal place of business at 51 Changi Business Park Central, 2 #08-03, The Signature, Singapore 486066.

WHEREAS:

- (A) The Supplier supplies wireless network products.
- (B) NEC is a renowned systems integrator providing custom ICT technology solutions and services in the Territory.
- (C) The Supplier wishes to authorize and appoint NEC, and NEC wishes to accept the authorization and appointment as the Supplier’s distributor, to market, distribute, sell, or incorporate for distribution, the Products and Services listed in Annexure A attached to this Agreement, within the Territory in each case on the terms and subject to the conditions set out in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1 Definitions**

In this Agreement:

“**Aviat Product**” is defined at provision 3.1.

“**Business**” means the wireless backhaul business.

“**Business Day**” means a day other than a Saturday, a Sunday, or any public holiday in New Zealand.

“**Confidential Information**” means all non-public, confidential or proprietary information disclosed by one Party to the other Party, in any tangible or intangible form, such as but not limited to written, oral, visual, audio, those produced by electronic media, or through any other means, that is designated as confidential or that by its nature or circumstances surrounding its disclosure, should be reasonably considered as confidential, including but not limited to products or planned products, processes and/or procedures, technological achievements and interests, customers and potential customers, business prospects, financial statements and information, financial situation and corporate plans, internal activities, future plans of the disclosing party, and other information deemed proprietary or confidential by the disclosing party or any other matter in which the disclosing party may have any interest whatsoever, which may include, without limitation, trade secrets, engineering designs, architecture and other technical data, as well as business plans, financial data. For the avoidance of doubt, for the purposes of this Agreement, all information disclosed by a Party to the other Party shall be treated as Confidential Information.

“**Customer**” means an organization located in the Territory who purchases Products from NEC to sell to End Customers located in the Territory or provide services to End Customers or for integration into a more complex solution and resale of that more complex solution, including the Product, to an End-Customer (i.e. a system integrator).

“**Delivery Date**” means the date at which the risk of loss or damage to the Products transfers to NEC, in accordance with the risk transfer rules of the applicable Incoterm.

“**Effective Date**” is defined in the introduction to this Agreement.

“**Encumbrances**” means any pledges, liens, charges, security interests, leases, title retention agreements, mortgages, restrictions easements, rights-of-way, title defects, options, adverse claims, or encumbrances of any kind.

“**End Customer**” means the final customer in the Territory that consume the Products and/or Services listed in Annexure A from NEC directly or from an NEC Customer based in the Territory for its own internal use and not for resale.

“**Governmental Authority**” means:

- (a) any national, regional, local, or foreign government, and any political subdivision of any of them,
- (b) any agency or instrumentality of any such government or political subdivision,
- (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), and
- (d) any arbitrator, court or tribunal of competent jurisdiction.

“**Initial Term**” is defined in clause 13.1.

“**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world:

- (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
- (b) copyrights, including all applications and registrations related to the foregoing,
- (c) trade secrets and confidential know-how,
- (d) patents and patent applications,
- (e) websites and internet domain name registrations, and
- (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

“**Inspection Period**” is defined in clause 6.1.

“**Law**” means:

- (a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
- (b) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

“**Legal Proceeding**” means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).

“**Parties**” means both the Supplier and NEC, collectively.

“**Party**” means either the Supplier or NEC, individually.

“**Pasolink Product**” is defined at provision 3.1.

“**Permits**” means all material licenses, franchises, permits, certificates, approvals, and authorizations, from Governmental Authorities necessary for the ownership and operation of the Party’s business.

“**Person**” includes

- (a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and
- (b) any individual.

“**Products**” means the goods listed in Annexure A, attached to this Agreement.

“**Purchase Order**” is defined in clause 4.1.

“**Renewal Term**” is defined in clause 13.2.

“**Services**” means the services listed in Annexure A, attached to this Agreement.

“**Support Service Charges**” means the charges to be paid for the Support Services under clause 12.

“**Support Services**” means the support services listed in Annexure A, attached to this Agreement.

“**Taxes**” includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind for which a Party may have any liability

imposed by any Governmental Authority, whether disputed or not, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

“**Territory**” means New Zealand and Papua New Guinea.

“**USD**” means the United States dollar.

## 2 Interpretation

### 2.1 References to Specific Terms

- 2.1.1 *Accounting Principles*. Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the International Financial Reporting Standards defined by the professional accounting industry in effect in New Zealand (“**IFRS**”).
- 2.1.2 *Currency*. Unless otherwise specified, all dollar amounts expressed in this Agreement refer to United States Dollars.
- 2.1.3 “*Including*”. Where this Agreement uses the word “including,” it means “including without limitation” and where it uses the word “includes,” it means “includes without limitation.”
- 2.1.4 “*Knowledge*”. Where any representation, warranty, or other statement in this Agreement, or in any other document entered into or delivered under this Agreement, is expressed by a Party to be “to its knowledge” or is otherwise expressed to be limited in scope to facts or matters known to the Party or of which the Party is aware, it means:
- 2.1.4.1 the then-current, actual knowledge of the directors and officers of that Party, and
- 2.1.4.2 the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.
- 2.1.5 *Statutes, etc.* Unless specified otherwise, any reference in this Agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.
- 2.2 *Number and Gender*. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.
- 2.3 *Headings*. The headings used in this Agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.
- 2.4 *Internal References*. References in this Agreement to sections and other subdivisions are to those parts of this Agreement.
- 2.5 *Calculation of Time*. In this Agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. New Zealand Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. New Zealand Time on the next Business Day.
- 2.6 *Construction of Terms*. The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting Party will not apply in interpreting this Agreement.
- 2.7 *Conflict of Terms*. If there is any inconsistency between the terms of this Agreement and those in any Annexure to this Agreement or in any document entered into under this Agreement, the terms of the Annexure will prevail. The Parties shall take all necessary steps to conform the inconsistent terms to the terms of this Agreement.
- 2.8 *Binding Effect*. This Agreement will benefit and bind the Parties and their respective heirs, successors, and permitted assigns.

### 3 Appointment of NEC

- 3.1 NEC shall, for the Initial Term or Renewal Term (as applicable), purchase Products and Services only from the Supplier and, subject to the provisions of clause 3.2b), it shall not, for the Initial Term or Renewal Term (as applicable), distribute or manufacture any goods and/or services which compete with the Pasolink Products.
- 3.2 NEC shall, for the Initial Term or Renewal Term (as applicable), be the Supplier's:
- (a) exclusive distributor of the Products & Services listed in Annexure A1 (Pasolink Product). to those Customers and/or End-Customers located in New Zealand which are listed in Annexure B1;
  - (b) non-exclusive distributor of the Products & Services listed in Annexure A2 (**Aviat Product**); provided always that where a Customer/End-Customer requires NEC to quote/submit a proposal for products similar to the Aviat Products, NEC shall always position the Aviat Products as the primary product offered for wireless access and/or transport solutions, unless Supplier acknowledges in writing it cannot provide a solution to the requirements and does not have the products needed by the designated Customer/End-Customer, and
  - (c) non-exclusive distributor of Pasolink Product to customers and prospective customers located in New Zealand that are not specified in Annexure B.1. New Customers and End Customers acquired by NEC after the date of this Agreement shall be deemed added to Annexure B.1 from the date of supply by NEC.
- 3.3. For the avoidance of doubt, the relevant restrictions set on Supplier under the terms of clause 3.2 (a) and (c) shall only apply with respect to sales resulting from Supplier actively targeting Customers/End-Customers listed in or added to Annexure B.1, but they shall not apply in those documented instances where, in the absence of any active sales targeting by Supplier, Customers/End-Customer solicit the Supplier for sales offers directly or via channels other than NEC. For the avoidance of doubt, any territorial exclusivity is subject to any previously agreed upon distribution agreements entered into by NEC Corporation or any of NEC Corporation's affiliates prior to the Effective Date of this Agreement.
- 3.4 For the Initial Term or Renewal Term (as applicable), the Supplier agrees to supply NEC with Products and Services on a continuous basis in line with NEC's Purchase Orders.
- 3.5 NEC shall act as an independent contractor, purchasing the Products from the Supplier and reselling them in its own name, on its own behalf and on its own account. NEC shall have no authority to enter into any contract or commitment in the name of or for the account of the Supplier or to bind the Supplier in any manner whatsoever.
- 3.6 The Parties may revise the list of Products and Services at any time during the Initial Term or Renewal Term (as applicable) by agreement in writing.
- 3.5 To the extent not specifically covered in this Agreement, sales transactions between the Parties shall be covered by Supplier's standard Terms and Conditions of Sale in effect at the time of Supplier's acceptance of a Purchase Order issued by NEC ("Supplier's Terms"), incorporated by reference in this Agreement, which shall prevail over any terms and conditions included on any purchase order submitted by NEC. In the event of any conflict between this Agreement and Supplier's Terms, the order of precedence is as follows: (a) this Agreement; (b) Supplier's Terms.

### 4 Orders

- 4.1 *Purchase Orders*. From time to time, NEC shall submit orders for Products to the Supplier in writing and in accordance with the respective quotation provided by the Supplier to Supplier's address listed in the introduction to this Agreement or as the Supplier otherwise specifies in writing (each, a "**Purchase Order**") and include in each Purchase Order:
- 4.1.1 each Product and/or Service it is ordering, identified by model, part number or service description;
  - 4.1.2 the amount of each Product and/or Service it is ordering;
  - 4.1.3 the unit price of each Product and /or Service it is ordering;

4.1.4 the Incoterm applicable to the Purchase Order;

4.1.5 the location for delivery; and

4.1.6 the delivery date (the “**Delivery Date**”).

4.2 **Accepting, Modifying, and Rejecting Purchase Orders**

4.2.1 *By Notice.* Within 3 (three) Business Days’ of receiving a Purchase Order from NEC, the Supplier shall accept, reject, or propose a modification to the Purchase Order by sending NEC written notice of its acceptance, rejection, or proposed modification (as applicable), save that the Supplier shall not be permitted to reject or propose any modification to any Purchase Order that is consistent with Annexures A & B and all the terms and conditions of this Agreement.

4.2.2 *Modification of Purchase Order.* The Supplier may propose a modification to a Purchase Order by including in its notice to NEC a modified Purchase Order format for NEC to process and re-send to Supplier for acceptance or rejection, according to the acceptance and rejection procedure under clause 4.2.1.

4.3 *Cancelling Purchase Orders.* NEC may, at no expense to itself, cancel part or all of a Purchase Order before it is accepted by Supplier. After the acceptance of a Purchase Order by Supplier, any Order cancellation shall entitle Supplier to charge cancellation charges up to the full amount of the Purchase Order.

4.4 **Deal Registration**

4.4.1 NA

4.5 **License Keys**

4.5.1 Supplier shall provide NEC with the ability to generate license keys necessary for NEC and/or its End Customers to access, unlock or otherwise enable purchased Product features.

**5 Delivery of Products or Services**

5.1 *Delivery.* The Supplier shall deliver each order of Products or Services to NEC:

5.1.1 on the Delivery Date and at the Delivery Location (which shall be the Supplier’s manufacturing facilities)

5.1.2 using any delivery method that the Parties shall agree to in writing and the ExWorks Supplier’s manufacturing facilities Incoterm.

5.2 *Risk of Loss Shifts on Delivery.* The Supplier will remain liable for any damages, losses to the Products until the risk of loss or damage to the Products is transferred to NEC in accordance with the Incoterm that is applicable to a Purchase Order, after which NEC will assume the risk of loss or damage to the Products.

5.3 *Title transfer:* The title in the Products (including software media, where applicable) shall transfer from Supplier to NEC upon shipment of the Products from the Supplier’s manufacturing facilities.

**6 Acceptance and Rejection of Product Deliveries**

6.1 *Inspection Period.* NEC will have 20 Business Days after the Products reach the named place of Delivery to inspect the Products for defects, missing items, items shipped in error, items damaged in transit (the “**Issues**”) and to ensure the deliveries meet the specifications of the applicable Purchase Order (the “**Inspection Period**”).

6.2 *Acceptance.* For the Products which satisfy the specifications of the applicable Purchase Order, NEC shall accept the Products and notify the Supplier in writing of such acceptance within 2 days after the end of the Inspection Period.

6.3 *Deemed Acceptance.* NEC will be deemed to have accepted Products if:

6.3.1 NEC fails to notify the Supplier on or before the expiration of the Inspection Period; or

6.3.2 if during the Inspection Period, NEC sells, runs, or otherwise uses the Products beyond what is necessary for inspection and testing, and in a way a reasonable Person would consider consistent with NEC having accepting the delivery from the Supplier.

6.4 *Rejection and Cure.* For the Product Issues supported by undisputed evidence:

6.4.1 NEC shall deliver to the Supplier a written list detailing each Issue and the affected Products;

6.4.2 On NEC returning the Products having an Issue at Supplier's cost and in accordance with Supplier's Return Material Authorization process, the Supplier shall promptly deliver to NEC any Products necessary to remedy each Issue, at no expense to NEC.

## 7 **Changes to Products.**

The Supplier may not discontinue, modify, or replace Products or Services that are subject to an accepted and outstanding Purchase Order, unless:

7.1 required by Law;

7.2 the Supplier is able to replace such Products and Services with similar or better products or services that achieve the same purpose and/or outcome;

7.3 the End Customer has agreed to such replacement of the Products and Services; and

7.4 the replacement products are no more expensive than the Products being replaced.

## 8 **Price**

8.1 *Price.* NEC shall pay the Supplier's listed price for each Product or Service as advised by the Supplier. The price list in effect between the parties at the Effective Date is set out in Annexure A.5. All prices are quoted, shall be invoiced and paid in United States Dollars. Supplier's listed price for each Product or Service are exclusive of all sales, use, excise, and other taxes, duties, assessments, or fees or charges. All prices given by Supplier pursuant to this Agreement represent net amounts the Supplier is entitled to receive and shall not be subject to any deductions for any reason whatsoever.

8.2 *Resale Prices.* NEC may determine its own resale prices.

8.3 *Changes to Prices*

8.3.1 *Notice of Upcoming Price Changes.* If the Supplier changes its pricing, the Supplier shall give NEC at least 30 calendar days' notice before implementing such changes.

8.3.2 *No Effect on Outstanding Purchase Orders.* Changes to the Supplier's prices will not affect any Purchase Orders already submitted prior to the effective date of such price changes.

## 9 **Payment of Prices**

9.1 *Invoice Delivery.* The Supplier shall invoice NEC for Product purchases at the time of shipment of the Products from Supplier's manufacturing facilities. In the case of Services, and unless differently agreed in a Purchase Order for Services, the Supplier shall invoice NEC monthly in arrears on completion of the Services or, in the case of Support Services, annually in advance.

9.2 *Invoice Procedure and Requirements.* The Supplier shall:

9.2.1 issue each invoice to NEC in writing, including:

9.2.1.1 an invoice date and number;

9.2.1.2 the total amount due;

9.2.1.3 the calculation of the total amount; and

9.2.1.4 the details of its nominated bank account; and

9.2.2 send each invoice to the nominated recipient of NEC as advised by NEC in writing.

9.3 *Payment.* NEC shall pay each properly rendered invoice by the 20<sup>th</sup> of the month following the invoice date to the account whose details are set out in the relevant invoice in accordance with clause 9.2.1.4. If NEC fails to timely pay any outstanding amounts, Supplier may, in its sole discretion, and in addition to any other rights and remedies it may have under this Agreement and at law, including the right to suspend any delivery and to terminate any outstanding Purchase Order after 30 days of suspension, charge interest on such unpaid amounts equal to a rate of 1.5% per month or the maximum rate permitted by law, whichever is less, from the date such amounts become due until the date such amounts are received in full, save that nothing contained in this provision shall apply to any improperly rendered or bona fide disputed invoice.

**10 Taxes.**

- 10.1 Subject to the Incoterm that applies to the Purchase Order, both NEC and the Supplier shall bear and pay any tax that may be imposed on each payment hereunder in their own countries.
- 10.2 If the payment by NEC of any sum due under this Agreement is subject by law to withholding tax, NEC shall:
  - 10.2.1 withhold such legislated levied amount from the payment to the Supplier;
  - 10.2.2 account to the relevant tax authority for that withholding tax; and
  - 10.2.3 supply to the Supplier a certificate certifying such payment of withholding tax.

**11 Services to be provided by Supplier**

- 11.1 Where NEC issues a Purchase Order for Support Services, the Supplier shall provide the Support Services to NEC in accordance with this Agreement and that Purchase Order.
- 11.2 Where NEC issues an upfront Purchase Order for Support the Supplier shall provide the Support Services for the duration covered by NEC's Purchase Order.

**12 Support Services Charges**

- 12.1 In consideration of Supplier providing the Support Services to NEC, NEC shall pay the Support Service Charges to Supplier.
- 12.2 The Supplier shall invoice NEC at the beginning of each year for the Support Services to be provided to NEC during the invoiced year. NEC shall pay the Support Service Charges net 30 days following receipt of Supplier's invoice, to the bank account nominated in writing by Supplier.
- 12.3 If NEC disputes any invoice or other request for payment, NEC shall immediately notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within 30 days of NEC giving notice to the Supplier, the dispute shall be resolved in accordance with clause 33.15.
- 12.4 Unless differently agreed between the Parties in writing, the Supplier shall be responsible for the payment of all invoices due to third party suppliers of the Supplier in connection with the provision of the Support Services.
- 12.5 NEC shall be entitled to require the Supplier to provide all such evidence as may be reasonably necessary to verify the Support Service Charges and any other matters set out in an invoice.

**13 Term**

- 13.1 *Initial Term.* The initial term of this Agreement will begin on the Effective Date and continue for 5 years thereafter (the "**Initial Term**"), unless terminated earlier in accordance with the provisions of this Agreement.
- 13.2 *Automatic Renewal.* Subject to clause 13.3, at the end of each Initial Term, this Agreement will automatically renew for a renewal term of 12 (twelve) months, unless terminated earlier in accordance with the provisions of this Agreement ("**Renewal Term**").
- 13.3 *Election Not to Renew.* Either Party may elect not to renew this Agreement, by providing notice of at least 6 (six) calendar months to the other Party before the end of the Initial Term or Renewal Term, as the case may be.
- 13.4 Save for the termination provisions as set out in clause 28, neither Party may terminate this Agreement prior to the end of the Initial Term or the Renewal Term.

**14 Marketing Development / Sales Development Plans**

- 14.1 The Parties shall discuss in good faith at the beginning of each anniversary of this Agreement NEC's Marketing and Sales Development strategy and specific plans in the Territory for the contract year to come and the Parties shall agree in good faith if Supplier should contribute in any way to those efforts. Supplier shall make reasonable commercial efforts to participate with NEC in fairs, exhibitions and similar events in the Territory, but shall be under no obligation to do so unless such participation is agreed by the parties in writing sufficiently in advance of each event to enable proper preparation by the parties.
- 14.2 Employee Training. The Supplier shall provide sufficient technical and other training for NEC's employees who are responsible for the marketing, sales, and technical support services for the Products at no cost to NEC at reasonable intervals.
- 14.3 Marketing and Informational Materials. Supplier shall provide NEC with the latest marketing, promotional, and other information in English about the Products and Services that Supplier typically provides to other distributors of its Products free of charge.
- 14.4 Other Information. The Supplier shall provide NEC with such information as NEC may reasonably and lawfully require in connection with this Agreement as soon as reasonable upon NEC's written request.

**15 Representations**

15.1 Mutual Representations

- 15.1.1 *Existence.* The Parties are corporations incorporated and existing under the Laws of the jurisdictions of their respective incorporation.
- 15.1.2 *Authority and Capacity.* The Parties have the authority and capacity to enter into this Agreement.
- 15.1.3 *Execution and Delivery.* The Parties have duly executed and delivered this Agreement.
- 15.1.4 *Enforceability.* This Agreement constitutes a legal, valid, and binding obligation, enforceable against the Parties according to its terms.
- 15.1.5 *No Conflicts.* Neither Party is under any restriction or obligation that the Party could reasonably expect might affect the Party's performance of its obligations under this Agreement.
- 15.1.6 *No Breach.* Neither Party's execution, delivery, or performance of its obligations under this Agreement will breach or result in a default under:
  - 15.1.6.1 its articles, bylaws, or any unanimous shareholders agreement;
  - 15.1.6.2 any Law to which it is subject;
  - 15.1.6.3 any judgment, Order, or decree of any Governmental Authority to which it is subject; or
  - 15.1.6.4 any agreement to which it is a Party or by which it is bound.
- 15.1.7 *Permits, Consents, and Other Authorizations.* Each Party holds all Permits and other authorizations necessary to:
  - 15.1.7.1 own, lease, and operate its properties, and
  - 15.1.7.2 conduct its business as it is now carried on.
- 15.1.8 *No Disputes or Proceedings.* Each Party confirms, represents and warrants that there are no Legal Proceedings pending, threatened, or foreseeable against itself, which would affect its ability to complete its obligations under this Agreement.
- 15.1.9 *No Bankruptcy.* Neither Party has taken or authorized any proceedings related to that Party's bankruptcy, insolvency, liquidation, dissolution, or winding up.

15.2 Supplier's Representations

- 15.2.1 *Ownership.* The Supplier is the sole owner or rightful licensee of the Products, free of any claims by a third party or any Encumbrance.
- 15.2.2 *Legal Right.* The Supplier warrants that it has all rights necessary to supply or license the Products & Services to NEC on the terms of this Agreement.

15.2.3 *No Infringement.* The Supplier's sale of the Products does not infringe on or constitute a misappropriation of the Intellectual Property or other rights of any third party.

## 16 Limited Warranties

- 16.1 *Products.* All Products are covered by the Supplier's warranty statements that are provided with the Products or Services, otherwise made available or advised by the Supplier from time to time. Unless differently agreed in an accepted Purchase Order, the Warranty Period for the Supplier-manufactured Products listed in Annexures A1 (i.e. the Pasolink Products) shall be 2 years from the date of shipment of the Products from the Supplier's manufacturing premises ('**Product Warranty Period**'). Notwithstanding anything to the contrary, the Supplier warrants that all Products supplied to NEC are free of manufacturing defects (including known security vulnerabilities), and will conform to their specification(s) for their respective Product Warranty Period.
- 16.2 *Third Party Products.* Non-Supplier branded products or services receive warranty coverage as provided by the relevant third party supplier.
- 16.3 *Software Warranty.* The Supplier hereby warrants that for the Software Warranty Period, which shall be 90 days from the date at which the Software is put into production by an End Customer of NEC, or 90 days from the time the SW licence is delivered by Supplier to NEC, whichever comes first, that when operated according to the documentation and other instructions the Supplier provides, software will perform substantially according to the functional specifications listed in the documentation.
- 16.4 *Support Services Warranty.* The Supplier warrants any repairs performed by Supplier as part of the Product Warranty and/or Support Services purchased by NEC for a period which is the longer of (a) the balance of the initial Product Warranty Period or (b) 6 months from the return shipment date.
- 16.5 The limited warranties listed in clauses 16.1 to 16.4 apply only to the NEC and its End Customers. Supplier shall provide the above-mentioned warranties for the most current version of Supplier's products. Supplier shall have no obligation to provide warranty if a material defect in the Supplier's product is caused by the malfunction of non-Supplier hardware or Software, by modification of the Supplier's product not made the Supplier, by use of the Supplier's products that is not in accordance with the Supplier's written instructions for the Supplier's products. Supplier will accept warranty returns only from NEC and NEC must arrange all details of such returns with End Customers, eligible under the aforementioned warranties. **EXCEPT FOR THE WARRANTIES STATED ABOVE, SUPPLIER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES ON SUPPLIER'S PRODUCTS FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AND NON-INFRINGEMENT.**
- 16.6 *Compliance with Laws.* The Supplier hereby warrants that the Products and Support Services comply with any applicable laws, statutes and regulations relevant to the manufacture, design, packaging, sale and use of the Products or Support Services (as applicable) in connection with this Agreement.
- 16.7 *Software Updates.* Software Updates will be made available for all Software licensed under a Purchase Order, at the time of release, , provided that the concerned Software is still under its initial Software Warranty period or that a Software support contracts is in place between Supplier and NEC at the time of the release of the Software Updates.
- 16.8 *Return Material Authorisation/RMA.* NA
- 16.9 *Support.* NA
- 16.10 *Dead on Arrival / Out-of-box Failures.* NA
- 16.11 *Service Level Agreement on warranties.* NA

**17 Intellectual Property.**

- 17.1 The Supplier hereby grants to NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute the Products solely for use by NEC's Customers and/or End Customers, and in connection with their use of the Products under this Agreement, within the Territory.
- 17.2 Except for rights expressly granted under this Agreement:
- 17.2.1 nothing in this Agreement will function to transfer any of either Party's Intellectual Property rights to the other Party, and
- 17.2.2 each Party will retain exclusive interest in and ownership of its Intellectual Property developed before this Agreement or developed outside the scope of this Agreement.
- 17.3 The Supplier indemnifies and holds NEC harmless against all losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by NEC in connection with any claims, actions or proceedings arising out of or in connection with any actual or alleged infringement by the Products sold or licensed by Supplier to NEC and/or by the Support Services provided by Supplier to NEC of the Intellectual Property or other rights of a third Party. The preceding indemnification obligation shall not apply (i) to any Products and/or Support Services, or portion thereof, manufactured and/or provided to specifications furnished by NEC or on NEC's behalf, or (ii) to any infringement arising out of the use of such Products and/or Support Services in combination with other equipment, software or services not sold or recommended by Supplier, or (iii) to use in a manner not normally intended, or (iv) to any patent, copyright, trademark or trade secret in which NEC, or any of NEC's affiliates has a direct or indirect interest, or (v) if NEC has not provided Supplier with prompt notice, authority, information and assistance necessary to defend the action, or (vi) to any claim alleging infringement of any intellectual property right or interest in FOSS.
- 17.4 The Supplier shall retain the right, in its sole discretion, to modify or replace the infringing Products or Services with non-infringing Products or Services and the Supplier shall give NEC reasonable advance notice of such action.
- 17.5 The provisions of this clause 17 shall survive the termination of this Agreement, irrespective of the reasons for termination.

**18 Supplier Responsibilities**

- 18.1 *Supply of Products and Support Services.* The Supplier shall supply the Products and Support Services to NEC in accordance with the provisions of this Agreement.
- 18.2 *Insurance.* The Supplier shall put in place and maintain public liability insurance for not less than USD\$10M in respect of each claim and product liability insurance for not less than USD\$10M in respect of each claim for the Initial Term and/or Renewal Term, as the case may be. The Supplier shall promptly provide copies of the insurance certificates to NEC on NEC's request.
- 18.3 *Licences and permits.* The Supplier shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Products and Support Services in accordance with this Agreement.
- 18.4 *Personnel.* The Supplier shall employ a sufficient number of competent and qualified personnel to carry out its obligations under this Agreement.

**19 NEC Responsibilities**

- 19.1 *Marketing.* Subject to clause 14 hereof, NEC shall use reasonable efforts to market, advertise, and otherwise promote and sell the Products in the Territory.
- 19.2 *Employee Training.* NEC shall ensure that any of its employees who are responsible for the marketing, sales, and technical support services for the Products have proper skill, training, and background to enable them to provide these services in a competent and professional manner.
- 19.3 *Sales Forecast.* NEC shall provide the Supplier with a non-binding quarterly sales forecast, in a mutually agreed-upon format.

- 19.4 *Markings and Notices.* NEC will not remove or alter any trademarks, Product identification, notices of any proprietary or copyright restrictions, or other markings or notices that appear on the Products or their packaging.
- 19.5 *No Reverse Engineering.* NEC will not:
- 19.5.1 create or attempt to, or aid or permits others to, create by reverse engineering, disassembly, de-compilation, reverse engineering or otherwise, the internal structure, the source code, hardware design, or organization of any Product, unless expressly permitted by Law;
  - 19.5.2 copy, modify, translate, or create derivative works of software included in any Product, unless the Supplier consents in writing; or
  - 19.5.3 separate the Product into component parts for distribution or transfer to a third party.

## 20 License Grants

- 20.1 *Software License Grant.* Supplier hereby grants NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute any software incorporated in Products solely for use by NEC's Customers and/or End Customers in the Territory in and in connection with their use of Products and always subject to such End Customers abiding by the terms of Supplier's End-User License Agreement included in Supplier's Terms.
- 20.2 *Documentation License Grant.* Supplier hereby grants to NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to:
- 20.2.1 reproduce or transmit documentation Supplier provides NEC for marketing, selling, and distributing the Products (provided such documentation is not modified and Supplier's proprietary notices are not removed); and
  - 20.2.2 reproduce and transmit any user manuals and other documentation Supplier creates for customers in connection with the Products.
- 20.3 *Supplier Trademark License Grant.* Supplier hereby grants to NEC a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use Supplier's name, trademarks, logos, and other identifying information on marketing literature, advertising, promotions, customer information, and programs NEC creates in connection with the Products, subject to Supplier's written approval as well as guidelines for use, in each instance.
- 20.4 *Trademark Use.* NEC shall comply with all of Supplier's policies regarding the use and display of Supplier's name, trademarks, logos, and other identifying information that Supplier provides to NEC in writing.

## 21 Compliance with Laws.

Each Party shall:

- 21.1 comply with all applicable Laws relating to the subject matter of the Agreement and in the performance of its duties under this Agreement, and
- 21.2 notify the other Party if it becomes aware of any non-compliance in connection with this clause 21.

### Export Controls:

A. It is expressly understood that this Agreement, and all obligations arising hereunder are subject to U.S. Government export control laws and regulations, as amended, including without limitation, the requirement to obtain necessary approvals and licenses prior to the acceptance of any Purchase Orders, or the export of Products hereunder. Such shall also apply, by way of example only, to spare parts, warranty items delivered by Supplier in connexion with the Products, and the in-country transfer or re-export of any such Products by NEC or an End Customer thereafter. Any Products purchased by or provided to NEC, including any technical data or documentation pertaining thereto, shall not be sold, leased or assigned, transferred, conveyed or in any manner disposed of, either directly or indirectly, without the prior written approval of the United States Government, in accordance with U.S. Law.

B. Each Party agrees to use reasonable efforts to obtain all necessary U.S Government approvals or licenses for the export and/or import of the Products hereunder for resale within the Territory. NEC agrees to use reasonable efforts to provide timely and accurate End User Statements to Supplier, as appropriate, prior to Supplier's application for export license and submission of this Agreement to the appropriate U.S. Government Authority to secure the appropriate export approval

C. Supplier shall be excused from performance, and not be liable for damages, including the assessment of late deliveries penalties, for failure to deliver the Products hereunder resulting from the U.S Government's delay, denial, or withdrawal of approval to export Products to NEC or an End Customer.

D. If Supplier has reason to believe that NEC has misrepresented, or failed to properly disclose, any fact regarding end use, End Customers or country of ultimate destination or any other information supplied or requested pursuant to the End Use Statement, Supplier may without liability to NEC terminate this Agreement for default immediately and discontinue all performance hereunder.

E. NEC is responsible for obtaining any necessary import licences or permits required for the entry of the Products into the Territory or their delivery to NEC. Further, NEC is responsible for any customs, duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products into the Territory.

## 22 Data Protection

All personal data contained in this Agreement shall be processed in accordance with the relevant data protection laws in force in the Territory.

## 23 Compliance With Code of Conduct:

By entering into this agreement, the Supplier hereby confirms its compliance with the NEC Group's Code of Conduct Policy, which can be found at <https://www.NEC.co.za/wp-content/uploads/2022/02/Code-of-Conduct.pdf>. NEC undertakes to comply at all times with Supplier's Code of Conduct available at : <https://investors.aviatnetworks.com/code-conduct-0> and as may be updated by Supplier from time to time.

## 24 Confidentiality Obligations.

24.1 Each Party ("Recipient") undertakes to the other Party ("Disclosing Party") that:

24.1.1 it will treat all Confidential Information as confidential and will not disclose such Confidential Information to any third Party, other than its auditors and other professional advisers, without the Disclosing Party's prior written consent;

24.1.2 if it discloses any Confidential Information to its auditors and other professional advisors, it will ensure that such auditors and professional advisors are bound by obligations of confidentiality no less onerous than those contained in this clause 24;

24.1.3 it will only disclose the Confidential Information to those of its employees, contractors and agents who require such Confidential Information to perform their duties and all such employees, contractors and agents will be bound by obligations of confidentiality no less onerous than those contained in this clause 24; and

24.1.4 will not use such Confidential Information other than for the purposes of this Agreement.

24.2 The provisions of clause 24.1 shall not apply to Confidential Information which:

24.2.1 was developed by Recipient independently of the Confidential Information disclosed by the Disclosing party which can be verified by independent evidence ; or

24.2.2 has been or becomes now or in the future published in the public domain without breach of this Agreement or breach of a similar agreement by a third party; or

24.2.3 is disclosed or used by Recipient after receiving express written consent from an authorized representative of the Disclosing party to disclose or use; or

24.2.4 is required to be disclosed by law or in terms of a court order of a court of competent jurisdiction or otherwise in accordance with any direction or request issued by any governmental or regulatory body, in which event the recipient shall (i) only disclose such of the Confidential Information as is strictly required; (ii) use its reasonable endeavours to seek confidential treatment of such Confidential Information; and (iii) notify the disclosing Party as soon as reasonably possible (and if possible prior to any disclosure) of its obligation to so disclose.

24.3 The obligations contained in this clause 24 shall survive termination of this Agreement.

**25 Publicity**

25.1 *Consent.* Save for the use as set out in this Agreement, neither Party will use the other Party's name, logo, or trademarks, or issue any press release or public announcement regarding this Agreement, without the other Party's written consent, unless specifically permitted under this Agreement or required by Law.

25.2 *Cooperation.* The Parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this Agreement and the relationship between the Parties.

**26 Force Majeure**

26.1 Notwithstanding any other provision of this Agreement, neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party (or its Affiliates) as a result of any delay or other failure in the performance of its obligations under this Agreement (other than an obligation to pay money, including the Fees) if and to the extent that such delay or other failure is caused by an event or circumstance which was unforeseeable and not within the reasonable control of the Party concerned ("**Force Majeure Event**"). The Party affected by a Force Majeure event shall be granted with an equitable extension of time for performance of the relevant obligation(s) *provided that* it complies with clause 26.2.

26.2 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event shall:

26.2.1 notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event as soon as reasonably practicable; and

26.2.2 after cessation of the Force Majeure Event, as soon as reasonably practicable notify the other Party thereof and resume full performance of its obligations under this Agreement.

**27 Non-Solicitation**

27.1 Neither Party shall, whether directly or indirectly and whether for its own benefit or the benefit of any third party, at any time while this Agreement is in force and for a period of 12 (twelve) months from the date on which this Agreement terminates encourage, entice, induce, solicit, offer employment or employ any person employed by the other Party who has had a material role in the performance of this Agreement, other than via a job advertisement to the general public.

**28 Termination**

28.1 *Termination for Material Breach.* Each Party may terminate this Agreement with immediate effect by delivering written notice of the termination to the other Party, if:

28.1.1 the other Party fails to materially perform, has made or makes any material inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations in this Agreement; and

28.1.2 such failure, inaccuracy, or breach is either non-remediable or continue unremedied for a period of more than 14 (fourteen) Business Days' after the injured Party delivers notice to the breaching Party reasonably detailing the breach.

28.2 *Termination for Insolvency.* If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this Agreement with immediate effect by delivering notice of the termination to the first Party.

28.3 *Termination due to Force Majeure.* If due to Force Majeure, a Party is or shall be unable to perform a material obligation under this Agreement or is delayed or prevented from performing its obligations for a continuous period exceeding 90 Business Days or a total of more than 180 Business Days in any year, NEC may terminate this Agreement with immediate effect by delivering notice of the termination to the Supplier.

28.4 *Termination for convenience.* Either Party shall be entitled to terminate this Agreement without cause and without liability to the other Party during the Renewal Term, by observing a two (2) months' notice period prior to the effective termination date.

## 29 Effect of Termination

29.1 *Termination of Obligations.* On termination for any reason or expiry of this Agreement, the following shall occur:

- a. NEC shall cease to represent itself as Supplier's authorized distributor, cease to use Supplier's trademarks, and promptly return to Supplier any demonstration equipment or Products not intended for sale.
- b. Except for termination for cause, Supplier agrees to fill NEC's Purchase Orders accepted by Supplier prior to the effective date of termination, provided that NEC can and will comply with all provisions of the Agreement, and NEC agrees to make full payment for such Purchase Orders, all in accordance with this Agreement, to the same extent as if termination had not occurred. Supplier's acceptance of any Purchase Orders from NEC after the effective date of termination (or payment therefor), will not have the effect of renewing, or extending the Term of this Agreement.
- c. Neither Supplier nor NEC shall be liable to the other by reason of expiration or termination *per se* of this Agreement including, without limitation, any liability for compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases, or commitments made in connection with the business or goodwill of Supplier or NEC, or otherwise.

29.2 *No Further Liability.* On termination or expiration of this Agreement, neither Party will be liable to the other Party, except for liability that arose before the termination or expiration of this Agreement.

29.3 *Continued Assistance.* Subject to the issuance by NEC of one or more Purchase Orders for Support Services, the scope and terms of which shall be agreed between the Parties, the Supplier shall provide Support Services to NEC after the termination or expiry of this Agreement.

29.4 Reserved.

29.5 *Return or Destroy of Materials Confidential Information.* Each Party shall promptly cease to use and shall return or (at the other Party's reasonable request) securely destroy all Confidential Information and other equipment, materials and property of the other Party then in its possession or control in connection with the supply of the Products and Support Services under this Agreement and shall on request certify in writing that this has been done.

29.6 *Continuing Provisions.* Any provision of this Agreement which expressly or by implication is intended to continue in force after termination shall do so notwithstanding termination or expiry of this Agreement.

## 30 Indemnification

30.1 *Indemnification by Supplier.* The Supplier (as an indemnifying Party) shall indemnify NEC (as an indemnified Party) against all losses, damages, liability, costs and expenses (including reasonable professional fees) arising out of any claims, actions or proceedings brought by a third party claiming:

- 30.1.1 a breach of any provision of this Agreement by Supplier or Supplier's representatives;
- 30.1.2 any negligence or act or omission, wilful misconduct, or other tortious conduct of Supplier or Supplier's representatives including any resulting bodily injury, death of any person, or damage to real or tangible personal property;
- 30.1.3 a loss or damage howsoever caused by the Supplier's supply of Products, Services, Support Services or any defects therein solely attributable to Supplier;
- 30.1.4 any failure by Supplier or Supplier's representatives to comply with any applicable laws;

- 30.1.5 a breach by Supplier or Supplier's representatives of its agreement with a third party as a result of, or in connection with, entering into, performing under, or terminating this Agreement.
- 30.2 *Indemnification by NEC:* NEC shall indemnify Supplier and Supplier's affiliates against all losses, damages, liability, costs and expenses (including reasonable professional fees) arising out of any claims, actions or proceedings arising out of or relating to any third party claim relating to or alleging:
  - 30.2.1 a breach of any provision of this Agreement by NEC or NEC's representatives;
  - 30.2.2 any negligence or act or omission, wilful misconduct, or other tortious conduct of NEC or NEC's representatives, including any resulting bodily injury, death of any person, or damage to real or tangible personal property;
  - 30.2.3 any promotion, demonstration, implementation, or integration made by NEC and not expressly directed by Supplier infringes any Intellectual Property Right of a third party;
  - 30.2.4 a purchase of the Products by any person or entity purchasing through NEC or NEC's representatives and not directly relating to a claim of Limited Warranties breach;
  - 30.2.5 any representations or statements made by NEC or NEC's representatives not specifically authorized by Supplier herein or in writing;
  - 30.2.6 any failure by NEC or NEC's representatives to comply with any applicable laws;
  - 30.2.7 a breach by NEC or NEC's representatives of its agreement with a third party as a result of, or in connection with, entering into, performing under, or terminating this Agreement.
- 30.3 *Exclusions.* Neither Party will be required to indemnify the other Party against losses to the extent such losses are caused or contributed to by the other Party.

### **31 Limitation on Liability**

- 31.1 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; or (b) fraud or fraudulent misrepresentation.
- 31.2 Subject to clause 31.1, Each Party's total liability to the other Party ("**Aggrieved Party**") or any third party claiming through the Aggrieved Party shall not exceed the actual value of Purchase Orders issued to Supplier by NEC under this Agreement. Each Party's total and liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement.
- 31.3 Notwithstanding any provision to the contrary of this Agreement, the following types of loss are wholly excluded from recoverable damages: (a) loss of revenue, (b) loss of profits, (c) loss of sales or business, (d) loss of agreements or contracts, (e) loss of use, (f) loss of anticipated savings, (g) loss of or damage to goodwill, (h) lost or corrupted data, (i) losses resulting from system shutdown, failure to accurately transfer, read or transmit information, failure to update or provide correct information, (j) system incompatibility or providing incorrect compatibility information, (k) breaches in system security, and (l) special, indirect, incidental, punitive or consequential losses of any party, including third parties, even if Supplier has been advised of the possibility of such losses. The exclusions stated in this clause 31.3 shall apply to any claim or cause of action whether in contract or tort (including negligence, strict liability or breach of warranty).
- 31.2 This clause shall survive the termination or expiration of this Agreement.

### 32 Anti-Corruption Obligation

- 32.1 Each Party shall not, and shall procure that its employees and agents shall not, offer, give or agree to give any person, or accept or agree to accept from any person, whether for itself or on behalf of another, any gift, payment, consideration, financial or non-financial advantage or benefit of any kind, which constitutes an illegal or corrupt practice under the laws of any country, either directly or indirectly in connection with this Agreement, or otherwise than in connection with this Agreement (the “**Anti-Corruption Obligation**”).
- 32.2 Each Party shall immediately disclose in writing to the other Party details of any breach of the Anti-Corruption Obligation. This is an ongoing obligation.
- 32.3 Each Party shall:
- 32.3.1 always maintain strict compliance with the Anti-Corruption Obligation;
  - 32.3.2 monitor its employees, agents and sub-contractors who are acting in connection with this Agreement to ensure compliance with the Anti-Corruption Obligation; and
  - 32.3.3 make clear, in all its dealings in connection with this Agreement, that it is required by the other Party to act, and is acting, in accordance with the Anti-Corruption Obligation.
- 32.4 Any breach of this clause 32 by a Party shall entitle the other Party to immediately terminate this Agreement by delivering notice of the termination to the Party in breach and the Party in breach hereby indemnifies the other Party in full for any damages and losses of any nature incurred, caused, arising out of or in connection to such breach.

### 33 General Provisions

- 33.1 *Entire Agreement.* The Parties intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement:
- 33.1.1 represent the final expression of the Parties’ intent relating to the subject matter of this Agreement;
  - 33.1.2 contain all the terms the Parties agreed to relating to the subject matter; and
  - 33.1.3 replace all of the Parties’ previous memorandums of understanding, discussions, understandings and agreements relating to the subject matter of this Agreement.
- 33.2 *Counterparts*
- 33.2.1 *Signed in Counterparts.* This Agreement may be signed in any number of counterparts.
  - 33.2.2 *All Counterparts Original.* Each counterpart when signed and dated is an original.
  - 33.2.3 *Counterparts Form One Document.* Together, all counterparts shall constitute one single document.
  - 33.2.4 *Electronic exchange.* Each Party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement.
- 33.3 *Severability.* If any part of this Agreement is declared illegal, unenforceable or invalid, the remainder will continue to be legal, valid and enforceable. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 33.4 *Amendment.* This Agreement can be amended only by a writing signed by both Parties.
- 33.5 *Waiver*
- 33.5.1 *Affirmative Waivers.* No Party’s failure, delay or neglect to enforce any rights, power or remedy provided by law or under this Agreement will operate as a waiver of that Party’s right, power or remedy nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

- 33.5.2 *Written Waivers.* A waiver of any term, provision, condition or breach of this Agreement is only effective if it is in writing and signed by the Party granting the waiver and then only in the instance and for the purpose for which it is given.
- 33.5.3 *No Course of Dealing.* No single or partial exercise of any right, power or remedy provided by law or under this Agreement will preclude any further exercise of it or the exercise of any other right, power or remedy.
- 33.6 *No Relationship.* Save for the provisions set out in this Agreement, nothing herein creates any special relationship between the Parties, such as a partnership, joint venture, or employee/employer relationship between the Parties.
- 33.7 *No Authority.* Save for the provisions set out in this Agreement, neither Party will have the authority to, and will not, act as agent for or on behalf of the other Party or represent or bind the other Party in any manner.
- 33.8 *Assignment.* Neither Party may assign this Agreement or any of their rights or obligations under this Agreement without the other Party's written consent, such consent not to be unreasonably withheld or delayed; provided, that the Supplier may assign to one or more of its affiliates, provided that such affiliate and the Supplier are jointly and severally liable for all of the Supplier's obligations under this Agreement.
- 33.9 *Further Assurance.* Each Party shall do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 33.10 *Not Used*
- 33.11 *Costs and expenses.* Each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).
- 33.12 *Language.* The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.
- 33.13 *Third party rights.* Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights to enforce any of the provisions of this Agreement.
- 33.14 *Notices*
- 33.14.1 *Method of Notice.* The Parties shall give all notices and communications between the Parties in writing by: (i) personal delivery; (ii) a nationally-recognized, next-day courier service; (iii) first-class registered or certified mail, postage prepaid; or (iv) electronic mail to the Party's address specified in this Agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section.
- 33.14.2 *Receipt of Notice.* A notice given under this Agreement will be effective on
- 33.14.2.1 the other Party's receipt of it; or
- 33.14.2.2 if mailed, the earlier of the other Party's receipt of it and the fifth business day after mailing it.
- 33.15 *Dispute Resolution*
- 33.15.1 *Arbitration.* Any dispute or controversy arising out of or in connection with this Agreement may be settled by arbitration in New Zealand according to the the Arbitration Act 1986 or any succeeding legislation, and by 1 (one) arbitrator.
- 33.15.2 *Judgment.* Judgment may be entered on the arbitrator's award in any court having jurisdiction.
- 33.15.3 *Arbitrator's Authority.* The arbitrator will not have the power to award any punitive or consequential damages.
- 33.16 *Governing Law.* This Agreement shall be governed, construed, and enforced in accordance with the laws of England and Wales.
- 33.17 *Domicilium Citandi ex Executandi*
- 33.17.1 Any notice in terms of this Agreement may be hand delivered to the physical address of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice, together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in which event proof of postage issued by the relevant postal authority will serve as proof.

33.17.2 The Parties respectively choose their domicilium citandi ex executandi for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature at the following addresses:

Supplier: Physical Address Postal Address

51 Changi Business Park  
Central 2, #08-03  
The Signature

ShentonWay#18-01,  
SGX CentreI,Singapore  
Singapore068804

Facsimile number: [...]

Email Address: [...]

NEC:

Physical Address  
Level 1, 1 Willeston Street  
Wellington, 6011  
New Zealand  
Email Address: [...]

Postal Address  
Same

**SIGNATORIES IN EXECUTION**

SIGNED at Auckland, New Zealand on this 18 day of November 2023 in the presence of the undersigned witness

/s/ Wilma Burich

As witness

**Name: Wilma Burich**

/s/ Melanie Barber

for and on behalf of the **NEC New Zealand Limited**

*(who warrants that he/she is duly authorised)*

**Name: Melanie Barber**

SIGNED at Austin, TX on this 30 day of November 2023 in the presence of the undersigned witness

/s/ Anca Pocan

As witness

**Name: Anca Pocan**

/s/ Erin Boase

for and on behalf of AVIAT NETWORKS (S) Pte. Ltd.

*(who warrants that he/she is duly authorised)*

**Name: Erin Boase**

[Signature Page to New Zealand Distribution Agreement]

**Annexure A – Products and Services**

**Annexure A1 -> Products & Services in the scope of Distributor’s exclusivity**

[Intentionally omitted]

**Annexure A2 -> Products & Services that Distributor is authorized to distribute on a non-exclusive basis**

[Intentionally omitted]

**Annexure A.3 -> Product Discontinuance – common provisions**

[Intentionally omitted]

**Annexure A.4 -> Specific Support Services provisions**

[Intentionally omitted]

**A.5 - Product & Services Pricing**

[Intentionally omitted]

**Annexure B1 -> Customers within Distributor’s exclusivity for the products listed in Annexure A1**

[Intentionally omitted]

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

**DISTRIBUTION AGREEMENT**

BETWEEN

**NEC CORPORATION OF MALAYSIA SDN BHD**  
(hereinafter called “NECOMAL” or “Distributor”)

Registration Number:  
(Company No. 200001023469 (526077-M))

and

**AVIAT NETWORKS (S) PTE. LTD.**  
(hereinafter after called “Supplier”)

Registration Number:  
199901592C

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This Distribution Agreement (hereinafter referred to as the “Agreement”) is made on December 1<sup>st</sup>, 2023 (the “Effective Date”) between **NEC CORPORATION OF MALAYSIA SDN BHD** (Company No. 200001023469) (526077-M), a private company with its principal place of business at Suite 19-01, Level 19, The Gardens South Tower, Mid Valley City, Lingkaran Syed Putra, 59200 Kuala Lumpur, Malaysia (hereinafter referred to as “**NECOMAL**” or “**Distributor**”) and Aviat Networks (S) Pte. Ltd., a limited liability corporation with its principal place of business at 51, Changi Business Park Central 2 #08-03, The Signature, Singapore 486066 (hereinafter referred to as the “**Supplier**”).

Both the Distributor and Supplier shall be collectively referred to as “Parties”, and each separately as “Party”, as the case may be.

WHEREAS:

- (A) The Supplier supplies wireless network products.
- (B) NECOMAL is a renowned systems integrator providing custom ICT technology solutions and services in the Territory.
- (C) The Supplier wishes to authorize and appoint NECOMAL, and NECOMAL wishes to accept the authorization and appointment as the Supplier’s distributor on a non-exclusive basis (as set out in clause 3 hereof), to market, distribute, sell, or incorporate for distribution, the Products and Services listed in Annexure A attached to this Agreement, within the Territory in each case on the terms and subject to the conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:

**1 Definitions**

In this Agreement:

“**Business**” means the wireless backhaul business.

“**Business Day**” means a day other than a Saturday, a Sunday, or any public holiday in the Territory.

“**Confidential Information**” means all non-public, confidential or proprietary information disclosed by one Party to the other Party, in any tangible or intangible form, such as but not limited to written, oral, visual, audio, those produced by electronic media, or through any other means, that is designated as confidential or that by its nature or circumstances surrounding its disclosure, should be reasonably considered as confidential, including but not limited to products or planned products, processes and/or procedures, technological achievements and interests, customers and potential customers, business prospects, financial statements and information, financial situation and corporate plans, internal activities, future plans of the disclosing party, and other information deemed proprietary or confidential by the disclosing party or any other matter in which the disclosing party may have any interest whatsoever, which may include, without limitation, trade secrets, engineering designs, architecture and other technical data, as well as business plans, financial data. For the avoidance of doubt, for the purposed of this Agreement, all information disclosed by a Party to the other Party shall be treated as Confidential Information

“**Defect**” means a flaw in the materials and/or workmanship incorporated in a product during its manufacturing process which hinders its usability for the purpose for which it was originally designed and manufactured or substantially affects its performance in accordance with the technical specifications published by the manufacturer of the Products. Software and firmware bugs, known or unknown at the time of sale of the firmware or software, which cause the firmware or software to produce an incorrect or unexpected result, or to behave in ways unintended in the technical data sheets from the Supplier;

“**Delivery Date**” means the date at which the risk of loss or damage to the Products transfers to NECOMAL, in accordance with the risk transfer rules of the applicable Incoterm.

“**Effective Date**” is defined in the introduction to this Agreement.

“**Encumbrances**” means any pledges, liens, charges, security interests, leases, title retention agreements, mortgages, restrictions, easements, rights-of-way, title defects, options, adverse claims, or encumbrances of any kind.

“**End Customer**” means the final customer in the Territory that purchases the Products and/or Services listed in Annexure A from NECOMAL for its own internal use and not for resale.

“**Governmental Authority**” means:

- (a) any national, regional, local, or foreign government, and any political subdivision of any of them,
- (b) any agency or instrumentality of any such government or political subdivision,
- (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), and
- (d) any arbitrator, court or tribunal of competent jurisdiction.

“**Initial Term**” is defined in clause 13.1.

“**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world:

- (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
- (b) copyrights, including all applications and registrations related to the foregoing,
- (c) trade secrets and confidential know-how,
- (d) patents and patent applications,
- (e) websites and internet domain name registrations, and
- (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

“**Inspection Period**” is defined in clause 6.1.

“**Law**” means:

- (a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
- (b) any official directive, protocol, code, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

“**Legal Proceeding**” means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).

“**Parties**” means both the Supplier and NECOMAL, collectively.

“**Party**” means either the Supplier or NECOMAL, individually.

“**Permits**” means all material licenses, franchises, permits, certificates, approvals, and authorizations, from Governmental Authorities necessary for the ownership and operation of the Party’s business.

“**Person**” includes

- (a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and
- (b) any individual.

“**Products**” means the Pasolink Products and related Software as further listed in Annexure A, attached to this Agreement.

“**Purchase Order**” is defined in clause 4.1.

“**Renewal Term**” is defined in clause 13.2.

“**Scope Specific Agreement**” means the separate agreement entered into by the Supplier and NECOMAL in respect of the Services to be rendered by the Supplier directly to an End-User on behalf of NECOMAL.

“**Services**” means the services listed in Annexure A, attached to this Agreement.

“**Support Service Charges**” means the charges to be paid for the Support Services under clause 12 and **Error! Reference source not found.**

“**Support Services**” means the support services scoped in clause 11.1 and listed in **Error! Reference source not found.**, attached to this Agreement.

“**Taxes**” includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other applicable taxes for which a Party may have any liability imposed by any Governmental Authority, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

“**Territory**” means Malaysia.

“**USD**” means the United States dollar.

## 2 Interpretation

### 2.1 References to Specific Terms

2.1.1 *Currency*. Unless otherwise specified, all dollar amounts expressed in this Agreement refer to United States Dollars.

2.1.2 “*Including*”. Where this Agreement uses the word “including,” it means “including without limitation” and where it uses the word “includes,” it means “includes without limitation.”

2.1.3 “*Knowledge*”. Where any representation, warranty, or other statement in this Agreement, or in any other document entered into or delivered under this Agreement, is expressed by a Party to be “to its knowledge” or is otherwise expressed to be limited in scope to facts or matters known to the Party or of which the Party is aware, it means:

2.1.3.1 the then-current, actual knowledge of the directors and officers of that Party, and

2.1.3.2 the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.

2.1.4 *Statutes, etc.* Unless specified otherwise, any reference in this Agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.

2.2 *Number and Gender*. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

2.3 *Headings*. The headings used in this Agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

2.4 *Internal References*. References in this Agreement to sections and other subdivisions are to those parts of this Agreement.

2.5 *Calculation of Time*. In this Agreement, a period of days begins on the first day after the event that began the period and ends at 11:59 p.m. Malaysia Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 11:59 p.m. Malaysia Time on the next Business Day.

- 2.6 *Construction of Terms.* The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting Party will not apply in interpreting this Agreement.
- 2.7 *Conflict of Terms.* If there is any inconsistency between the terms of this Agreement and those in any Annexures to this Agreement or in any document entered into under this Agreement, the terms of this Agreement will prevail. The Parties shall take all necessary steps to conform the inconsistent terms to the terms of this Agreement.
- 2.8 *Binding Effect.* This Agreement will benefit and bind the Parties and their respective heirs, successors, and permitted assigns.

### **3 Appointment of NECOMAL**

- 3.1 NECOMAL shall, for the Initial Term or Renewal Term (as applicable), purchase Products and Services only from the Supplier -and the Supplier agrees to supply NECOMAL with Products and Services on a continuous basis in line with NECOMAL' Purchase Orders accepted by the Supplier- and it shall not, for the Initial Term or Renewal Term (as applicable), distribute or manufacture any goods and/or services which compete with the Products and/or Services accepted by the Supplier at the price as listed in Annexure A—Products, Services and Price List.
- 3.2 NECOMAL shall, for the Initial Term or Renewal Term (as applicable), be the Supplier's distributor on a non-exclusive basis of the Products within the Territory.
- 3.3 NECOMAL shall act as an independent contractor, purchasing the Products from the Supplier and reselling them in its own name, on its own behalf and on its own account. NECOMAL shall have no authority to enter into any contract or commitment in the name of or for the account of the Supplier or to bind the Supplier in any manner whatsoever.
- 3.4 The Parties may revise the list of Products and Services at any time during the Initial Term or Renewal Term (as applicable) by agreement in writing provided that the revision shall not affect those quotation(s) which have already been issued by the Supplier to NECOMAL and which are still within the quote validity period of 30 (thirty) days from the quote issuance date..
- 3.5 To the extent not specifically covered in this Agreement, sales transactions between the Parties shall be covered by Supplier's standard Terms and Conditions of Sale in effect at the time of Supplier's acceptance of a Purchase Order issued by NECOMAL ("Supplier's Terms"), incorporated by reference in this Agreement, which shall prevail over any terms and conditions included on any purchase order submitted by NECOMAL. In the event of any conflict between this Agreement and Supplier's Terms, the order of precedence is as follows: (a) this Agreement; (b) Supplier's Terms.

### **4 Orders**

- 4.1 *Purchase Orders.* From time to time, NECOMAL shall submit orders for Products to the Supplier in writing and in accordance with the respective quotation provided by the Supplier to Supplier's address listed in the introduction to this Agreement or as the Supplier otherwise specifies in writing (each, a "**Purchase Order**") and include in each Purchase Order:

- 4.1.1 each Product and/or Service it is ordering, identified by model, part number or service description;
  - 4.1.2 the amount of each Product and/or Service it is ordering;
  - 4.1.3 the unit price of each Product and/or Service it is ordering;
  - 4.1.4 the Incoterm applicable to the Purchase Order;
  - 4.1.5 the location for delivery; and
  - 4.1.6 the delivery date (the “**Delivery Date**”).
- 4.2 **Accepting, Modifying, and Rejecting Purchase Orders**
- 4.2.1 *By Notice.* Within 3 (three) Business Days’ of receiving a Purchase Order from NECOMAL, the Supplier shall accept, reject, or propose a modification to the Purchase Order by sending NECOMAL written notice of its acceptance, rejection, or proposed modification (as applicable), save that the Supplier shall not be permitted to reject or propose any modifications to any Purchase Order that is consistent with Annexures A&B and all the terms and conditions of this Agreement.
- 4.3 *Cancelling Purchase Orders.* NECOMAL may, at no expense to itself, cancel part or all of a Purchase Order before it is accepted in writing by the Supplier. After the acceptance of a Purchase Order by Supplier in writing, any Order cancellation shall entitle Supplier to charge cancellation charges up to the full amount of the cancelled Purchase Order.
- 4.4 **License Keys (If Applicable)**
- 4.4.1 Supplier shall provide NEC with the ability to generate license keys necessary for NEC and/or its End Customers to access, unlock or otherwise enable purchased Product features.
- 5 Delivery of Products and Scope Specific Agreement**
- 5.1 *Delivery.* The Supplier shall deliver each order of Products to NECOMAL in accordance with the CIF Port Klang, Malaysia Incoterm (2020 edition):
- 5.1.1 on the Delivery Date; and
  - 5.1.2 using any delivery method that the Parties shall agree to in writing.
- 5.2 *Risk of Loss Shifts on Delivery.* The risk of loss or damage to the Products is transferred to NECOMAL when the Products are handed to the first carrier, in accordance with the risk transfer rules of the CIF Port Klang, Malaysia Incoterm that is applicable to a Purchase Order, after which NECOMAL will assume the risk of loss or damage to the Products.
- 5.3 *Title transfer:* The title in the Products (including software media, where applicable) shall transfer from Supplier to NECOMAL upon shipment of the Products from the Supplier’s manufacturing facilities.

5.4 *Scope Specific Agreement.* In the event that NECOMAL resells Supplier's Services, Supplier and NECOMAL may agree, by entering into a mutually agreed Scope Specific Agreement, the terms and conditions under which Supplier shall render the Services to the End Customer directly on behalf of NECOMAL in accordance with the Scope Specific Agreement; however the Supplier shall have no direct relationship with the End Customer. NECOMAL shall at all times remain liable for payment of the Services provided by Supplier under the Scope Specific Agreement. NECOMAL shall enter into a similar back-to-back agreement with the End Customer for the relevant Services, provided always that NECOMAL shall not give any promise, guarantee, condition, or warranty about the Services beyond those given by Supplier in the Scope Specific Agreement or make any representation, pledge any credit, commit to any contract, or incur any liability for or on behalf of Supplier.

**6 Acceptance and Rejection of Product Deliveries**

6.1 *Inspection Period.* NECOMAL will have 20 (twenty) Business Days after the Products reach the named place of destination to inspect and test the Products for Defects, missing items, items shipped in error, items damaged in transit (the "**Issues**") and to ensure the order deliveries meet the specifications of the applicable Purchase Order and in the case of software Products, NECOMAL will have 5 (five) Business Days to test or inspect the software Products upon those software Products being authorized by the Supplier for downloading by NECOMAL (the "**Inspection Period**").

6.2 *Acceptance.* For the Products which satisfy the specifications of the applicable Purchase Order, NECOMAL shall accept the Products and notify the Supplier in writing of such acceptance within seven (7) days after the end of the Inspection Period.

6.3 *Deemed Acceptance.* NECOMAL will be deemed to have accepted Products if

6.3.1 NECOMAL fails to notify the Supplier on or before the expiration of the Inspection Period; or

6.3.2 if during the Inspection Period, NECOMAL sells, runs, or otherwise uses the Products beyond what is necessary for inspection and testing, and in a way a reasonable Person would consider consistent with NECOMAL having accepting the delivery from the Supplier.

6.4 *Rejection and Cure.* For the Product Issues supported by undisputed evidence:

6.4.1 NECOMAL shall deliver to the Supplier a written list detailing each Issue and the affected Products;

6.4.2 On NECOMAL returning the Products having an Issue at Supplier's cost and in accordance with Supplier's Return Material Authorization process, the Supplier shall promptly deliver to NECOMAL any Products necessary to remedy each Issue, at no expense to NECOMAL.

**7 Changes to Products.**

The Supplier may not discontinue, modify, or replace Products or Services that are subject to an accepted and outstanding Purchase Order, unless:

- 7.1 required by Law;
- 7.2 the Supplier is able to replace such Products and Services with similar or better products or services that achieve the same purpose and/or outcome;
- 7.3 the End Customer has agreed to such replacement of the Products and Services; and
- 7.4 the replacement products are no more expensive than the Products being replaced.

**8 Price**

8.1 *Price.* NECOMAL shall pay the Supplier's listed price for each Product or Service as advised by the Supplier. The price list in effect between the parties at the Effective Date is as set out in Annexure A - Products, Services and Price List attached to this Agreement. The price list is in U.S. dollars and Supplier's invoices shall be issued and paid in U.S. dollars. The price list is exclusive of all sales, use, excise, and other taxes, including withholding taxes, duties, assessments or fees or charges of any kind imposed by a governmental authority on any amount payable by the Distributor under this Agreement and represent net amounts the Supplier is entitled to receive and shall not be subject to any deductions for any reason whatsoever. For the avoidance of doubt, the Price List is set to reflect an ExWorks Supplier's manufacturing facilities delivery. Should NECOMAL request deliveries on CIF Port Klang, Malaysia Incoterm, then the CIF freight/insurance and export custom clearance duties and taxes shall be quoted on an adhoc basis and be added to the ExWorks price of the Products as a separate quotation line.

8.2 *Resale Prices.* NECOMAL may determine its own resale prices.

8.3 *Changes to Prices*

8.3.1 *Notice of Upcoming Price Changes.* If the Supplier changes its pricing, the Supplier shall give NECOMAL at least thirty (30) calendar days' notice before implementing such changes.

8.3.2 *No Effect on Outstanding Purchase Orders.* Changes to the Supplier's prices will not affect any Purchase Orders already submitted prior to the effective date of such price changes.

**9 Payment of Prices**

9.1 *Invoice Delivery.* The Supplier shall invoice NECOMAL for Product purchases at the time of shipment of the Products from Supplier's manufacturing facilities. In the case of Services, and unless differently agreed in a Purchase Order for Services, the Supplier shall invoice NECOMAL upon completion of the Services and/or, in the case of Support Services, annually in advance.

9.2 *Invoice Procedure and Requirements.* The Supplier shall:

9.2.1 issue each invoice to NECOMAL in writing, including:

- 9.2.1.1 an invoice date and number;
- 9.2.1.2 the total amount due;
- 9.2.1.3 the calculation of the total amount; and

9.2.1.4 the details of its nominated bank account; and

9.2.2 send each invoice to the nominated recipient of NECOMAL as advised by NECOMAL in writing.

9.3 *Payment.* NECOMAL shall pay each properly rendered invoice within 45 (forty-five) calendar days after receiving each invoice, to the account whose details are set out in the relevant invoice in accordance with clause 9.2.1.4. If Distributor fails to timely pay any outstanding amounts, Supplier may, in its sole discretion, and in addition to any other rights and remedies it may have under this Agreement and at law, including the right to suspend any delivery and to terminate any outstanding Purchase Order after 30 days of suspension, charge interest on such unpaid amounts equal to a rate of 1.5% per month or the maximum rate permitted by law, whichever is the lesser, from the date such amounts become due until the date such amounts are received in full, save that nothing contained in this provision shall apply to any improperly rendered or bona fide disputed invoice.

9.4 If NECOMAL disputes any invoice or other request for payment, NECOMAL shall immediately notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within 30 days of NECOMAL giving notice to the Supplier, the dispute shall be resolved in accordance with clause 33.15.

9.5 Unless differently agreed between the Parties in writing, the Supplier shall be responsible for the payment of all invoices due to third party suppliers of the Supplier in connection with the provision of the Support Services.

9.6 NECOMAL shall be entitled to require the Supplier to provide all such evidence as may be reasonably necessary to verify the Support Service Charges and any other matters set out in an invoice.

## **10 Taxes.**

10.1 NECOMAL and the Supplier shall respectively bear and pay any applicable tax that may be imposed on them in relation to their obligations under this Agreement and a Purchase Order.

10.2 If the payment by NECOMAL of any sum due under this Agreement is subject by law to withholding tax, NECOMAL shall:

10.2.1 withhold such legislated levied amount from the payment to the Supplier;

10.2.2 account to the relevant tax authority for that withholding tax; and

10.2.3 supply to the Supplier a certificate certifying such payment of withholding tax.

## **11 Support Services – Level 3 to be provided by Supplier**

11.1 Where NECOMAL issues a Purchase Order for support services outside of the Product warranty period and basic coverage (the “**Support Services**”), the Supplier shall provide the Support Services—Level 3 to the Products and Software to NECOMAL in accordance with this Agreement and for the duration covered by NECOMAL’s Purchase Order.

**12 Support Services Charges**

- 12.1 In consideration of Supplier providing the Support Services to NECOMAL, NECOMAL shall pay the Support Service Charges to Supplier.
- 12.2 The Supplier shall invoice NECOMAL for the Support Services yearly in advance. NECOMAL shall pay Supplier's invoices for the Support Services within 45 calendar days of receipt of Supplier's invoice, to the bank account nominated in writing by Supplier.

**13 Term**

- 13.1 *Initial Term.* The initial term of this Agreement will begin on the Effective Date and continue for 12 (twelve) months thereafter (the "**Initial Term**"), unless terminated earlier in accordance with the provisions of this Agreement.
- 13.2 *Non-Automatic Renewal.* The parties may discuss the principle and the details of a renewal of this Agreement at three (3) months prior to the expiry of the Initial Term.

**14 Marketing Development / Sales Development Contribution**

- 14.1 The Parties shall discuss in good faith at the beginning of each anniversary of this Agreement NEC's Marketing and Sales Development strategy and specific plans in the Territory for the contract year to come and the Parties shall agree in good faith if Supplier should contribute in any way to those efforts. Supplier shall make reasonable commercial efforts to participate with NEC in fairs, exhibitions and similar events in the Territory, but shall be under no obligation to do so unless such participation is agreed by the parties in writing sufficiently in advance of each event to enable proper preparation by the parties.

**15 Representations**

15.1 Mutual Representations

- 15.1.1 *Existence.* The Parties are corporations incorporated and existing under the Laws of the jurisdictions of their respective incorporation.
- 15.1.2 *Authority and Capacity.* The Parties have the authority and capacity to enter into this Agreement.
- 15.1.3 *Execution and Delivery.* The Parties have duly executed and delivered this Agreement.
- 15.1.4 *Enforceability.* This Agreement constitutes a legal, valid, and binding obligation, enforceable against the Parties according to its terms.
- 15.1.5 *No Conflicts.* Neither Party is under any restriction or obligation that the Party could reasonably expect might affect the Party's performance of its obligations under this Agreement.
- 15.1.6 *No Breach.* Neither Party's execution, delivery, or performance of its obligations under this Agreement will breach or result in a default under:
  - 15.1.6.1 its articles, by-laws, or any unanimous shareholders agreement;

15.1.6.2 any Law to which it is subject;

15.1.6.3 any judgment, Order, or decree of any Governmental Authority to which it is subject; or

15.1.6.4 any agreement to which it is a Party or by which it is bound.

15.1.7 *Permits, Consents, and Other Authorizations.* Each Party holds all Permits and other authorizations necessary to:

15.1.7.1 own, lease, and operate its properties, and

15.1.7.2 conduct its business as it is now carried on.

15.1.8 *No Disputes or Proceedings.* Each Party confirms, represents and warrants that there are no Legal Proceedings pending, threatened or foreseeable, against itself, which would affect its ability to complete its obligations under this Agreement.

15.1.9 *No Bankruptcy.* Neither Party has taken or authorized any proceedings related to that Party's bankruptcy, insolvency, liquidation, dissolution, or winding up.

## 15.2 Supplier's Representations

15.2.1 *Ownership.* The Supplier is the sole owner or rightful licensee of the Products, free of any claims by a third party or any Encumbrance.

15.2.2 *Legal Right.* The Supplier has the necessary right to transfer or license the Products to NECOMAL under the terms of this Agreement.

15.2.3 *No Infringement.* The Supplier's sale of the Products does not infringe on or constitute a misappropriation of the Intellectual Property or other rights of any third party.

## 16 Limited Warranties

16.1 *Products.* All Products are covered by the Supplier's warranty statements that are provided with the Products or Services, otherwise made available or advised by the Supplier from time to time. The Parties may mutually agree additional warranty terms on a case-by-case basis.

16.2 *Services.* The Supplier certifies that all its personnel are trained appropriately to perform the Services and, possess the necessary certifications and/or licenses to deliver the Services.

16.3 *Third Party Products.* Non-Supplier branded products or services receive warranty coverage as provided by the relevant third-party supplier.

16.4 *Software Warranty.* The Supplier hereby warrants that for the Software Warranty Period, which shall be 90 days from the date NECOMAL is in receipt of shipment of the Software at which the Software license is delivered by Supplier to NECOMAL, that when operated according to the documentation and other instructions the Supplier provides, software will perform substantially according to the functional specifications listed in the documentation.

16.5 *Support Services Warranty.* The Supplier hereby warrants any repairs performed by Supplier as part of the Product Warranty and/or Support Services purchased by NECOMAL for a period which is the longer of (a) the balance of the initial Product Warranty Period or (b) 6 months from the return shipment date.

- 16.6 The limited warranties listed in clauses 16.1 to 16.4 apply only to the Distributor and its End Customers. Supplier shall provide the above-mentioned warranties for the most current version of Supplier's products. Supplier shall have no obligation to provide warranty if a material defect in the Supplier's product is caused by the malfunction of non-Supplier hardware or Software, by modification of the Supplier's product not made the Supplier, by use of the Supplier's products that is not in accordance with the Supplier's written instructions for the Supplier's products. Supplier will accept warranty returns only from Distributor and Distributor must arrange all details of such returns with End Customers, eligible under the aforementioned warranties. EXCEPT FOR THE WARRANTIES STATED ABOVE, SUPPLIER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES ON SUPPLIER'S PRODUCTS FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 16.7 *Compliance with Laws.* The Supplier hereby warrants that the Products and Support Services comply with any applicable laws, statutes and regulations relevant to the manufacture, design, packaging, sale and use of the Products or Support Services (as applicable) in connection with this Agreement.
- 16.8 The following provisions relating to the Products, shall be addressed in accordance with the Supplier's Global Customer Services Support Guidelines:
- 16.8.1 *Upgrades/Updates.*
  - 16.8.2 *Return Material Authorisation/RMA.*
  - 16.8.3 *Support.*
  - 16.8.4 *Dead on Arrival / Out-of-box Failures.*
  - 16.8.5 *Service Level Agreement on warranties.*
- 17 Intellectual Property.**
- 17.1 The Supplier hereby grants to NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute the Products solely for use by the End Customers, and in connection with their use of the Products under this Agreement, within the Territory.
- 17.2 Except for rights expressly granted under this Agreement:
- 17.2.1 nothing in this Agreement will function to transfer any of either Party's Intellectual Property rights to the other Party, and
  - 17.2.2 each Party will retain exclusive interest in and ownership of its Intellectual Property developed before this Agreement or developed outside the scope of this Agreement.

- 17.3 The Supplier indemnifies and holds NECOMAL harmless against all losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by NECOMAL in connection with any claims, actions or proceedings arising out of or in connection with any actual or alleged infringement by the Products sold or licensed by Supplier to NECOMAL and/or by the Support Services provided by Supplier to NECOMAL of the Intellectual Property or other rights of a third Party. The preceding indemnification obligation shall not apply (i) to any Products and/or Support Services, or portion thereof, manufactured and/or provided to specifications furnished by NECOMAL or on NECOMAL's behalf, or (ii) to any infringement arising out of the use of such Products and/or Support Services in combination with other equipment, software or services not sold or recommended by Supplier, or (iii) to use in a manner not normally intended, or (iv) to any patent, copyright, trademark or trade secret in which NECOMAL, or any of NECOMAL's affiliates has a direct or indirect interest, or (v) if NECOMAL has not provided Supplier with prompt notice, authority, information and assistance necessary to defend the action, or (vi) to any claim alleging infringement of any intellectual property right or interest in FOSS.
- 17.4 The Supplier shall retain the right, in its sole discretion, to modify or replace the infringing Products or Services with non-infringing Products or Services and the Supplier shall give NECOMAL reasonable advance notice of such action.
- 17.5 The provisions of this clause 17 shall survive the termination of this Agreement, irrespective of the reasons for termination.

**18 Supplier Responsibilities**

- 18.1 *Supply of Products and Support Services.* The Supplier shall supply the Products and Support Services to NECOMAL in accordance with the provisions of this Agreement and agreed timeline in accepted Purchase Orders. Shipping or delivery dates are estimates only and subject to change based on Supplier's commitments at the time NECOMAL's Purchase Order is received and accepted, on NECOMAL's diligence in providing all information necessary to permit Supplier to complete the Purchase Order and on NECOMAL's ability to secure financing of the Purchase Order. When Supplier is providing financing to NECOMAL, shipments will not be made until all required security agreements and financing statements have been executed and approved by Supplier.
- 18.2 *Insurance.* Each party shall put in place and maintain appropriate public liability insurance for in respect of each claim and Supplier shall also put in place appropriate product liability insurance in respect of each product liability claim for the duration of this Agreement. Each party shall promptly provide copies of the insurance certificates to the other party at the other party's request.
- 18.3 *Licences and permits.* The Supplier shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Products and Support Services in accordance with this Agreement.
- 18.4 *Personnel.* The Supplier shall employ a sufficient number of competent and qualified personnel to carry out its obligations under this Agreement.

**19 NECOMAL Responsibilities**

- 19.1 *Marketing.* Subject to clause 14 hereof, NECOMAL shall use reasonable efforts to market, advertise, and otherwise promote and sell the Products in the Territory.

- 19.2 *Employee Training.* NECOMAL shall ensure that any of its employees who are responsible for the marketing, sales, and technical support services for the Products have proper skill, training, and background to enable them to provide these services in a competent and professional manner.
- 19.3 *Sales Forecast.* NECOMAL shall provide the Supplier with a non-binding quarterly sales forecast, in a mutually agreed-upon format.
- 19.4 *Markings and Notices.* NECOMAL will not remove or alter any trademarks, Product identification, notices of any proprietary or copyright restrictions, or other markings or notices that appear on the Products or their packaging.
- 19.5 *No Reverse Engineering.* NECOMAL will not:
- 19.5.1 create or attempt to, or aid or permits others to, create by reverse engineering, disassembly, de-compilation, reverse engineering or otherwise, the internal structure, the source code, hardware design, or organization of any Product, unless expressly permitted by Law;
  - 19.5.2 copy, modify, translate, or create derivative works of software included in any Product, unless the Supplier consents in writing; or
  - 19.5.3 separate the Product into component parts for distribution or transfer to a third party.
- 20 License Grants**
- 20.1 *Software License Grant.* Supplier hereby grants NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use and distribute any software incorporated in Products solely for use by the End Customers in the Territory in and in connection with their use of Products and always subject to such End Customers abiding by the terms of Supplier's End-User License Agreement included in Supplier's Terms.
- 20.2 *Documentation License Grant.* Supplier hereby grants to NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to:
- 20.2.1 reproduce or transmit documentation Supplier provides NECOMAL for marketing, selling, and distributing the Products (provided such documentation is not modified and Supplier's proprietary notices are not removed); and
  - 20.2.2 reproduce and transmit any user manuals and other documentation Supplier creates for customers in connection with the Products.
- 20.3 *Supplier Trademark License Grant.* Supplier hereby grants to NECOMAL a perpetual, non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use Supplier's name, trademarks, logos, and other identifying information on marketing literature, advertising, promotions, customer information, and programs NECOMAL creates in connection with the Products, subject to Supplier's written approval as well as guidelines for use, in each instance.

20.4 *Trademark Use.* NECOMAL shall comply with all of Supplier's policies regarding the use and display of Supplier's name, trademarks, logos, and other identifying information that Supplier provides to NECOMAL in writing.

**21 Compliance with Laws.**

Each Party shall:

21.1 At its own expense comply with all applicable Laws relating to the subject matter of the Agreement and in the performance of its duties under this Agreement, and

21.2 notify the other Party if it becomes aware of any non-compliance in connection with this clause 21.

Export Controls:

A. It is expressly understood that this Agreement, and all obligations arising hereunder are subject to U.S. Government export control laws and regulations, as amended, including without limitation, the requirement to obtain necessary approvals and licenses prior to the acceptance of any Purchase Orders, or the export of Products hereunder. Such shall also apply, by way of example only, to spare parts, warranty items delivered by Supplier in connexion with the Products, and the in-country transfer or re-export of any such Products by Distributor or an End Customer thereafter. Any Products purchased by or provided to Distributor, including any technical data or documentation pertaining thereto, shall not be sold, leased or assigned, transferred, conveyed or in any manner disposed of, either directly or indirectly, without the prior written approval of the United States Government, in accordance with U.S. Law.

B. Each Party agrees to use reasonable efforts to obtain all necessary U.S. Government approvals or licenses for the export and/or import of the Products hereunder for resale within the Territory. Distributor agrees to use reasonable efforts to provide timely and accurate End User Statements to Supplier, as appropriate, prior to Supplier's application for export license and submission of this Agreement to the appropriate U.S. Government Authority to secure the appropriate export approval.

C. Supplier shall be excused from performance, and not be liable for damages, including the assessment of late deliveries penalties, for failure to deliver the Products hereunder resulting from the U.S. Government's delay, denial, or withdrawal of approval to export Products to Distributor or an End Customer PROVIDED THAT the Supplier shall, without any unreasonable delay, inform to the Distributor about such delay in writing.

D. If Supplier has reason to believe that NEC has misrepresented, or failed to properly disclose, any fact regarding end use, End Customers or country of ultimate destination or any other information supplied or requested pursuant to the End Use Statement, Supplier may without liability to NEC terminate this Agreement for default immediately and discontinue all performance hereunder.

E. NECOMAL is responsible for obtaining any necessary import licences or permits required for the entry of the Products into the Territory or their delivery to NECOMAL. Further, NECOMAL is responsible for any customs, duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products into the Territory.

**22 Data Protection**

All personal data contained in this Agreement shall be processed in accordance with the relevant data protection laws in force in the Territory.

**23 Compliance With Code of Conduct:**

By entering into this agreement, the Supplier hereby confirms its compliance with the NEC Group's Code of Conduct Policy, which can be found at [https://my.nec.com/en\\_MY/about/about-nec-asia-pacific/csr/Ethical\\_Procurement.html](https://my.nec.com/en_MY/about/about-nec-asia-pacific/csr/Ethical_Procurement.html). NECOMAL undertakes to comply at all times with Supplier's Code of Conduct available at : <https://investors.aviatnetworks.com/code-conduct-0> and as may be updated by Supplier from time to time.

**24 Confidentiality Obligations.**

24.1 Each Party (“**Recipient**”) undertakes to the other Party (“**Disclosing Party**”) that:

- 24.1.1 it will treat all Confidential Information as confidential and will not disclose such Confidential Information to any third Party, other than its auditors and other professional advisers, without the Disclosing Party's prior written consent;
- 24.1.2 if it discloses any Confidential Information to its auditors and other professional advisors, it will ensure that such auditors and professional advisors are bound by obligations of confidentiality no less onerous than those contained in this clause 24;
- 24.1.3 it will only disclose the Confidential Information to those of its employees, contractors and agents who require such Confidential Information to perform their duties and all such employees, contractors and agents will be bound by obligations of confidentiality no less onerous than those contained in this clause 24; and
- 24.1.4 will not use such Confidential Information other than for the purposes of this Agreement.

24.2 The provisions of clause 24.1 shall not apply to Confidential Information which:

- 24.2.1 was developed by Recipient independently of the Confidential Information disclosed by the Disclosing party which can be verified by independent evidence; or
- 24.2.2 has been or becomes now or in the future published in the public domain without breach of this Agreement or breach of a similar agreement by a third party; or
- 24.2.3 is disclosed or used by Recipient after receiving express written consent from an authorized representative of the Disclosing party to disclose or use; or
- 24.2.4 is required to be disclosed by law or in terms of a court order of a court of competent jurisdiction or otherwise in accordance with any direction or request issued by any governmental or regulatory body, in which event the recipient shall (i) only disclose such of the Confidential Information as is strictly required; (ii) use its reasonable endeavours to seek confidential treatment of such Confidential Information; and (iii) notify the disclosing Party as soon as reasonably possible (and if possible prior to any disclosure) of its obligation to so disclose.

24.3 The obligations contained in this clause 24 shall survive a period of one (1) year after the termination of this Agreement or until the Confidentiality Information has become part of the public domain, whichever is longer.

**25 Publicity**

25.1 *Consent.* Save for the use as set out in this Agreement, neither Party will use the other Party's name, logo, or trademarks, or issue any press release or public announcement regarding this Agreement, without the other Party's written consent, unless specifically permitted under this Agreement or required by Law.

25.2 *Cooperation.* The Parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this Agreement and the relationship between the Parties.

**26 Force Majeure**

26.1 Notwithstanding any other provision of this Agreement, neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party (or its Affiliates) as a result of any delay or other failure in the performance of its obligations under this Agreement (other than an obligation to pay money, including the Fees) if and to the extent that such delay or other failure is caused by an event or circumstance which was unforeseeable and not within the reasonable control of the Party concerned ("**Force Majeure Event**"). The Party affected by a Force Majeure event shall be granted with an equitable extension of time for performance of the relevant obligation(s) *provided that* it complies with clause 26.2.

26.2 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event shall:

26.2.1 notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event as soon as reasonably practicable; and

26.2.2 after cessation of the Force Majeure Event, as soon as reasonably practicable notify the other Party thereof and resume full performance of its obligations under this Agreement.

26.3 If the performance by any Party of any of its obligations under this Agreement is affected by an event of Force Majeure for a continuous period in excess of thirty (30) days, the Parties hereto shall enter into bona fide discussions with regards to the possible resolutions and remedial measures with a view to alleviating its effects or to agree upon such alternative arrangements as may be fair and reasonable.

26.4 Where the event of Force Majeure persists for a continuous period exceeding 30 Days from the occurrence of the event of Force Majeure or a total of more than 60 Days in six (6) months or when Parties have no resolutions further to the discussions in Clause 26.3 above, both Parties may mutually terminate this Agreement in accordance with the applicable terms as stipulated in Clause 28.3 of this Agreement.

**27 Non-Solicitation**

27.1 Neither Party shall, whether directly or indirectly and whether for its own benefit or the benefit of any third party, at any time while this Agreement is in force and for a period of 12 (twelve) months from the date on which this Agreement terminates encourage, entice, induce, solicit, offer employment or employ any person employed by the other Party who has had a material role in the performance of this Agreement, other than via a job advertisement to the general public.

**28 Termination**

28.1 *Termination for Material Breach.* Each Party may terminate this Agreement with immediate effect by delivering written notice of the termination to the other Party, if:

28.1.1 the other Party fails to materially perform, has made or makes any material inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations in this Agreement; and

28.1.2 such failure, inaccuracy, or breach is either non-remediable or continue unremedied for a period of more than 14 (fourteen) Business Days' after the injured Party delivers notice to the breaching Party reasonably detailing the breach.

28.2 *Termination for Insolvency.* If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this Agreement with immediate effect by delivering notice of the termination to the first Party.

28.3 *Termination due to Force Majeure.* If due to Force Majeure, a Party is or shall be unable to perform a material obligation under this Agreement or is delayed or prevented from performing its obligations for a continuous period exceeding 30 Days or a total of more than 60 Days in six (6) months, NECOMAL may terminate this Agreement with immediate effect by delivering notice of the termination to the Supplier.

28.4 *Termination for convenience.* The Parties may terminate this Agreement by mutual agreement in writing during the Initial Term. Either party shall be entitled to terminate this Agreement without cause and without liability to the other Party during the Renewal Term, by observing a two (2) months' notice period prior to the effective termination date.

**29 Effect of Termination**

29.1 *Termination of Obligations.*

29.2 On termination for any reason or expiry of this Agreement, the following shall occur:

a. NECOMAL shall cease to represent itself as Supplier's authorized distributor, cease to use Supplier's trademarks, and promptly return to Supplier any demonstration equipment or Products not intended for sale.

b. Except for termination for cause, Supplier agrees to fulfil NECOMAL's Purchase Orders accepted by Supplier prior to the effective date of termination, provided that NECOMAL can and will comply with all provisions of the Agreement, and NECOMAL agrees to make full payment for such Purchase Orders, all in accordance with this Agreement, to the same extent as if termination had not occurred. Supplier's acceptance of any Purchase Orders from NECOMAL after the effective date of termination (or payment therefor), will not have the effect of renewing, or extending the Term of this Agreement.

c. Neither Supplier nor NECOMAL shall be liable to the other by reason of expiration or termination of this Agreement including, without limitation, any liability for compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases, or commitments made in connection with the business or goodwill of Supplier or NECOMAL, or otherwise.

29.3 *No Further Liability.* On termination or expiration of this Agreement, neither Party will be liable to the other Party, except for liability that arose before the termination or expiration of this Agreement, including but not limited to payment obligations and any antecedent breaches.

29.4 *Continued Assistance.* Subject to the issuance by NECOMAL of one or more Purchase Orders for Support Services, the scope and terms of which shall be agreed between the Parties, the Supplier shall provide such assistance as NECOMAL may reasonably require and as Supplier may reasonably offer after the termination or expiry of this Agreement.

29.5 *Return or Destroy of Materials Confidential Information.* Each Party shall promptly cease to use and shall return or (at the other Party's reasonable request) securely destroy all Confidential Information and other equipment, materials and property of the other Party then in its possession or control in connection with the supply of the Products and Support Services under this Agreement and shall on request certify in writing that this has been done.

29.6 *Continuing Provisions.* Any provision of this Agreement which expressly or by implication is intended to continue in force after termination shall do so notwithstanding termination or expiry of this Agreement.

### **30 Indemnification**

30.1 *Indemnification by Supplier:* The Supplier shall indemnify NECOMAL against any and all losses, damages, liability, costs and expenses, including reasonable attorneys' fees directly arising out of any claims, actions or proceedings brought by a third party claiming:

30.1.1 a breach of any provision of this Agreement by Supplier or Supplier's representatives;

30.1.2 any negligence or act or omission, wilful misconduct, or other tortious conduct of Supplier or Supplier's representatives, including any resulting bodily injury, death of any person, or damage to real or tangible personal property;

30.1.3 any infringement by the Supplier of any Intellectual Property Right of a third party;

30.1.4 any failure by the Supplier or Supplier's representatives to comply with any applicable laws;

30.1.5 a breach by the Supplier or Supplier's representatives of its agreement with a third party as a result of, or in connection with, entering into, performing under, or terminating this Agreement.

- 30.2 *Indemnification by NECOMAL*: NECOMAL shall indemnify Supplier and Supplier's affiliates against all losses, damages, liability, costs and expenses (including reasonable professional fees) arising out of any claims, actions or proceedings arising out of or relating to any third-party claim relating to or alleging:
- 30.2.1 a breach of any provision of this Agreement by NECOMAL or NECOMAL's representatives;
  - 30.2.2 any negligence or act or omission, wilful misconduct, or other tortious conduct of NECOMAL or NECOMAL's representatives, including any resulting bodily injury, death of any person, or damage to real or tangible personal property
  - 30.2.3 any promotion, demonstration, implementation, or integration made by NECOMAL and not expressly directed by Supplier infringes any Intellectual Property Right of a third party;
  - 30.2.4 a purchase of the Products by any person or entity purchasing through NECOMAL or NECOMAL's representatives and not directly relating to a claim of Limited Warranties breach;
  - 30.2.5 any representations or statements made by NECOMAL or NECOMAL's representatives not specifically authorized by Supplier herein or in writing;
  - 30.2.6 any failure by NECOMAL or NECOMAL's representatives to comply with any applicable laws;
  - 30.2.7 a breach by NECOMAL or NECOMAL's representatives of its agreement with a third party as a result of, or in connection with, entering into, performing under, or terminating this Agreement; or
- 30.3 *Exclusions*.
- Neither Party will be required to indemnify the other Party against losses to the extent such losses are caused or contributed to by the other Party.
- 31 Limitation on Liability**
- 31.1 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; or (b) fraud or fraudulent misrepresentation.
- 31.2 Subject to clause 31.1, each Party's total liability to the other Party ("**Aggrieved Party**") or any third party claiming through the Aggrieved Party shall not exceed the actual value of Purchase Orders issued to Supplier by NECOMAL under this Agreement in the 12 (twelve) months immediately preceding the date upon which the claim arose. Each Party's total and liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement.
- 31.3 Notwithstanding any provision to the contrary of this Agreement, the following types of loss are wholly excluded: (a) loss of revenue, (b) loss of profits, (c) loss of sales or business, (d) loss of agreements or contracts, (e) loss of use, (f) loss of anticipated savings, (g) loss of or damage to goodwill, (h) lost or corrupted data, (i) losses resulting from system shutdown, failure to

accurately transfer, read or transmit information, failure to update or provide correct information, (j) system incompatibility or providing incorrect compatibility information, (k) breaches in system security, and (l) special, indirect, incidental, punitive or consequential losses of any party, including third parties, even if Supplier has been advised of the possibility of such losses. The exclusions stated in this clause 31.3 shall apply to any claim or cause of action whether in contract or tort (including negligence, strict liability or breach of warranty).

31.4 This clause shall survive the termination or expiration of this Agreement.

**32 Anti-Corruption Obligation**

32.1 Each Party shall not, and shall procure that its employees and agents shall not, offer, give or agree to give any person, or accept or agree to accept from any person, whether for itself or on behalf of another, any gift, payment, consideration, financial or non-financial advantage or benefit of any kind, which constitutes an illegal or corrupt practice under the laws of any country, either directly or indirectly in connection with this Agreement, or otherwise than in connection with this Agreement (the “**Anti-Corruption Obligation**”).

32.2 Each Party shall immediately disclose in writing to the other Party details of any breach of the Anti-Corruption Obligation. This is an ongoing obligation.

32.3 Each Party shall:

32.3.1 always maintain strict compliance with the Anti-Corruption Obligation;

32.3.2 monitor its employees, agents and sub-contractors who are acting in connection with this Agreement to ensure compliance with the Anti-Corruption Obligation; and

32.3.3 make clear, in all its dealings in connection with this Agreement, that it is required by the other Party to act, and is acting, in accordance with the Anti-Corruption Obligation.

32.4 Any breach of this clause 32 by a Party shall entitle the other Party to immediately terminate this Agreement by delivering notice of the termination to the Party in breach and the Party in breach hereby indemnifies the other Party in full for any damages and losses of any nature incurred, caused, arising out of or in connection to such breach.

**33 General Provisions**

33.1 *Entire Agreement.* The Parties intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement:

33.1.1 represent the final expression of the Parties’ intent relating to the subject matter of this Agreement;

33.1.2 contain all the terms the Parties agreed to relating to the subject matter; and

33.1.3 replace all of the Parties’ previous memorandums of understanding, discussions, understandings and agreements relating to the subject matter of this Agreement.

33.2 *Counterparts*

- 33.2.1 *Signed in Counterparts.* This Agreement may be signed in any number of counterparts.
- 33.2.2 *All Counterparts Original.* Each counterpart when signed and dated is an original.
- 33.2.3 *Counterparts Form One Document.* Together, all counterparts shall constitute one single document.
- 33.2.4 *Electronic exchange.* Each Party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement.
- 33.3 **Severability.** If any part of this Agreement is declared illegal, unenforceable or invalid, the remainder will continue to be legal, valid and enforceable. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 33.4 *Amendment.* This Agreement can be amended only by a writing signed by both Parties.
- 33.5 **Waiver**
  - 33.5.1 *Affirmative Waivers.* No Party's failure, delay or neglect to enforce any rights, power or remedy provided by law or under this Agreement will operate as a waiver of that Party's right, power or remedy nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
  - 33.5.2 *Written Waivers.* A waiver of any term, provision, condition or breach of this Agreement is only effective if it is in writing and signed by the Party granting the waiver and then only in the instance and for the purpose for which it is given.
  - 33.5.3 *No Course of Dealing.* No single or partial exercise of any right, power or remedy provided by law or under this Agreement will preclude any further exercise of it or the exercise of any other right, power or remedy.
- 33.6 *No Relationship.* Save for the provisions set out in this Agreement, nothing herein creates any special relationship between the Parties, such as a partnership, joint venture, or employee/employer relationship between the Parties.
- 33.7 *No Authority.* Save for the provisions set out in this Agreement, neither Party will have the authority to, and will not, act as agent for or on behalf of the other Party or represent or bind the other Party in any manner.
- 33.8 *Assignment.* Neither Party may assign this Agreement or any of their rights or obligations under this Agreement without the other Party's written consent, such consent shall not be unreasonably withheld or delayed; provided, that the Supplier may assign to one or more of its affiliates, provided that such affiliate and the Supplier are jointly and severally liable for all of the Supplier's obligations under this Agreement.

- 33.9 *Further Assurance.* Each Party shall do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 33.10 *Conflict.* In the event of any conflict between this Agreement and its Annexures or between this Agreement and any other terms of a Purchase Order, the provisions of this Agreement (including Supplier's Terms incorporated by reference into this Agreement) shall prevail.
- 33.11 *Costs and expenses.* Each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).
- 33.12 *Language.* The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.
- 33.13 *Third party rights.* Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights to enforce any of the provisions of this Agreement.
- 33.14 Notices
- 33.14.1 *Method of Notice.* The Parties shall give all notices and communications between the Parties in writing by: (i) personal delivery; (ii) a nationally-recognized, next-day courier service; (iii) first-class registered or certified mail, postage prepaid; or (iv) electronic mail to the Party's address specified in this Agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section.
- 33.14.2 *Receipt of Notice.* A notice given under this Agreement will be effective on
- 33.14.2.1 the other Party's receipt of it; or
- 33.14.2.2 if mailed, the earlier of the other Party's receipt of it and the [fifth] business day after mailing it.
- 33.15 Dispute Resolution
- 33.15.1 *Arbitration.* Any dispute or controversy arising out of or in connection with this Agreement will be settled by arbitration in the Asian International Arbitration Centre (AIAC), Malaysia according to the rules of the AIAC Rules then in effect, and by a tribunal of 3 (three) arbitrators, chaired by one (1) arbitrator appointed by the Director of AIAC, and the remaining two (2) arbitrators will be nominated by each of the Parties respectively. The award of arbitration is final and binding, save for fraud or manifest errors.
- 33.15.2 *Judgment.* Judgment may be entered on the arbitrator's award in any court having jurisdiction.
- 33.15.3 *Arbitrator's Authority.* The arbitrator will not have the power to award any punitive or consequential damages.
- 33.16 *Governing Law.* This Agreement shall be governed, construed, and enforced in accordance with the laws of Singapore.

33.17 Domicilium Citandi et Executandi

33.17.1 Any notice in terms of this Agreement may be hand delivered to the physical address of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice, together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in which event proof of postage issued by the relevant postal authority will serve as proof.

33.17.2 The Parties respectively choose their domicilium citandi et executandi for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature at the following addresses:

| Supplier: | Physical Address   | Postal Address                           |
|-----------|--|--|
|           | 51 Changi Business Park<br>01,<br>Central 2, #08-03<br>Centre1, Singapore<br>The Signature | ShentonWay#18-<br>SGX<br>Singapore068804 |

Facsimile number: [...]

Email Address: [...]

NECOMAL: Suite 19-01, Level 19, The Gardens South Tower  
Mid Valley City, Lingkaran Syed Putra  
59200 Kuala Lumpur, Malaysia  
Facsimile number: [...]

Email Address:

1. Kusha Tunku Sufian : [...]
2. Eddie Hooi : [...]

**Signatories in Execution**

SIGNED at Kuala Lumpur, Malaysia on this 29 day of November 2023 in the presence of the undersigned witness

/s/ Chin Yuet Yoon

As witness

Name: Chin Yuet Yoon

/s/ Hooi Weng Yen

for and on behalf of the **NEC CORPORATION OF MALAYSIA  
SDN BHD**

*(who warrants that he/she is duly authorised)*

**Name: Hooi Weng Yen**

SIGNED at Austin, TX on this 30 day of November 2023 in the presence of the undersigned witness

/s/Anca Pocan

As witness

**Name: Anca Pocan**

/s/Erin Boase

for and on behalf of **AVIAT NETWORKS (S) PTE. LTD.** *(who warrants that he/she is duly authorised)*

**Name: Erin Boase**

[Signature Page to Malaysia Distribution Agreement]

**Annexure A - Products, Services and Price List**

[Intentionally omitted]

**Annexure B - Support Services – Level 3 and Support Service Charges**

[Intentionally omitted]

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

### Trademark License Agreement

This Trademark License Agreement (this “**Agreement**”) is entered into on November 30, 2023, by and between **NEC Corporation**, a Japanese corporation having its principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan (together with the Selling Entities, “**NEC**”) and **Aviat Networks, Inc.**, a Delaware corporation having its principal place of business at 200 Parker Drive, Suite C100A, Austin, Texas 78728 (together with the Purchasing Entities, “**Aviat**”). NEC and AVIAT are hereinafter collectively referred to as the “**Parties**”, and each individually as a “**Party**”.

#### WHEREAS:

- (A) NEC and AVIAT have entered into a master sale-of-business agreement on May 9, 2023, pursuant to which NEC has agreed to sell, and AVIAT has agreed to purchase and/or cause the Purchasing Entities to purchase, all right, title, and interest to certain assets relating to NEC’s wireless backhaul business, and AVIAT and/or the Purchasing Entities have agreed to assume certain liabilities relating to NEC’s wireless backhaul business, subject to the terms of such master sale of business agreement (the “**MBA**”).
- (B) Pursuant to the MBA, AVIAT is willing to grant, and NEC desires to take, the licenses of the Licensed Marks (defined below) in Japan in accordance with the terms and conditions of this Agreement.

**THEREFORE**, in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed by and between the Parties as follows:

#### 1. Definitions

For the purposes of this Agreement, the below definitions shall apply. Capitalized terms not otherwise defined herein are defined as set forth in the MBA.

“**Affiliate**” means any company Controlled by a Party, but any such entity shall be deemed to be Affiliated only as long as such Control exists;

“**Business**” has the meaning set forth in the MBA;

“**Completion**” means completion of the sale and purchase of certain assets as contemplated and in accordance with the MBA;

“**Completion Date**” means the date on which the Completion takes place pursuant to the MBA;

“**Control**” means directly or indirectly owning or controlling more than fifty percent (50%) of such company’s voting stock, or possessing the power to direct or cause the direction of its management and policies;

“**Licensed Goods**” means wireless backhaul products and other wireless communication products;

“**Licensed Marks**” means the Japanese registered trademarks “**PASOLINK**” (Registration #1806876; Registration Date September 27, 1985; Classes 07, 09 and 11), “**iPASOLINK**” (Registration #5552982; Registration Date January 25, 2013; Classes 09 and 42) and “**パソリンク**” (Registration #1806877; Registration Date September 27, 1985; Classes 07, 09 and 11);

“**Licensed Territory**” means Japan; and

“**MBA**” has the meaning set forth in the recitals.

## **2. Grant of Trademark License**

2.1 Subject to the terms and conditions of this Agreement, AVIAT hereby grants a royalty-free, non-exclusive, non-transferable, non-sublicensable, and perpetual right and license to NEC and its Affiliates to use the Licensed Marks in conjunction with the manufacture, promotion, advertising, distribution, sale, commercialization and other use of the Licensed Goods in the Licensed Territory. NEC is not entitled to use the Licensed Marks as an element of its company names or internet-domains. Nothing herein shall be construed to grant NEC the right to use the Licensed Marks except as expressly provided in this Agreement. For the avoidance of doubt, “non-exclusive” within the meaning of this Agreement means that AVIAT may use and license the Licensed Marks in the Licensed Territory subject to the terms and conditions set forth under Section 6.4 of the MBA.

2.2 Other than the license rights expressly granted herein, no other license or rights are granted, whether expressly or by implication, estoppel, reliance or otherwise, all of which are expressly excluded and disclaimed.

2.3 NEC shall ensure that its Affiliates comply with the terms and conditions of this Agreement as applicable, including, but not limited to, those regarding confidentiality obligations while they exercise the rights specified in Section 2.1 above. NEC shall be responsible and liable to AVIAT for any breach of such terms and conditions of this Agreement caused by any act or omission of its Affiliates as if such act or omission were that of NEC.

### **3. Term and Termination**

3.1 Unless otherwise earlier terminated pursuant to Section 3.2 below, this Agreement shall come into effect on the Completion and shall continue in full force and effect perpetually.

3.2 AVIAT may terminate this Agreement immediately upon written notice of termination to NEC upon any of the following events:

- (a) a petition for relief under any bankruptcy or insolvency legislation is filed by NEC, or a receiver is appointed for all or a substantial part of NEC's assets;
- (b) a petition for relief under any bankruptcy or insolvency legislation is filed against NEC, and such petition is not dismissed or vacated within thirty (30) calendar days;
- (c) dissolution or liquidation of NEC by resolution or by law; or
- (d) NEC ceases carrying on its wireless backhaul business.

AVIAT may also terminate this Agreement upon thirty (30) days' notice to NEC, and NEC's failure to cure during such thirty (30) day period, any material breach of the requirements under Section 5 (Quality Control). For clarity, if NEC has previously assigned this Agreement with the prior written consent of AVIAT in accordance with Section 16, AVIAT may only terminate this Agreement if the current holder (including any successor in interest) of the license granted herein becomes bankrupt or is dissolved in accordance with Sections 3.2(a)-(c) above.

3.3 Without prejudice to the provisions of Section 8 below, this Agreement shall terminate upon expiration of all the Licensed Marks automatically.

3.4 Upon termination of this Agreement, NEC (and its Affiliates) shall have the right to dispose of all stocks of Licensed Goods bearing the Licensed Marks in its possession or in the course of manufacture or production as of the date of termination for a period of one hundred and twenty (120) days after the date of termination, in each case, in accordance with the terms and conditions of this Agreement.

3.5 Except as necessary for NEC or its Affiliates to comply with applicable law, after the termination or expiration of this Agreement for any reason whatsoever, NEC shall itself, within a commercially reasonable time period, return to AVIAT or dispose of (at AVIAT's option), in accordance with instructions and guidance provided by AVIAT, all of the Confidential Information provided by AVIAT to it under this Agreement. NEC shall keep AVIAT's Confidential Information that is not returned or disposed of after termination or expiration of this Agreement in confidence, in accordance with Section 14 below. Upon AVIAT's request, NEC shall itself issue to AVIAT a document certifying the performance of obligations under this Section 3.5.

3.6 Upon the termination of this Agreement, except for Sections 3.4, 3.6, 11, and Sections 17 to 24, and any right, obligation, or required performance of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, all the other provisions of this Agreement shall lapse and cease to have effect, provided however that neither the lapsing of those provisions nor their ceasing to have effect shall affect any accrued rights or liabilities of either Party in respect of damages for non-performance of any obligation under this Agreement falling due for performance prior to such lapse and cessation.

#### **4. Ownership**

NEC acknowledges that AVIAT is and shall remain the sole owner of the Licensed Marks, including the goodwill and reputation symbolized thereby, and nothing herein shall affect AVIAT's property rights pertaining to the Licensed Marks. NEC acknowledges that nothing contained herein shall constitute an assignment of such rights and agrees that NEC will not take any action inconsistent with such ownership. NEC recognizes the value of the goodwill associated with the Licensed Marks and agrees and acknowledges that any goodwill arising out of the use of the Licensed Marks by NEC shall inure to the benefit of and be on behalf of AVIAT. NEC agrees that nothing in this Agreement shall give NEC any right, title, or interest in the Licensed Marks other than the right to use the Licensed Marks in accordance with this Agreement, and NEC agrees that it will not (i) challenge the title of AVIAT to the Licensed Marks, or (ii) attempt to register in any jurisdiction the Licensed Marks or any marks that are confusingly similar to the Licensed Marks.

#### **5. Quality Control**

5.1 NEC agrees on behalf of itself, and agrees to cause its Affiliates, as follows: (i) to comply with reasonable guidelines concerning the style, appearance, and usage of the Licensed Marks that are provided by AVIAT to NEC in writing reasonably in advance of such usage; (ii) to reasonably cooperate with AVIAT in facilitating its control of all uses of the Licensed Marks to the extent reasonably necessary under applicable law to maintain the validity of the Licensed Marks and protect the goodwill associated therewith; and (iii) not to use any other trademark or service mark to create a composite mark with the Licensed Marks without prior written approval of AVIAT.

5.2 NEC agrees on behalf of itself, and agrees to cause its Affiliates, in connection with the use of the Licensed Marks under this Agreement, not to deviate from the Licensed Mark's registered format.

#### **6. Registration of the License**

In the event that NEC wishes to register the license set forth in Section 2 above, both Parties will apply to the Japanese Patent Office at NEC's expense for the registration of such license under the Japanese Trademark Law.

#### **7. Enforcement; Third-Party Infringement Claims**

7.1 If (a) either Party believes that any Licensed Mark is being infringed or misappropriated by a third party, or (b) a third party alleges to a Party that any Licensed Mark is invalid or unenforceable, each Party may provide written notice to the other Party and provide it with all details of such infringement or allegation, as applicable, that are known by the Party.

**8. Maintenance of the Licensed Marks**

Unless otherwise notified by NEC in writing, AVIAT shall use commercially reasonable efforts to maintain the Licensed Marks, and renew their ten-year (10-year) terms at its own expense so long as NEC or any of its Affiliates use the Licensed Marks in connection with the Licensed Goods in the Licensed Territory.

**9. Notices**

A notice given to a Party under or in connection with this Agreement shall be in writing and delivered by hand or sent by pre-paid courier or by electronic mail. Delivery of a notice will be deemed to have taken place (i) if delivered by hand, at the time the notice is left at the address, or (ii) if sent by electronic mail, at the time of receipt, or (iii) if sent by courier, on the third business day thereafter. The addresses and details of the Parties are as follows unless a Party provides notification otherwise in accordance with this Agreement:

If to NEC:

**NEC Corporation**

7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan

Attention: Department Manager, Licensing Department

Intellectual Property Management Division

Email: [...]

If to AVIAT:

Aviat Networks, Inc.

200 Parker Dr. Ste 100A, Austin, TX 78728, USA

Attention: Erin Boase

Email: [...]

**10. Disclaimer of Warranties**

AVIAT MAKES NO WARRANTY OR REPRESENTATION, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THOSE ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE AND THOSE CONCERNING THE MATTERS SET FORTH IN (A) TO (D) OF THE FOLLOWING SENTENCE. THE LICENSED MARKS ARE LICENSED AND WILL BE PROVIDED "AS IS". AVIAT ASSUMES NO RESPONSIBILITY FOR: (A) INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT AND/OR ANY OTHER RIGHT OF ANY THIRD PARTY; (B) PERFORMANCE AND QUALITY; (C) MERCHANTABILITY, MARKETABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THE PURPOSE OF THE BUSINESS OF NEC AND ITS AFFILIATES; AND (D) ANY AND ALL OTHER MATTERS, WITH RESPECT TO THE USE OF THE LICENSED MARKS IN CONJUNCTION WITH THE LICENSED GOODS BY NEC AND ALL LICENSED MARKS BY AVIAT HEREUNDER. FOR AVOIDANCE OF DOUBT, THE PARTIES HEREBY CONFIRM THIS SECTION 10 DOES NOT HAVE ANY IMPACTS ON THE WARRANTIES AND REPRESENTATION SEPARATELY AGREED UNDER THE MBA.

**11. Compliance with Laws**

Each Party shall not, directly or indirectly, export or re-export the Licensed Goods (including any associated products, items, articles, computer software, media, services, technical data, and other information) in violation of any applicable laws.

**12. Damages**

12.1 IN THE CASE THAT A PARTY SUFFERS OR INCURS ANY LOSS, EXPENSES, OR DAMAGES DUE TO THE DEFAULT AND/OR BREACH OF THIS AGREEMENT BY THE OTHER PARTY OR ITS AFFILIATES, THE NON-BREACHING PARTY MAY CLAIM FOR COMPENSATION FOR DAMAGES FROM THE BREACHING PARTY OR ITS AFFILIATES.

12.2 EXCEPT UNDER A PARTY'S OR ITS AFFILIATES' LIABILITY FOR BREACH OF CONFIDENTIALITY, IN NO EVENT WILL THE PARTIES BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

12.3 Either Party will not be in default by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to any circumstance or cause beyond its reasonable control, including strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, or air conditioning.

**13. Change of Control**

13.1 The Parties shall provide a written notice to the other Party at least thirty (30) days prior to, and immediately after becoming aware of, an anticipated Change of Control. For the purpose of this Agreement, “**Change of Control**” means any of the following events:

- (a) a sale to a third party, of all or substantially all of the assets of the Party;
- (b) a merger or consolidation in which the Party is not the surviving corporation;
- (c) a reverse merger in which the Party is the surviving corporation but the shares of its common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash, or otherwise;
- (d) the acquisition of majority of the shares of the Party by any person, entity, or group; or
- (e) occurrence of any event as provided in paragraph (a), (b), (c) or (d) above to any direct or indirect parent company of the Party.

13.2 The licenses granted hereunder to NEC shall survive any transfer by operation of law or otherwise of the Licensed Marks or this Agreement by AVIAT.

**14. Confidentiality**

14.1 The Parties will protect each other’s Confidential Information (as defined in Section 14.2) using the same degree of care they would use with respect to their own confidential and proprietary information, but in any event, no less than a reasonable degree of care. Except as otherwise permitted in this Agreement, the Parties will, and will direct their Affiliates or anyone else to whom disclosure is permitted under this Agreement to, keep confidential and not disclose to any person, without the disclosing Party’s prior written consent, all Confidential Information

(including any portion thereof); provided, however, that the receiving Party shall have the right, without the prior written consent of the disclosing Party, to disclose Confidential Information if legally compelled to do so by applicable law or court order. If the receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall: (i) to the extent permitted by applicable law, provide prompt written notice to the disclosing Party so that the disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this Section 14; and (ii) disclose only the portion of Confidential Information that it is legally required to furnish.

14.2 “**Confidential Information**” means all non-public, confidential or proprietary information relating to a Party or its Affiliates, whether in oral, written, electronic, or other form or media, whether or not such information is marked, designated, or otherwise identified as “confidential” and includes any information that, due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be confidential or proprietary, excluding the Licensed Marks, but including information, know-how, samples, designs, specifications, business-related information, conceptions, innovations, trade secrets, designs, ideas, data, production schedules and/or quantities, pricing information, financial information, customer information as well as the terms and conditions of this Agreement, whether or not patentable, copyrightable, or documented. Confidential Information shall not include, and each Party shall be free to use without liability under this Section 14 to the other Party, information that the receiving Party can demonstrate by documentation: (i) was in the possession of the receiving Party without restriction on its use or disclosure prior to its receipt from the disclosing Party; (ii) is or becomes available to the relevant public (e.g., available in the technical literature, databases, or the like) or is in, or subsequently enters, the public domain other than as a result of a breach of this Agreement or other wrongful act or omission of the receiving Party; (iii) is obtained by the receiving Party without an obligation of confidence from a third party who is rightfully in possession of such information and who is under no obligation of confidentiality to the disclosing Party concerning such information; or (iv) is independently developed by the receiving Party without using or any reference to the disclosing Party’s Confidential Information.

14.3 NEC and its Affiliates shall use the Confidential Information of AVIAT received or obtained by NEC as a result of or in connection with this Agreement only within the scope of the license as provided under Section 2 and solely for the purposes as contemplated under this Agreement, and shall not use any such information for any other purposes.

14.4 Neither NEC nor any of its Affiliates may issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or, unless expressly permitted under this Agreement, otherwise use AVIAT's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, other than the use of PASOLINK Marks in accordance with the MBA or the Licenced Marks licensed under this Agreement, without the prior written consent of AVIAT.

**15. Costs and Taxes**

15.1 Except as otherwise expressly provided in this Agreement, each Party shall pay the costs and expenses incurred by it in connection with this Agreement.

15.2 All taxes, duties, and charges payable under the applicable laws in this Agreement must be borne and paid in full by the Party incurring such taxes, duties, and charges in connection with this Agreement.

**16. No Assignment**

This Agreement or any right or obligation hereunder may not be transferred, delegated or assigned by any Party without the prior written consent of the other Party. Any purported assignment, delegation, or transfer in violation of this Section 16 is null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

**17. Governing Law**

This Agreement and all matters arising out of or in connection with it shall be governed by the laws of the State of Delaware, United States of America, excluding: (i) any conflict-of-laws rule or principle that would require or permit the application of the laws of any other jurisdiction; and (ii) any matters of validity, enforcement, and infringement of intellectual property rights (which includes, for clarity, the Licensed Marks) which are governed by the substantive laws of the jurisdiction or administrative office in which the right has been granted or arises.

**18. Arbitration**

18.1 This Section 18 shall be governed by the laws of the State of Delaware.

18.2 Any dispute, claim, difference, or controversy arising out of, relating to, or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach, or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it, shall be referred to, and finally resolved by, arbitration under the Rules of Arbitration of the International Chamber of Commerce (for the purpose of this Section 18, the “**Rules**”).

18.3 The Rules are incorporated by reference into this clause and capitalised terms used in this Section 18 which are not otherwise defined in this Agreement have the meaning given to them in the Rules.

18.4 The number of arbitrators shall be three (3). The arbitrators nominated by the parties shall jointly nominate the third arbitrator who, subject to confirmation by the Court, will act as president of the arbitral tribunal.

18.5 The seat or legal place of arbitration shall be London, England.

18.6 The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

18.7 Notwithstanding the provisions of this Section 18, both Parties agree and acknowledge that, for any actions of a Party which violate the rights of the other Party under this Agreement and which, in the other Party’s reasonable determination, threaten irreparable harm or significant injury to the other Party’s business: (i) that may be extremely difficult to ascertain; and (ii) for which an immediate remedy may be necessary yet cannot be adequately or timely addressed by arbitration, the other Party has the right to obtain injunctive relief to enjoin any such violation.

**19. Further Assurances**

Each Party shall do and execute, or arrange for the doing and executing of, without further consideration, any other act and document reasonably requested of it by the other Party to implement and give full effect to the terms of this Agreement.

**20. Entire Agreement**

This Agreement constitutes and contains the entire agreement between the Parties relating to the subject matter hereof, and supersedes any and all prior agreements, negotiations, correspondence, understandings, or communications among the Parties, whether written or oral, applicable hereto with respect to such matter.

**21. Consultation**

The Parties shall resolve any matter not stipulated in this Agreement, or any question arising under this Agreement, through separate discussions.

**22. Counterparts**

This Agreement may be executed in counterparts (including by means of facsimile, electronic signature (i.e., DocuSign) or portable document format (pdf) signature pages), each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**23. Bankruptcy and Insolvency**

All licenses granted under this Agreement will be deemed licenses of rights to “Intellectual Property” as that term is defined for purposes of Section 365(n) of the U.S. Bankruptcy Code and NEC (on behalf of itself and its Affiliates) will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code.

**24. Miscellaneous**

24.1 The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party has authority to contract for or bind the other Party in any manner whatsoever.

24.2 If any provision of this Agreement or the application of any such provision to any person or circumstance is held to be prohibited by or invalid in any jurisdiction, such: (i) provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement; and (ii) prohibition or invalidity will not prohibit or render invalid such term in any other jurisdiction.

24.3 Any variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to vary this Agreement, and signed by authorized representatives of each of the Parties.

24.4 The rights of each Party under this Agreement may be waived only in a writing signed by the waiving Party, and specifically, delay in exercise or non-exercise or partial enforcement of any such right is not a waiver of that right or of any other right.

24.5 This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns. A person who is not a Party to this Agreement may not enforce any of its terms and shall not have any rights, remedies, or benefits under any provision of this Agreement.

24.6 In this Agreement, any reference, express or implied, to an enactment (which includes any legislation in any relevant jurisdiction) includes: (i) that enactment as amended, extended or applied by or under any other enactment (before or after signature of this Agreement); (ii) any enactment which that enactment re-enacts (with or without modification); and (iii) any subordinate legislation made (before or after signature of this Agreement) under that enactment, including (where applicable) that enactment as amended, extended or applied as described in the foregoing subsection (a) or under any enactment which it re-enacts as described in foregoing subsection (b), except to the extent that the contrary intention appears; or any legislation or subordinate legislation made or enacted after the date of this Agreement which would create or increase the liability of NEC under this Agreement.

24.7 In this Agreement: (i) any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular; (ii) the words "include," "includes," and "including" will be deemed to be followed by the words "without limitation"; (iii) the word "or" is not exclusive; and (iv) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole.

24.8 Unless the context otherwise requires, references herein: (i) to Sections refer to the Sections of this Agreement; and (ii) to any agreement, instrument, contract, or other document are to that agreement, instrument, contract, or other document as amended, modified or supplemented from time to time in accordance with the terms thereof.

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24.9 The Parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

*[Signature pages to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**NEC Corporation**

By: /s/ Fumio Imoto

Name: Fumio Imoto

Title: Department Manager, Development Promotion  
Department

[Signature Page to Pasolink Licensing Agreement]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**AVIAT NETWORKS, INC.**

By: /s/ Pete Smith

Name: Pete Smith

Title: CEO

[Signature Page to Pasolink Licensing Agreement]

Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K

### Intellectual Property License Agreement

This Intellectual Property License Agreement (this “**Agreement**”) is entered into on November 30, 2023, by and between **NEC Corporation**, a Japanese corporation having its principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan (“**NEC**”), and **AVIAT NETWORKS, INC.**, a Delaware corporation having its principal place of business at 200 Parker Dr Suite C100a Austin, TX 78728, United States (“**AVIAT**”). NEC and AVIAT are hereinafter collectively referred to as the “**Parties**”, and each individually as a “**Party**”.

#### WHEREAS:

- (A) NEC and AVIAT have entered into a master sale-of-business agreement on May 9, 2023, pursuant to which NEC has agreed to sell, and to cause the Selling Entities to sell, and AVIAT has agreed to purchase and/or cause the Purchasing Entities to purchase, all right, title and interest to certain assets relating to NEC’s wireless backhaul business, and AVIAT and/or the Purchasing Entities have agreed to assume certain liabilities relating to NEC’s wireless backhaul business, subject to the terms of such master sale of business agreement (the “**MBA**”).
- (B) Pursuant to the MBA, NEC is willing to grant, and AVIAT desires to take, a license of the NEC IP (defined below), including the mobile backhaul related patents, in accordance with the terms and conditions of this Agreement.

**THEREFORE**, in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed by and between the Parties as follows:

#### Section 1. Definitions

For the purposes of this Agreement, the below definitions shall apply. Capitalized terms not otherwise defined herein are defined as set forth in the MBA.

“**Affiliate**” means any company Controlled by a Party, but any such entity shall be deemed to be Affiliated only as long as such Control exists;

“**AVIAT Persons**” means AVIAT, its Affiliates, and EMS Companies;

“**Business**” has the meaning set forth in the MBA;

“**Completion**” means completion of the sale and purchase of certain assets as contemplated and in accordance with the MBA;

“**Completion Date**” means the date on which the Completion takes place pursuant to the MBA;

“**Control**” means directly or indirectly owning or controlling more than fifty percent (50%) of such company’s voting stock, or possessing the power to direct or cause the direction of its management and policies;

“**EMS Companies**” means electronics manufacturing services companies engaged by AVIAT from time to time for manufacturing of the Products on behalf of AVIAT or any third party employed or engaged by AVIAT to design, manufacture, or provide services, including software services, related to the Products or the Business;

“**Intellectual Property Rights**” has the meaning set forth in the MBA;

“**Know-How**” means any unpatented technical information, know-how, presentation, or materials including, without limitation, all data, discoveries, inventions, improvements, processes, formula or trade secrets, whether or not patentable, copyrightable or in documented form.

“**Licensed Materials**” means, collectively, Licensed Materials for Manufacturing, Other Licensed Materials and NMS Licensed Materials;

“**Licensed Materials for Manufacturing**” means the materials listed in Exhibit A, which will be updated by NEC or its Affiliates for a Product from time to time during the period where NEC and/or NEC Platforms, Ltd. manufactures and supplies such Product for AVIAT under the MSA;

“**MBA**” means a master sale of business agreement entered into between the Parties dated May 9, 2023;

“**MSA**” means a manufacturing and supply agreement entered into between the Parties around the date of this Agreement;

“**NEC Embedded Software**” means software embedded to the Products and controlling the Products, which NEC has the right to license to AVIAT;

“**NEC IP**” means, collectively, Licensed Materials, NEC Patents, NEC Embedded Software and NEC Network Management System used in or necessary for the conduct of the Business as of the Effective Date and not transferred to AVIAT under the MBA;

“**NEC Know-How**” means:

- (i) any technical information, knowledge, Know-How, or data shown, described, filed or incorporated in Licensed Materials; and
- (ii) all other Know-How owned by NEC or its Affiliates necessary for the conduct of the Business as of the Effective Date;

“**NEC Network Management System**” means software products for management of the Products as listed in Exhibit C;

“**NEC Patents**” means the Patents listed in Exhibit B-1 and any invention used in or necessary for the conduct of the Business as of the Effective Date for which a patent application is filed (other than in Japan) after the Effective Date;

“**NMS Licensed Materials**” means the materials listed in Exhibit A;

“**Other Licensed Materials**” means the materials for development and sale of the Products, listed in Exhibit A and any other materials necessary for the conduct of the Business as of the Effective Date;

“**Patents**” means all patents throughout the world (including patents, utility model rights and design patents, as well as all divisionals, renewals, continuations, continuations-in-part, re-examinations, extensions or reissues of any of the foregoing, and applications therefor); and

“**Products**” means wireless backhaul hardware products designed by NEC, as listed in Exhibit C.

## Section 2. Delivery and Installation

2.1 For the period during which NEC and/or NEC Platforms, Ltd. manufactures and supplies a Product for AVIAT under the MSA and for a period of 60 days after the end of such period, AVIAT may request NEC to deliver the Licensed Materials for Manufacturing for such Product to AVIAT within a reasonable period to be agreed between the Parties, taking into account the volume of the Licensed Materials for Manufacturing to be delivered and logistics of the delivery. For the avoidance of doubt, AVIAT may request NEC to deliver the Licensed Materials for Manufacturing only with the status as of the delivery time, and NEC will not be required to deliver the Licensed Materials for Manufacturing in a version before the delivery date.

2.2 NEC will deliver to AVIAT source codes and binary codes of the NEC Embedded Software within 30 days from the Completion Date, unless otherwise agreed between the parties.

2.3 NEC will deliver to AVIAT source codes and binary codes of the NEC Network Management System and NMS Licensed Materials within 30 days from the Completion Date unless otherwise agreed between the parties.

2.4 In respect of the Licensed Materials, NEC Embedded Software and NEC Network Management System to be delivered pursuant to:

- (a) Sections 2.1, 2.2 and 2.3, the Parties shall discuss and agree on a reasonable method of the delivery, taking into account the volume and form of the Licensed Materials, and AVIAT acknowledges and agrees that such Licensed Materials are the Confidential Information of NEC and subject to the confidentiality and non-disclosure obligations under Section 7, and that the AVIAT Persons' use of which is subject to the terms and conditions of this Agreement, including the scope of the license granted under Section 3; and
- (b) Section 2.2 and 2.3, the AVIAT Persons will securely store and protect such source codes and binary codes from unauthorized access, loss, damage, or theft, including by implementing technical, administrative, and physical safeguards in accordance with industry best practice.

For the avoidance of doubt, NEC shall have no obligation to deliver or conduct any actions to deliver NEC Know-How or Other Licensed Materials under this Agreement.

2.5 AVIAT shall pay all costs and expenses incurred by AVIAT, NEC or their Affiliates relating to or in association with the delivery and safeguarding of the Licensed Materials pursuant to Sections 2.1, 2.2 and 2.3 above, including the costs and expenses for the preparation for the delivery by NEC or its Affiliates and installation of any such Licensed Materials for AVIAT or its Affiliates.

### Section 3. Grant of NEC IP License

3.1 Subject to the terms and conditions of this Agreement, during the term of this Agreement, NEC agrees to grant and hereby grants AVIAT and its Affiliates:

- (a) a royalty-free, worldwide (excluding Japan), fully paid-up, non-exclusive, non-sublicensable and non-transferable right and license under the NEC Patents to manufacture, have made, use, import, offer for sale, lease, sell and/or otherwise transfer any Products (which includes, for clarity, any developments, modifications, or enhancements made to such Products by AVIAT);
- (b) a royalty-free, worldwide (excluding Japan), fully paid-up, non-exclusive, non-sublicensable and non-transferable right and license to:
  - (i) use, modify, copy, and create derivative works (and have its EMS Companies modify, copy, and create derivative works) of the NEC Embedded Software solely to be incorporated in a binary code form in the Products; and
  - (ii) distribute the NEC Embedded Software solely as incorporated in the Products to customers and end users;
- (c) a royalty-free, worldwide (excluding Japan), fully paid-up, non-exclusive, non-sublicensable and non-transferable right and license to:
  - (i) use, modify, copy, and create derivative works (and have its EMS Companies modify, copy, and create derivative works) of the NEC Network Management System solely to be incorporated in a binary code form in NEC Network Management System; and
  - (ii) distribute the NEC Network Management System solely to customers and end users of the Products;
- (d) a royalty-free, worldwide (excluding Japan), fully paid-up, non-exclusive, non-sublicensable and non-transferable right and license to:
  - (i) use, modify, copy and create derivative works (and have its EMS Companies modify, copy, and create derivative works) of the Licensed Materials and NEC Know-How solely for the purpose of designing, manufacturing, and selling and/or otherwise transferring any Products to its customers and end users;
  - (ii) distribute the Product User Manuals and Product Technical Documents of Other Licensed Materials and NMS Licensed Materials specified in Exhibit A solely for the purpose of designing, manufacturing, and selling and/or otherwise transferring any Products to its customers and end users; and
- (e) a royalty-free, worldwide (excluding Japan), fully paid-up, non-exclusive, non-sublicensable and non-transferable right and license, under any of NEC's Patents (excluding those filed, issued, granted or registered in Japan) that claim priority to or from (or cover the same invention as) the Patents set forth on Exhibit B-2 and B-3, to manufacture, have made, use, import, offer for sale, lease, sell and/or otherwise transfer any Products (which includes, for clarity, any developments, modifications, or enhancements made to such Products by AVIAT).

3.2 Other than the license rights expressly granted herein, no other license or rights are granted, whether expressly or by implication, estoppel, reliance or otherwise, all of which are expressly excluded and disclaimed. Further, notwithstanding the breadth of any of the foregoing, the

licenses granted under this Section 3 to develop, modify, enhance or create derivative works under the NEC Patents, Licensed Materials, NEC Know-How, NEC Embedded Software and NEC Network Management System, are limited solely to the field of wireless backhaul hardware and natural extensions thereof and shall not extend to any next-generation products.

3.3 AVIAT shall ensure that its Affiliates and its EMS Companies comply with the terms and conditions of this Agreement as applicable, including, but not limited to, those regarding confidentiality obligations while they exercise the rights specified in Section 3.1 above. AVIAT shall be responsible and liable to NEC for any breach of such terms and conditions of this Agreement caused by any act or omission of its Affiliates, and its EMS Companies as if such act or omission were that of AVIAT.

3.4 The Parties hereby confirm that the NEC Embedded Software and NEC Network Management System are using certain open source software, and that each Party shall, and ensure that its Affiliates, and the EMS Companies shall, comply with the terms and condition of such open source software (as notified by NEC) while they exercise the rights specified in Section 3.1 above.

3.5 Unless the parties otherwise agree in writing, AVIAT shall not use or display any name, mark or logo that is the same as, or similar to, or is likely to be confused or associated with, any name, mark or logo of NEC or its Affiliates (excluding the PASOLINK Marks) in any Licensed Materials, the NEC Embedded Software and the NEC Network Management System that will be transferred to the EMS Companies, or its customers or end users, or any other third parties. Notwithstanding the foregoing, AVIAT has no obligation to rebrand or destroy any existing materials provided to AVIAT by NEC or its Affiliates and may use and distribute such materials "AS IS" whether or not they contain any name, mark or logo of NEC or its Affiliates only for the Products manufactured by NEC and its Affiliates and only to the extent that there are no modifications or amendments to such materials provided by NEC or its Affiliates.

#### **Section 4. Disclaimer of Warranties and Indemnity**

**4.1 NEC MAKES NO WARRANTY OR REPRESENTATION, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THOSE ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE AND THOSE CONCERNING THE MATTERS SET FORTH IN (A) TO (D) OF THE FOLLOWING SENTENCE. THE NEC IP IS LICENSED AND WILL BE DELIVERED "AS IS". NEC ASSUMES NO RESPONSIBILITY FOR: (A) INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT AND/OR ANY OTHER RIGHT OF ANY THIRD PARTY; (B) PERFORMANCE AND QUALITY; (C) MERCHANTABILITY, MARKETABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THE PURPOSE OF THE BUSINESS OF AVIAT AND ITS AFFILIATES; AND (D) ANY AND ALL OTHER MATTERS, WITH RESPECT TO THE PRODUCTS MANUFACTURED OR SOLD AND IMPORTED BY AVIAT AND ALL NEC IP LICENSED BY NEC HEREUNDER. FOR AVOIDANCE OF DOUBT, THE PARTIES HEREBY CONFIRM THIS SECTION 4.1 DOES NOT HAVE ANY IMPACTS ON THE WARRANTIES AND REPRESENTATION SEPARATELY AGREED UNDER THE MBA.**

4.2 NEC does not have any obligations to apply for, keep, maintain, renew or update any rights or registrations of any NEC IP, and does not assume any liability or responsibility for any damages or losses of AVIAT or its Affiliates caused by lack or expiry of any rights or registrations of any NEC IP.

## **Section 5. Compliance with Laws**

5.1 Each Party shall not, directly or indirectly, export or re-export the Products (including any associated products, items, articles, computer software, media, services, technical data, and other information) in violation of any applicable laws.

## **Section 6. Enforcement; Third-Party Infringement Claims**

6.1 If (a) either Party believes that any NEC IP is being infringed or misappropriated by a third party, or (b) if a third party alleges to a Party that any NEC Patent is invalid or unenforceable, or claims that a Product, or its use, development, manufacture, or sale infringes such third party's intellectual property rights, each Party may provide written notice to the other Party and provide it with all details of such infringement or claim, as applicable, that are known by the Party.

## **Section 7. Confidentiality**

7.1 The Parties will protect each other's Confidential Information (as defined in Section 7.2) using the same degree of care they would use with respect to their own confidential and proprietary information, but in any event no less than a reasonable degree of care. Except as otherwise permitted in this Agreement, the Parties will, and will direct their Affiliates or anyone else to whom disclosure is permitted under this Agreement to, keep confidential and not disclose to any person, without the disclosing Party's prior written consent, all Confidential Information (including any portion thereof); provided, however, that the receiving Party shall have the right, without the prior written consent of the disclosing Party, to disclose Confidential Information if legally compelled to do so by applicable law or court order. If the receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall: (a) to the extent permitted by applicable law, provide prompt written notice to the disclosing Party so that the disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this Section 7; and (b) disclose only the portion of Confidential Information that it is legally required to furnish.

7.2 "**Confidential Information**" means all non-public, confidential or proprietary information relating to a Party or its Affiliates, whether in oral, written, electronic, or other form or media, whether or not such information is marked, designated, or otherwise identified as "confidential", and includes any information that, due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be confidential or proprietary, including, specifically the NEC IP (in the case of NEC only), information, Know-How, samples, designs, specifications, business related information, conceptions, innovations, trade secrets, designs, ideas, data, production schedules and/or quantities, pricing information, financial information, customer information as well as the terms and conditions of this Agreement, whether or not patentable, copyrightable, or documented. Confidential Information shall not include, and each Party shall be free to use without liability under this Section 7 to the other Party, information that the receiving Party can demonstrate by documentation: (a) was in the possession of the receiving Party without restriction on its use or disclosure prior to its receipt from the disclosing Party; (b) is or becomes available to the relevant public (e.g., available in the technical literature, databases, or the like) or is in, or subsequently enters, the public domain other than as a result of a breach of this

Agreement or other wrongful act or omission of the receiving Party; (c) is obtained by the receiving Party without an obligation of confidence from a third party who is rightfully in possession of such information and who is under no obligation of confidentiality to the disclosing Party concerning such information; or (d) is independently developed by the receiving Party without using or any reference to the disclosing Party's Confidential Information.

7.3 AVIAT shall use the Confidential Information of NEC received or obtained by AVIAT as a result of or in connection with this Agreement only within the scope of the NEC IP license as provided under Section 3 and solely for the purposes as contemplated under this Agreement, and shall not use any such information for any other purposes.

7.4 Notwithstanding Section 7.1 above, and only to the extent necessary for AVIAT's exercise of the license under Section 3.1, AVIAT may disclose, provided that it shall comply with Section 3.3, (a) the Licensed Materials to its Affiliates, and its EMS Companies who need to know the Confidential Information for the purpose of assisting AVIAT in exercising its rights under Section 3.1 and are bound by written nondisclosure agreements with confidentiality obligations at least as stringent as those in this Section 7, and (b) the Product User Manuals and Product Technical Documents of Other Licensed Materials and NMS Licensed Materials specified in Exhibit A to its customers and end users.

7.5 Neither AVIAT nor any of its Affiliates may issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use NEC's or its Affiliates' trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of NEC, except to the extent permitted by Section 3.5.

## **Section 8. Term and Termination**

8.1 Unless otherwise earlier terminated pursuant to Section 8.2 below, this Agreement shall come into effect on the Completion (such date, the "**Effective Date**") and shall continue in full force and effect perpetually.

8.2 NEC may terminate this Agreement immediately, upon written notice of termination to AVIAT, upon any of the following events:

- (a) a petition for relief under any bankruptcy or insolvency legislation is filed by AVIAT, or a receiver is appointed for all or a substantial part of AVIAT's assets;
- (b) a petition for relief under any bankruptcy or insolvency legislation is filed against AVIAT, and such petition is not dismissed or vacated within thirty (30) calendar days;
- (c) dissolution or liquidation of AVIAT by resolution or by law; or
- (d) AVIAT ceases carrying on the wireless backhaul business or natural extension thereof.

For clarity, if AVIAT has previously assigned this Agreement with the prior written consent

of NEC in accordance with Section 14, NEC may only terminate this Agreement if the current holder (including any successor in interest) of the license granted herein becomes bankrupt or is dissolved in accordance with Sections 8.2(a)-(c) above.

8.3 Except as necessary for AVIAT to comply with applicable law, after the termination or expiration of this Agreement for any reason whatsoever, AVIAT shall itself, within a commercially reasonable time period, return to NEC or dispose of (at NEC's option), in accordance with instructions and guidance provided by NEC, all of the Licensed Materials and other Confidential Information provided by NEC to it under this Agreement, and shall by itself immediately cease to use, and shall procure that any of its EMS Companies cease to use, the relevant NEC IP for any purposes thereafter. AVIAT shall keep NEC's Confidential Information that is not returned or disposed of after termination or expiration of this Agreement in confidence in accordance with Section 7 above. Upon NEC's request, AVIAT shall itself issue to NEC a document certifying the performance of obligations under this Section 8.

8.4 Upon the termination of this Agreement pursuant to Section 8.2, except for this Section 8.4, Section 1, Section 4 to Section 7, Section 9, Section 12, Section 13, Section 14, Section 15, Section 16 and Section 22, and any right, obligation, or required performance of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, all the other provisions of this Agreement shall lapse and cease to have effect, provided however that neither the lapsing of those provisions nor their ceasing to have effect shall affect any accrued rights or liabilities of either Party in respect of damages for non-performance of any obligation under this Agreement falling due for performance prior to such lapse and cessation.

#### **Section 9. Damages**

**9.1 IN THE CASE THAT A PARTY SUFFERS OR INCURS ANY LOSS, EXPENSES, OR DAMAGES DUE TO THE DEFAULT AND/OR BREACH OF THIS AGREEMENT BY THE OTHER PARTY OR ITS AFFILIATES, THE NON-BREACHING PARTY MAY CLAIM FOR COMPENSATION FOR DAMAGES FROM THE BREACHING PARTY OR ITS AFFILIATES.**

**9.2 EXCEPT UNDER A PARTY'S OR ITS AFFILIATES' LIABILITY FOR BREACH OF CONFIDENTIALITY, IN NO EVENT WILL THE PARTIES BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.**

9.3 Either Party will not be in default by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to any circumstance or cause beyond its reasonable control, including strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, or air conditioning.

## **Section 10. Change of Control in AVIAT**

10.1 The Parties shall provide a written notice to the other Party at least thirty (30) days prior to, and immediately after becoming aware of, a planned Change of Control. For the purposes of this Agreement, “**Change of Control**” means any of the following events:

- (a) a sale to a third party, of all or substantially all of the assets of the Party;
- (b) a merger or consolidation in which the Party is not the surviving corporation;
- (c) a reverse merger in which the Party is the surviving corporation but the shares of its common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash, or otherwise;
- (d) the acquisition of the majority of the shares of the Party by any person, entity, or group; or
- (e) occurrence of any event as provided in paragraphs (a), (b), (c) or (d) above to any direct or indirect parent company of the Party.

10.2 The licenses granted hereunder to AVIAT shall survive any transfer by operation of law or otherwise of the NEC IP or this Agreement by NEC.

## **Section 11. Improvements to NEC IP**

If a Party, its Affiliates, or the EMS Companies make any modifications or improvements to the NEC IP, and if requested by the other Party (or NEC, in the case of modifications or improvements made by the EMS Companies), the Parties shall discuss in good faith a license to the other Party of such modifications or improvements.

## **Section 12. Notices**

A notice given to a Party under or in connection with this Agreement shall be in writing and delivered by hand or sent by pre-paid courier or by electronic mail. Delivery of a notice will be deemed to have taken place (a) if delivered by hand, at the time the notice is left at the address, or (b) if sent by electronic mail, at the time of transmission, or (c) if sent by courier, on the third business day thereafter. The addresses and details of the Parties are as follows, unless a Party provides notification otherwise in accordance with this Agreement:

If to NEC:

NEC Corporation  
7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan  
Attention: Department Manager, Licensing Department  
Intellectual Property Management Division

Email: [...]

If to AVIAT:

AVIAT NETWORKS, INC.  
200 Parker Dr. Ste 100A, Austin, TX 78728, USA  
Attention: Erin Boase  
Email: [...]

### **Section 13. Costs and Taxes**

13.1 Except as otherwise expressly provided in this Agreement, each Party shall pay the costs and expenses incurred by it in connection with this Agreement.

13.2 All taxes, duties, and charges payable under the applicable laws in this Agreement must be borne and paid in full by the Party incurring such taxes, duties, and charges in connection with this Agreement.

### **Section 14. No Assignment**

This Agreement, or any right or obligation hereunder, may not be transferred, delegated or assigned by any Party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement to an Affiliate or in connection with a Change of Control. Any purported assignment, delegation, or transfer in violation of this Section 14 is null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

### **Section 15. Governing Law**

This Agreement and all matters arising out of or in connection with it shall be governed by the laws of the State of Delaware, United States of America, excluding: (a) any conflict-of-laws rule or principle that would require or permit the application of the laws of any other jurisdiction; and (b) any matters of validity, enforcement, and infringement of intellectual property rights (which includes, for clarity, the NEC IP) which are governed by the substantive laws of the jurisdiction or administrative office in which the right has been granted or arises.

### **Section 16. Arbitration**

16.1 This Section 16 shall be governed by the laws of the State of Delaware.

16.2 Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it, shall be referred to, and finally resolved by, arbitration under the Rules of Arbitration of the International Chamber of Commerce (for the purpose of this Section 16, the “**Rules**”).

16.3 The Rules are incorporated by reference into this clause and capitalised terms used in this Section 16 which are not otherwise defined in this Agreement have the meaning given to them in the Rules.

16.4 The number of arbitrators shall be three (3). The arbitrators nominated by the parties shall jointly nominate the third arbitrator who, subject to confirmation by the Court, will act as president of the arbitral tribunal.

16.5 The seat or legal place of arbitration shall be London, England.

16.6 The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

16.7 Notwithstanding the provisions of this Section 16, both Parties agree and acknowledge that, for any actions of a Party which violate the rights of the other Party under this Agreement and which, in the other Party's reasonable determination, threaten irreparable harm or significant injury to the other Party's business (a) that may be extremely difficult to ascertain, and (b) for which an immediate remedy may be necessary yet cannot be adequately or timely addressed by arbitration, the other Party has the right to obtain injunctive relief to enjoin any such violation.

#### **Section 17. Further Assurances**

Each Party shall do and execute, or arrange for the doing and executing of, without further consideration, any other act and document reasonably requested of it by the other Party to implement and give full effect to the terms of this Agreement.

#### **Section 18. Entire Agreement**

This Agreement constitutes and contains the entire agreement between the Parties relating to the subject matter hereof, and supersedes any and all prior agreements, negotiations, correspondence, understandings, or communications among the Parties, whether written or oral, applicable hereto with respect to such matter.

#### **Section 19. Consultation**

The Parties shall resolve any matter not stipulated in this Agreement, or any question arising under this Agreement, through separate discussions.

#### **Section 20. Counterparts**

This Agreement may be executed in counterparts (including by means of facsimile, electronic signature (i.e., DocuSign) or portable document format (pdf) signature pages), each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

#### **Section 21. Bankruptcy and Insolvency**

All licenses granted under this Agreement will be deemed licenses of rights to "Intellectual Property" as that term is defined for the purposes of Section 365(n) of the U.S. Bankruptcy Code and AVIAT (on behalf of itself and its Affiliates) will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code.

## Section 22. Miscellaneous

22.1 The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party has authority to contract for or bind the other Party in any manner whatsoever.

22.2 If any provision of this Agreement or the application of any such provision to any Person or circumstance is held to be prohibited by or invalid in any jurisdiction, such: (a) provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement; and (b) prohibition or invalidity will not prohibit or render invalid such term in any other jurisdiction.

22.3 Any variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to vary this Agreement, and signed by authorized representatives of each of the Parties.

22.4 The rights of each Party under this Agreement may be waived only in a writing signed by the waiving Party, and specifically, delay in exercise or non-exercise or partial enforcement of any such right is not a waiver of that right or of any other right.

22.5 This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns. A person who is not a Party to this Agreement may not enforce any of its terms and shall not have any rights, remedies, or benefits under any provision of this Agreement.

22.6 In this Agreement, any reference, express or implied, to an enactment (which includes any legislation in any relevant jurisdiction) includes: (a) that enactment as amended, extended or applied by or under any other enactment (before or after signature of this Agreement); (b) any enactment which that enactment re-enacts (with or without modification); and (c) any subordinate legislation made (before or after signature of this Agreement) under that enactment, including (where applicable) that enactment as amended, extended or applied as described in the foregoing subsection (a) or under any enactment which it re-enacts as described in foregoing subsection (b), except to the extent that the contrary intention appears; or any legislation or subordinate legislation made or enacted after the date of this Agreement which would create or increase the liability of NEC under this Agreement.

22.7 In this Agreement: (a) any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular; (b) the words “include,” “includes,” and “including” will be deemed to be followed by the words “without limitation”; (c) the word “or” is not exclusive; and (d) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole.

22.8 Unless the context otherwise requires, references herein: (a) to Sections and Exhibits refer to the Sections of and Exhibits attached to this Agreement; and (b) to any agreement, instrument, contract, or other document are to that agreement, instrument, contract or other document as amended, modified or supplemented from time to time in accordance with the terms thereof.

22.9 The Parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

*[Signature pages to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**NEC Corporation**

By: /s/ Hirotake Konda

\_\_\_\_\_  
Name: Hirotake Konda

Title: Department Manager,  
Licensing Department,  
Intellectual Property Management Division

[Signature Page to Intellectual Property Licensing Agreement]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**AVIAT NETWORKS, INC.**

By: /s/ Pete Smith

Name: Peter Smith

Title: CEO

[Signature Page to Intellectual Property Licensing Agreement]

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**Exhibit A**

**Licensed Materials**

[Intentionally omitted]

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**Exhibit B-1**

**NEC Patents**

[Intentionally omitted]

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**Exhibit B-2**

**Related Japanese Patents**

[Intentionally omitted]

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**Exhibit B-3**

**Abandoned Patents**

[Intentionally omitted]

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**Exhibit C**

**Products and NEC Network Management System**

[Intentionally omitted]

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

## TRADEMARK ASSIGNMENT AGREEMENT

THIS TRADEMARK ASSIGNMENT AGREEMENT (this “**Assignment**”), is entered into on November 30, 2023, by and between NEC Corporation, a Japanese corporation having its principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan (the, “**ASSIGNOR**”) and Aviat Networks, Inc. a Delaware corporation having its principal place of business at 200 Parker Drive, Suite C100A, Austin, Texas 78728 (“**ASSIGNEE**”). ASSIGNOR and ASSIGNEE are hereinafter collectively referred to as the “**Parties**”, and each individually as a “**Party**”.

The Assignor and Assignee have entered into that certain Master Sale of Business Agreement dated as of May 9, 2023 (the “**MBA**”).

Pursuant to the MBA and subject to the MBA, the Assignor has agreed to assign to the Assignee all of its right, title and interest in and to the Assets (as defined in the MBA), including the U.S. and foreign registered trademarks listed in the attached Schedule 1 (“**PASOLINK Marks**”), and the Assignee has agreed to acquire all such right, title and interest in and to the Assets, including the PASOLINK Marks.

In consideration of the mutual promises herein contained and in the MBA and other good and valuable consideration (including in connection with the MBA), the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Construction. All Schedules to this Assignment are hereby incorporated and made a part hereof as if set forth in full herein and are an integral part of this Assignment. All references to instruments, documents, contracts and agreements are references to such instruments, documents, contracts and agreements as the same may be amended, supplemented and otherwise modified from time to time, unless otherwise specified. The word “including” shall mean “including but not limited to” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. Any words imparting the singular number only shall include the plural and vice versa. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Assignment as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

2. Assignment. With effect on the Completion (as defined in the MBA) (such date, the “**Effective Date**”), and subject to the terms and conditions of this Assignment (including Section 5), the Assignor agrees to assign and hereby, absolutely and unconditionally, conveys, sells, assigns, transfers, grants and sets over unto the Assignee all of its worldwide rights, title, interest and benefit in and to the PASOLINK Marks, together with the goodwill of the business symbolized by the PASOLINK Marks and the right to all past, present and future income, royalties, damages and payments due with respect to infringement and misappropriation of the foregoing and all rights of action, both at law and in equity with respect thereto, including all rights to sue, settle any claims, and collect all damages for any past, present, or future infringement or misappropriation of the PASOLINK Marks, the same to be held and enjoyed by the Assignee, its successors and assigns forever, as fully and entirely as the same could have been held and enjoyed by the Assignor if this sale had not been made, and the Assignee does hereby accept such sale, assignment, transfer, grant, conveyance and set over.

3. Recordation. With effect on and from the Effective Date, the Assignor hereby authorizes and requests the U.S. Patent and Trademark Office, or any foreign equivalent thereto, and any other applicable governmental authority to record the Assignee, including any of its successors and designees, as owner of the PASOLINK Marks and of the entire title and interest in, to and under the same, for the use and enjoyment of the Assignee, its successors, assigns and other legal representatives.

4. Cooperation. With effect on and from the Effective Date, the Assignor covenants and agrees to (at the Assignee's sole cost and expense) execute any further lawful documents and take any other reasonable actions that may be reasonably necessary or appropriate to fully vest in Assignee the assigned rights and interests in the PASOLINK Marks and to effectuate the assignment of the PASOLINK Marks with the respective trademark office, in each case, upon written request from the Assignee. In addition, except where the PASOLINK Marks are used in breach of the MBA, the Assignor shall not oppose any PASOLINK Mark, seek to challenge any PASOLINK Mark, object to any use by Assignee of the PASOLINK Marks, or assist any third party in any of the foregoing.

5. Terms of the MBA. The Parties hereto acknowledge and agree that this Assignment is entered into pursuant to the MBA, to which reference is made for a further statement of the rights and obligations of Seller and Buyer with respect to the PASOLINK Marks. The representations, warranties, covenants, agreements, and indemnities contained in the MBA shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the MBA and the terms hereof, the terms of the MBA shall govern.

6. Governing Law. This Assignment and its interpretation, its construction and the remedies for its enforcement or breach (all matters arising out of or in connection with it) shall be governed by the laws of the State of Delaware, United States of America, without regard to any conflict of laws rule or principle that would require or permit the application of the laws of any other jurisdiction.

7. Amendment, Modification and Waiver. This Assignment may not be modified, amended or terminated except by written agreement specifically referring to this Assignment and signed by the Parties. No waiver of a breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

8. Severability. In the event that one or more provisions contained in this Assignment shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Assignment.

9. Successor and Assigns. This Assignment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

10. Entire Agreement. This Assignment constitutes and contains the entire agreement between the Parties relating to the subject matter hereof, and supersedes any and all prior agreements, negotiations, correspondence, understandings, or communications among the Parties, whether written or oral, applicable hereto with respect to such matter.

11. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A signed copy of this Assignment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment.

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment to be executed as of the date first written above by their respective officers thereunto duly authorized.

ASSIGNEE:

**Aviat Networks, Inc.**

By /s/ Peter A. Smith

\_\_\_\_\_  
Name: Pete Smith

Title: CEO

ASSIGNOR:

**NEC Corporation**

By /s/ Fumio Imoto

\_\_\_\_\_  
Name: Fumio Imoto

Title: Department Manager, Development Promotion  
Department

Jurisdiction of incorporation: Japan

Signature Page to Trademark Assignment Agreement

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**Schedule 1:**

**PASOLINK Marks**

[Intentionally omitted]

*Certain portions of this Exhibit were redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K*

### **Research and Development Cooperating Agreement for Existing Products**

This Research and Development Cooperating Agreement (this “**Agreement**”) is made and entered into on November 30, 2023 by and between **AVIAT NETWORKS, INC.**, having its principal place of business at 200 Parker Dr, Suite C100a Austin, TX 78728, United States acting on its behalf and on behalf of the Aviat Networks Group Affiliates (hereinafter called “**AVIAT**”) and NEC Corporation, having its principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan (hereinafter called “**NEC**”).

#### **WITNESSETH:**

**WHEREAS**, NEC and AVIAT have entered into a master sale of business agreement on May 9, 2023, pursuant to which NEC has agreed to sell, and AVIAT has agreed to purchase, all right, title and interest to certain assets relating to NEC’s wireless backhaul business, and AVIAT has agreed to assume certain liabilities relating to NEC’s wireless backhaul business, subject to the terms of such master sale of business agreement (the “**MSBA**”).

**WHEREAS**, pursuant to the MSBA, NEC is willing to provide to AVIAT, and AVIAT is willing to receive from NEC certain services relating to the development work to maintain existing products of the business as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, as well as the covenants and understandings hereinafter set forth, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### **SECTION 1 DEFINITIONS**

In addition to the words and the terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless some other meaning is apparent in the context in which the words and terms are used.

- (1) “**Completion**” means completion of the sale and purchase of certain assets as contemplated under and in accordance with the MSBA;
- (2) “**Completion Date**” means the date on which the Completion takes place pursuant to the MSBA;
- (3) “**Deliverables**” means the results of the development to be performed by NEC hereunder and which shall be specified in the SOW (hereinafter defined).
- (4) “**Service Fee**” has the meaning set forth in SECTION 5(1) below.
- (5) “**MSA**” means a manufacturing and supply agreement entered into between AVIAT, NEC and NEC Platforms, Ltd, around the date of this Agreement;
- (6) “**Product**” means certain products listed in Exhibit B attached to this Agreement;
- (7) “**SOW**” means a legally binding agreement to be executed by and between the parties hereto that states the Work, Deliverables (if any), Criteria, Service Fee, schedule and any special terms and conditions that applies to the Work, the form of which is attached in Exhibit A to this Agreement.

- (8) **“Work”** means the following work to be rendered by NEC to AVIAT:
- (a) sustainable development work for the product;
  - (b) maintenance design work for the Product (except for minor design change work specified in the MSA);
  - (c) security measure work;
  - (d) design quality measure work;
  - (e) work to comply with product liability laws and regulations;
  - (f) work to comply with export control regulations;
  - (g) creation of technical marketing materials (e.g., Equipment Configuration Shipping Management System (KSS) and ordering guide input document);
  - (h) L4 technical support services (except for production support specified in MSA);
  - (i) other services as reasonably required by AVIAT and accepted by NEC.

The parties agree and confirm that the Work shall be rendered to Aviat only on the Product listed in Exhibit B and especially the Work listed in this sub-section from (a) to (h) shall be rendered to Aviat only on the Product listed as “Products” in Exhibit B. For the avoidance of doubt, the Work shall not extend to work or services related to the next generation of the Product.

- (9) **“Intellectual Property Rights”** has the meaning set forth in the MSBA.
- (10) **“IPLA”** mean the intellectual property licensing agreement executed as of the Completion Date by and between the parties hereto.

## **SECTION 2 SCOPE OF AGREEMENT**

- (1) This Agreement sets forth the general terms and conditions of the Work rendered by NEC to AVIAT. Subject to the terms and conditions of this Agreement and/or the SOW, NEC shall render to AVIAT the Work set forth in each applicable SOW. Each SOW may be executed under this Agreement by mutual agreement of the Parties in writing. Each SOW is incorporated in this Agreement by reference hereof. In the event of any inconsistency or conflict between this Agreement and the SOW, the terms, conditions and provisions of the SOW shall prevail.
- (2) In the event that NEC expects that the performance by it of the Work hereunder will be delayed, NEC shall promptly notify AVIAT of (i) the reasons of such delay and (ii) its reasonably estimated new schedule and/or additional fee for the Work, and the parties shall discuss such new schedule and/or additional fee in good faith (**“Initial Notification”**). In such case, Aviat shall review such schedule and/or additional fee and submit a written acceptance or rejection to NEC within fifteen (15) days following such Initial Notification, unless otherwise agreed between the parties. In the event that Aviat rejects such a new schedule and/or additional fee, NEC shall revise the schedule and the price and submit it to Aviat within a reasonable period. But if such new schedule and/or additional fee are not agreed by the parties within sixty (60) days from such Initial Notification, Aviat may terminate applicable SOW without any liability to the other party. Even if Aviat terminates applicable SOW, AVIAT agrees to pay the amount equivalent to the Service Fee for the period until the date of such termination.

- (3) NEC disclaims any and all liability with respect to the delay of the Work.

### **SECTION 3 REPORTING**

If agreed in the SOW, NEC shall furnish AVIAT with written monthly (weekly if the period of the Work is less than one month) progress reports (by E-mail) describing the progress and status of the major activities of the Work, problems discovered or encountered in the Work. Such progress reports shall be submitted to the address as set forth in the SOW.

### **SECTION 4 ACCEPTANCE**

In case Deliverables are set forth in the SOW, and unless otherwise provided for in the SOW, acceptance procedure of such Deliverables shall be as follows:

- (1) AVIAT shall test and/or evaluate the Deliverables to determine whether such Deliverables conform to the acceptance criteria (the "Criteria") specified in the SOW, and submit an acceptance or rejection notice to NEC within fifteen (15) days after receipt by AVIAT of such Deliverables.
- (2) In the event that AVIAT rejects any Deliverables due to non-conformity to the Criteria within the fifteen (15) day period set forth in SECTION 4(1) above, NEC shall, within the reasonable period which the parties agree in good faith after its receipt of the written rejection from AVIAT, make corrections or changes to the non-conforming Deliverables so that they conform to the Criteria and deliver to AVIAT the corrected Deliverables. SECTION 4(1) above shall apply mutatis mutandis to such corrected Deliverables delivered to AVIAT.
- (3) In the event that any Deliverables fail to pass a third (3rd) acceptance test by AVIAT, Aviat may terminate the relevant SOW. Even if Aviat terminates the relevant SOW, AVIAT agrees to pay the amount equivalent to the Service Fee for the period until the date of such termination.
- (4) NEC disclaims any and all liability with respect to the failure to pass any acceptance test as set forth in this SECTION 4.

### **SECTION 5 PAYMENT AND TAXES**

- (1) AVIAT agrees to pay NEC the fees for Work set forth in each SOW (the "**Service Fee**") pursuant to the provisions of this SECTION 5 and/or the SOW. Such Service Fee shall be calculated by the time spent by NEC's team members working for the Work at the rates set forth in each SOW in consideration for the Work. Any costs and expenses incurred by NEC in connection with the Work, such as working floor fee and IT expenses in NEC, transportation expenses, accommodation expenses, inspection, copying, and purchasing expenses for related materials, shall be paid by Aviat to NEC to the extent agreed with Aviat in advance.
- (2) Unless otherwise provided for in the SOW, each payment of the Service Fee shall be due within forty-five (45) days after AVIAT's receipt of the relevant invoice issued by NEC. All such invoices shall be submitted to the address as set forth in the SOW. All amounts not paid when due shall bear interest from the date such amounts are due at the lesser of (a) fourteen point six percent (14.6%) per annum and (b) the maximum allowable rate of interest allowed by the Civil code in Japan.
- (3) The Service Fee shall be paid in Japanese Yen and shall be transmitted by telegraphic transfer to the bank account designated by NEC in writing in advance.

(4)

## SECTION 6 RISK OF LOSS

Risk of loss of or damage to any Deliverable shall pass from NEC to AVIAT upon the delivery by of that Deliverable by NEC in accordance with the SOW and all such risks prior to such delivery by NEC above shall be borne by NEC.

## SECTION 7 WARRANTIES

- (1) NEC represents and warrants that at the time of acceptance by AVIAT as set forth in SECTION 4 above, each and every Deliverable shall be developed or created originally by NEC and shall conform to the applicable SOW.
- (2) NEC represents and warrants that its employees who will engage in the performance of the Work hereunder have competence, qualification and profession for the performance of this Agreement and/or the SOW.
- (3) NEC represents and warrants that it has the full right and authority to enter into and perform any and all applicable provisions of this Agreement and/or the SOW and that there are no encumbrances or other restrictions that may prevent NEC or its employees from performing any and all applicable provisions of this Agreement and/or the SOW.
- (4) NEC represents and warrants that it shall implement and maintain a quality system conforming to the requirements of ISO 9001 (2015 version).
- (5) THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## SECTION 8 LICENSE OF INTELLECTUAL PROPERTY RIGHTS

NEC retains its Intellectual Property Rights, which were or may be developed, acquired or created by it independently of this Agreement or were existing prior to the Effective Date (“**NEC Background IPR**”). Nothing herein shall be construed as a transfer, license or assignment by NEC to AVIAT with respect to NEC Background IPR. Any and all Intellectual Property Rights resulting from or acquired through the Work set forth in each applicable SOW (“**NEC Foreground IPR**”) shall vest solely with NEC. Subject to AVIAT’s performance of its obligations under this Agreement (including without limitation, the payment of the Service Fee), NEC hereby grants a royalty-free, worldwide (excluding Japan), fully paid-up, exclusive (except for any patents and patent applications) , non-sublicensable and non-transferable right and licence to AVIAT with respect to NEC Foreground IPR subject to the same scope set forth in Section 3.1 of the IPLA and on the same terms and conditions as set forth in the IPLA.

## SECTION 9 CONFIDENTIALITY

- (1) “**Confidential Information**”, as used herein, shall mean any and all information disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) in a written or other tangible form clearly marked as being “confidential” or “proprietary” (or words of similar connotation), or in an electronic form clearly marked as being “confidential” or “proprietary” (or words of similar connotation), at the time it is provided. Oral information shall not be Confidential Information unless it is (a) designated as confidential or proprietary by the Disclosing Party at the time of the oral disclosure, and (b) summarized and identified as being confidential or proprietary in writing or in electronic form, which shall be received by the Receiving Party within thirty (30) days after such oral disclosure.

- (2) The parties agree to treat and maintain as confidential and proprietary all Confidential Information furnished pursuant to or in connection with this Agreement and/or the SOW to the same extent and with the same degree of care as the Receiving Party uses in handling its own confidential and proprietary information of similar nature (but with not less than a reasonable degree of care), and further agree not to use the Confidential Information for any purpose other than the performance of any obligation under this Agreement and/or the SOW. Neither party shall disclose any Confidential Information to anyone other than its employees who have a need to know the Confidential Information in the performance of this Agreement and/or the SOW.
- (3) SECTION 9(2) hereof shall not apply to any information that; (i) on the date of this Agreement and/or the SOW was already known to the Receiving Party or generally available within the industry; (ii) after the date of this Agreement and/or the SOW becomes rightfully known to the Receiving Party without restriction from a source other than the Disclosing Party or becomes generally available in the industry other than by unauthorized disclosure by the Receiving Party; (iii) is legally furnished to the Receiving Party by a third party without restriction; (iv) was or is developed by the Receiving Party independently without any use of any of the Confidential Information or (v) is disclosed pursuant to a lawful requirement of a governmental agency or to a court order in connection with a judicial proceeding, but then only to the extent so required or ordered; in such case Receiving Party will use reasonable efforts to timely advise the Disclosing Party prior to disclosure so that Disclosing Party will have an opportunity to seek a protective order or other appropriate relief.
- (4) Notwithstanding SECTION 9(2) above, the Receiving Party may disclose the Disclosing Party's Confidential Information to its subcontractor set forth in SECTION 16 and the Receiving Party's Subsidiaries in order to execute the purpose of this Agreement, as long as any such subcontractor is bound by confidentiality obligations similar to those contained herein. As used herein, the term "**Subsidiary**" means a corporation or other legal entity at least a majority of whose voting stock or voting power entitled to vote for the election of directors (or other managing authority) are owned or controlled, directly or indirectly, by a party, now or hereafter.
- (5) The Receiving Party's obligation under this Section shall survive for the three (3) years from the termination or expiration of this Agreement and/or the SOW.
- (6) The Receiving Party shall (i) inform each of its employees and subcontractors receiving Confidential Information of the confidential nature of the Confidential Information and of this Agreement, (ii) direct its employees and subcontractors to treat the Confidential Information confidentially and not to use it other than in connection with the Agreement, and (iii) be responsible for any improper use of the Confidential Information by the Receiving Party or its employees and / or subcontractors.

#### **SECTION 10 INTELLECTUAL PROPERTY RIGHTS**

If any problems related to intellectual property rights (including trademark, patent, license infringement or other intellectual property right infringement) occur in any Deliverable or the Work or the use thereof, or the performance by it of this Agreement and/or the SOW, the responsibility shall belong to AVIAT, and NEC shall not be held liable for any responsibilities.

#### **SECTION 11 FORCE MAJEURE**

- (1) If the whole or any part of the performance by a party of any part of its obligations under this Agreement is prevented, hindered or delayed or otherwise made impracticable by reason of strikes, labor troubles, floods, fires, accidents, earthquakes, tsunamis, riots, explosions, wars, hostilities, acts of government, customs barriers or taxes, export/import control regulations, interruption or shortage of or delay in transportation, inability to obtain key raw materials,

components or supplies or other causes of like or different character beyond the reasonable control of such party, such party shall be excused from such performance during the continuance of such contingency and for so long as such contingency shall continue to prevent, hinder or delay such performance.

- (2) If the contingency specified in SECTION 11(1) above shall continue for more than three months from its occurrence, the parties shall discuss and seek a mutually agreeable solution.

## **SECTION 12 LIMITATION OF LIABILITY**

- 12.1 To the extent permitted by applicable law, it is expressly agreed that in no event shall a party be liable to the other party or any third party for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages arising out of, or relating to, and/or in connection with any breach of this Agreement. The foregoing limitations of liability shall apply (i) regardless of the form of legal action, whether in contract or in tort, including negligence or reliance, under which such damages are sought, (ii) even if such Party knows, foresees or has been advised of the possibility of such damages and (iii) notwithstanding any failure of essential purpose of any limited remedy provided for herein. The foregoing limitations of liability are cumulative, with all expenditures costs of a party being aggregated to determine satisfaction of such party's limitation of liability.
- 12.2 To the extent permitted by applicable law, it is expressly agreed that in no event shall NEC be liable for any damages or liabilities incurred by AVIAT as a result of, or in connection with the Work provided by NEC in accordance with the Agreement or any breaches of this Agreement by NEC, including, without limitation, loss of profits, loss of anticipated savings, goodwill, revenue, data or use or interpretation of business, except where such damages or liabilities incurred by AVIAT are directly caused by NEC's willful misconduct or gross negligence.
- 12.3 In no event shall NEC be liable to Aviat for any damages or liabilities in relation to this Agreement in excess of the actual amount paid by AVIAT to NEC for the specific Work that is the subject of such claim. This limitation shall apply to any claim or cause of action, whether in contract or tort or otherwise.
- 12.4 Except for AVIAT's obligation to pay the Service Fees for Work actually performed under this Agreement and any SOW, in no event shall AVIAT be liable to NEC for any damages or liabilities in relation to this Agreement in excess of the actual amount paid by AVIAT to NEC for the specific Work that is the subject of such claim. This limitation shall apply to any claim or cause of action, whether in contract or tort or otherwise.

## **SECTION 13 CHANGES**

The parties may, from time to time, by written agreement, make changes in the SOW. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of the Work, an equitable adjustment shall be made in the Service Fee, or delivery date or the Schedule, or both, and applicable SOW shall be modified in writing accordingly.

## **SECTION 14 EFFECTIVE DATE AND TERMINATION**

- (1) The term of this Agreement shall become effective from the Completion Date (such date, the "**Effective Date**") and shall continue in full force and effect until terminated by either party in accordance with SECTION 14(2) or SECTION 14(3).
- (2) After one year from the Effective Date, either party may terminate this Agreement by written notification to the other party at least 90 days in advance. For the avoidance of doubt, such written notification can be sent after nine months from the Effective Date. Notwithstanding any termination or expiration of this Agreement, the Parties shall continue to perform their obligations under the SOW until termination or expiration of such SOW. In this case, any terms and conditions hereof shall survive only with regard to such SOW.

- (3) If either party (the **“Defaulting Party”**) fails to perform any of its material obligations under this Agreement and/or the SOW, the other party (the **“Aggrieved Party”**) may give written notice to the Defaulting Party specifying the respects in which the Defaulting Party has so failed to perform its obligations under this Agreement and/or the SOW, and stating that the Aggrieved Party intends to terminate this Agreement and/or the SOW in the event of continued default. In the event that any default so specified is not remedied within thirty (30) days after the giving of such written notice, the Aggrieved Party may terminate this Agreement and/or the SOW.

Either party may immediately terminate this Agreement and/or the SOW upon written notice to the other party in the event of the other party’s insolvency; or petition being filed by or against the other party in liquidation; or in the event that the other party shall make an assignment of the benefit of creditors; or a petition shall be filed by or against the other party under any bankruptcy law, corporate reorganization law, or any other law for relief of debtors (or law analogous in purpose or effect).

- (4) All rights and obligations of the parties shall cease to have effect immediately upon termination of this Agreement and/or the SOW except that termination shall not affect the accrued rights and obligations of the parties at the date of termination.
- (5) Even after the termination of this Agreement, the provision of this Agreement shall continue to apply to each SOW effective at the time of termination of this Agreement.
- (6) For the avoidance of doubts, any termination of the SOW will not affect any other SOWs.

#### **SECTION 15 (intentionally omitted)**

#### **SECTION 16 SUBCONTRACTING**

NEC may not subcontract or otherwise delegate any portion of the Work to any third party without the prior written consent of AVIAT. However, NEC may subcontract any portion of the Work to NEC’s Subsidiaries without the prior written consent of AVIAT to the extent that the resources engaged for the Work are listed in Exhibit C.

#### **SECTION 17 PUBLIC ANNOUNCEMENT**

Each party shall obtain prior written consent of the other if it desires to make any public announcement relative to this Agreement and/or the SOW.

#### **SECTION 18 PROJECT MANAGER**

The NEC Project Manager and AVIAT Project Manager shall be set forth in the relevant SOW. The parties respective Project Managers shall act as overall coordinators for activities anticipated by, and performed under, this Agreement and/or the SOW. Each party shall advise the other party in writing in the event any successor to its Project Manager is designated.

#### **SECTION 19 REGULATIONS**

- (1) The parties shall comply with any and all applicable laws, regulations and orders of government authorities and agencies of Japan and other country having jurisdiction.

- (2) NEC shall obtain and arrange for the maintenance in full force and effect of all governmental approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary or advisable for the performance of all of the terms and conditions of this Agreement and/or the SOW.

#### **SECTION 20 SERVICE QUALITY; INDEPENDENT CONTRACTOR**

- (1) NEC shall perform the Work in a commercially reasonable manner, in accordance with applicable law, and in the same manner and on the same basis as NEC and its affiliates provided the Work with immediately prior to Completion. Subject to SECTION 16, NEC agrees to assign sufficient resources and qualified personnel as are reasonably required to perform the Work during the term of this Agreement in accordance with the standards set forth in the preceding sentence. NEC may perform the Work, as applicable, in such facilities maintained by NEC or its affiliates it reasonably deems appropriate. AVIAT agrees that NEC is not in the business of providing the Work to third parties and is willing to provide the Work only on a transition basis as an accommodation to AVIAT and its affiliates in connection with the transactions contemplated by the MSBA. Except as set forth in this SECTION 7, NEC makes no representations or warranties, express or implied, with respect to the Work to be provided hereunder.
- (2) The relationship of NEC to AVIAT in the performance of this Agreement and/or the SOW shall be that of an independent contractor.
- (3) Nothing in this Agreement and/or the SOW shall be construed as creating a partnership between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

#### **SECTION 21 APPLICABLE LAW**

This Agreement and/or the SOW and all acts and transactions pursuant hereto shall be governed, construed and interpreted in accordance with the laws of Japan.

#### **SECTION 22 SETTLEMENT OF DISPUTES**

- (1) This SECTION 22 shall be governed by the laws of Japan.
- (2) Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement and/or the SOW, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity, and any dispute relating to any non-contractual obligations arising out of or in connection with it, shall be referred to, and finally resolved by, arbitration under the Rules of Arbitration of the International Chamber of Commerce (for the purpose of this SECTION 22, the **Rules**).
- (3) The Rules are incorporated by reference into this clause and capitalized terms used in this SECTION 22 which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- (4) The number of arbitrators shall be three (3). The arbitrators nominated by the parties shall jointly nominate the third arbitrator who, subject to confirmation by the Court, will act as president of the arbitral tribunal.
- (5) The seat or legal place of arbitration shall be Tokyo, Japan.

- (6) The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

#### **SECTION 23 LANGUAGE**

This Agreement shall be written and executed in the English language.

#### **SECTION 24 AMENDMENT**

No variation to this Agreement and/or the SOW shall be valid unless it is in writing and signed by or on behalf of each of the parties.

#### **SECTION 25 NOTICES**

- (1) Any notice or other communication provided for this Agreement and/or the SOW shall be in writing in the English language and shall be delivered personally, sent by certified or registered airmail or transmitted by email (in such case followed by confirmation delivered by certified or registered airmail) as follows:

- (a) If to AVIAT, to: AVIAT U.S., Inc.

Address: 200 Parker Drive, Suite C100A, Austin, Texas 78728, United States

Tel: [...]

Email: [...]

For the attention of: GC, VP of Legal Affairs

- (b) If to NEC, to:

Address:

1753 , Shimonumabe, Nakahara-ku , Kawasaki –city, 211-8666, JAPAN

Tel: [...]

Email: [...]

For the attention of: Kazuyuki Katashio

or to such other person, address or facsimile number as either party may specify by notice in writing to the other.

- (2) In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

- (a) if delivered personally when left at the address referred to in this SECTION 25;
- (b) if mailed, ten (10) days after being deposited in the mail;
- (c) if sent by facsimile, when clearly received in full.

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**SECTION 26 NON-ASSIGNABILITY**

None of the parties shall, nor shall it attempt to, assign, transfer or otherwise dispose of its rights or obligations under this Agreement and/or the SOW without the prior written consent of the other party.

**SECTION 27 WAIVER**

The failure to exercise or delay in exercising a right or remedy under this Agreement and/or the SOW shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement and/or the SOW shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

**SECTION 28 SEVERABILITY**

The illegality, invalidity or unenforceability of any provision or term of this Agreement and/or the SOW for any reason whatsoever shall not affect the validity of any other provisions or terms of this Agreement and/or the SOW and the illegal, invalid or unenforceable provision or term shall be severable from this Agreement and/or the SOW and shall be deemed deleted from this Agreement and/or the SOW.

**SECTION 29 HEADINGS**

The headings of this Agreement and/or the SOW are for convenience of reference purpose only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement and/or the SOW.

**SECTION 30 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, proposals, consents, correspondence, commitments and/or representations, whether oral or in writing. There are no understandings, representations or warranties of any kind except as expressly set forth herein. No amendments or modifications of this Agreement shall be valid or binding upon the parties unless in writing and signed by their duly authorized representatives.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their authorized representatives as of the date hereof.

**Aviat Networks, Inc.**

By: /s/ Peter A. Smith

Name: Peter A. Smith

Title: President & CEO

**NEC Corporation**

By: /s/ Yukio Hioki

Name: Yukio Hioki

Title: General Manager, Wireless Solutions Division

[Signature Page to Research Development Cooperating Agreement]

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**Exhibit A**

**STATEMENT OF WORK N°1**

[Intentionally omitted]

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**Exhibit B**

**Products**

[Intentionally omitted]

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**EXHIBIT C**

**List of resources assigned to the Work under this DSA**

[Intentionally omitted]

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**EXHIBIT D**

**Maximum budget for the first year of the DSA**

[Intentionally omitted]

## Aviat Networks Completes the Acquisition of NEC's Wireless Transport Business

Austin, TX, November 30, 2023 — Aviat Networks, Inc. (“Aviat Networks,” “Aviat,” or the “Company”), (Nasdaq: AVNW), the leading expert in wireless transport and access solutions, today announced the completion of its acquisition of the Wireless Transport Business of NEC Corporation (“NEC”). The completion of this acquisition significantly increases the scale of Aviat Networks, enhances the Company’s product portfolio with a greater capability to innovate, and creates a more diversified business.

“We are pleased to close this transaction and further solidify our position as the leading wireless transport specialist company,” said Pete Smith, CEO of Aviat Networks. “Now with the two businesses’ products and services together, Aviat will be able to offer a superior solution to its combined customers around the world.”

Mr. Smith continued, “We are eager to bring our best-in-class services and operations to the customers joining Aviat. We are committed to our goal of providing a better customer experience for all customers as a result of this transaction. Additionally, we welcome the employees joining Aviat from NEC. We look forward to building a great business together.”

Aviat will include the acquired Wireless Transport Business in updated fiscal year 2024 guidance which will be provided in Aviat’s fiscal 2024 second quarter earnings call. The acquired business will impact only the last month of Aviat’s fiscal 2024 second quarter, which will be reflected in Aviat’s next earnings report.

Aviat Networks previously announced its entry into a definitive agreement to purchase the assets of NEC’s Wireless Transport Business on May 9, 2023. Updates to the terms of the agreement, along with the full details of the final Purchase Agreement, have been filed with the SEC today. The final purchase price of the transaction was \$65.5 million with \$42.1 million in cash consideration and \$23.4 million in stock consideration. Aviat is drawing on its previously announced committed debt financing to fund the cash portion of the transaction. The price per share of the stock consideration remains fixed at \$31.74 per share based on Aviat’s 30-day volume weighted average price prior to the May 9, 2023 definitive agreement. The reduction in purchase price is a result of a portion of the acquired business that could not be transferred as originally planned and accounts for approximately 7% of the previously disclosed \$150 million annual run rate revenue expected from the acquired business.

### About Aviat Networks, Inc.

Aviat Networks, Inc. is the leading expert in wireless transport and access solutions and works to provide dependable products, services and support to its customers. With more than one million systems sold into 170 countries worldwide, communications service providers and private network operators including state/local government, utility, federal government and defense organizations trust Aviat with their critical applications. Coupled with a long history of microwave innovations, Aviat provides a comprehensive suite of localized professional and support services enabling customers to drastically simplify both their networks and their lives. For more than 70 years, the experts at Aviat have delivered high performance products, simplified operations, and the best overall customer experience. Aviat is headquartered in Austin, Texas. For more information, visit [www.aviatnetworks.com](http://www.aviatnetworks.com) or connect with Aviat Networks on [Twitter](#), [Facebook](#) and [LinkedIn](#).

**Aviat Networks Media Contact:** Stuart Little, [stuart.little@aviatnet.com](mailto:stuart.little@aviatnet.com)

**Aviat Networks Investor Relations Contact:** Andrew Fredrickson, [andrew.fredrickson@aviatnet.com](mailto:andrew.fredrickson@aviatnet.com)

### Forward-Looking Statements

The information contained in this Current Report on Form 8-K includes forward-looking statements within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995, including Aviat's beliefs and expectations regarding the Transaction with NEC, outlook, business conditions, new product solutions, customer positioning, future orders, bookings, new contracts, cost structure, profitability in fiscal 2024, process improvements, plans and objectives of management, realignment plans and review of strategic alternatives and expectations regarding future revenue, Adjusted EBITDA, operating income of earnings or loss per share. All statements, trend analyses and other information contained herein regarding the foregoing beliefs and expectations, as well as about the markets for the services and products of Aviat and trends in revenue, and other statements identified by the use of forward-looking terminology, including "anticipate," "believe," "plan," "estimate," "expect," "goal," "will," "see," "continue," "delivering," "view," and "intend," or the negative of these terms or other similar expressions, constitute forward-looking statements. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, forward-looking statements are based on estimates reflecting the current beliefs, expectations and assumptions of the senior management of Aviat regarding the future of its business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Such forward-looking statements involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. Forward-looking statements should therefore be considered in light of various important factors, including those set forth in this document. Therefore, you should not rely on any of these forward-looking statements.

Important factors that could cause actual results to differ materially from estimates or projections contained in the forward-looking statements include the following: disruption the NEC Transaction may cause to customers, vendors, business partners and our ongoing business; our ability to integrate the operations of the acquired NEC Corporation businesses with our existing operations and fully realize the expected synergies of the NEC Transaction on the expected timeline; the impact of COVID-19; disruptions relating to the ongoing conflict between Russia and Ukraine and the conflict in Israel and surrounding areas; continued price and margin erosion in the microwave transmission industry; the impact of the volume, timing, and customer, product, and geographic mix of our product orders; our ability to meet financial covenant requirements; the timing of our receipt of payment; our ability to meet product development dates or anticipated cost reductions of products; our suppliers' inability to perform and deliver on time, component shortages, or other supply chain constraints; the effects of inflation; customer acceptance of new products; the ability of our subcontractors to timely perform; weakness in the global economy affecting customer spending; retention of our key personnel; our ability to manage and maintain key customer relationship; uncertain economic conditions in the telecommunications sector combined with operator and supplier consolidation; our failure to protect our intellectual property rights or defend against intellectual property infringement claims; the results of our restructuring efforts; the effects of currency and interest rate risks; the effects of current and future government regulations; general economic conditions, including uncertainty regarding the timing, pace and extent of an economic recovery in the United States and other countries where we conduct business; the conduct of unethical business practices in developing countries; the impact of political turmoil in countries where we have significant business; our ability to realize the anticipated benefits of any proposed or recent acquisitions; the impact of tariffs, the adoption of trade restrictions affecting our products or suppliers, a United States withdrawal from or significant renegotiation of trade agreements, the occurrence of trade wars, the closing of border crossings, and other changes in trade regulations or relationships; our ability to implement our stock repurchase program or that it will enhance long-term stockholder value; and the impact of adverse developments affecting the financial services industry, including events or concerns involving liquidity, defaults or non-performance by financial institutions.

For more information regarding the risks and uncertainties for Aviat's business, see "Risk Factors" in Aviat's Form 10-K for the fiscal year ended June 30, 2023 filed with the U.S. Securities and Exchange Commission ("SEC") on August 30, 2023, as well as other reports filed by Aviat with the SEC from time to time. Aviat undertakes no obligation to update publicly any forward-looking statement, whether written or oral, for any reason, except as required by law, even as new information becomes available or other events occur in the future.