AGREEMENT FOR USE AND NONDISCLOSURE
OF CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

THIS AGREEMENT, effective as of this _____ day of _____ 20__, by and between **NEC America, Inc.** (hereinafter "NECAM"), and _____ (hereinafter "DEVELOPER"), is intended to preserve the confidentiality and/or proprietary status of information to be disclosed or exchanged between NECAM and DEVELOPER concerning NECAM's DEVELOPER Kits (herinafter "the INTERFACE") and DEVELOPER's Product (hereinafter "the PRODUCT").

NECAM may disclose to representatives of DEVELOPER confidential, trade secret, and/or proprietary information concerning hardware and/or software components, functions and features of the INTERFACE. DEVELOPER may likewise disclose to NECAM certain confidential and/or proprietary information for use by NECAM in developing the PRODUCT. DEVELOPER and NECAM acknowledge that neither would disclose such information to the other unless the other agreed to maintain such information in confidence.

NOW, THEREFORE, in reliance upon and in consideration of the following undertakings and the mutual benefits to be derived therefrom, NECAM and DEVELOPER agree as follows:

1. "Confidential Information" as used herein shall mean various trade secrets, proprietary NECAM and DEVELOPER technical data, technical experience, and other confidential information, including (but not limited to) design, features, and functions of the INTERFACE and PRODUCT, materials and manufacturing processes, software and firmware computer programs, patterns, devices, inventions, compilations of information, records and specifications, and business methods and techniques which are owned by the disclosing party. "Confidential Information" includes the above-stated types of information, whether provided by the disclosing party in written or verbal form, or as data recorded in any machine-readable medium or form, provided, that:

    (a) written Confidential Information will be stamped or labeled **"[Disclosing Party] Confidential"** (or words of similar connotation) at the time it is provided,

    (b) verbal information will be identified as Confidential Information by the disclosing party at the time it is provided, and

    (c) data recorded in any machine-readable medium will be identified by the disclosing party at the time it is provided, by the use of (i) a label affixed to the medium or (ii) a display which appears on the output of a terminal, printout or other method used to translate machine-readable information into information discernable by human beings, in such a way that the Confidential Information cannot be accessed without such notice first having appeared.

    A disclosing party which **fails to identify disclosed information as "Confidential Information" at the time of disclosure** may subsequently identify such information as "Confidential Information", on a prospective basis, by giving written notice to the receiving party. **Notwithstanding anything contained herein to the contrary, the receiving party shall not be liable for any consequences of its use of such information, including (but not limited to) the receiving party's release of such information to the public, prior to the time of receiving such written notice.**

2. Each party agrees to use Confidential Information received from the other only for purposes of: (a) the development of the PRODUCT, (b) determining whether to enter into a mutual business relationship concerning the PRODUCT, or (c) other purposes identified and mutually agreed upon. Nothing herein shall be construed as an obligation or undertaking on the part of either party to enter into any business relationship with the other concerning the PRODUCT.

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3. NECAM and DEVELOPER agree not to reveal the other's Confidential Information to any third party, nor to reveal the contents of this Agreement to any third party, without the other's prior written consent. As a condition of granting such consent, the other party may require the third party to execute an agreement in substantially the same form as this agreement.

4. Unless prior written consent is obtained, NECAM and DEVELOPER agree to disclose Confidential Information received from one another **only to** representatives, officers, employees or agents of the receiving party who have a "need to know" such Confidential Information for the purposes set forth in Section 2 above.

5. Whenever NECAM or DEVELOPER generates an internal work product containing the other's Confidential Information (including, but not limited to: notes, extracts, paraphrased text and references from which the substance of the Confidential Information may be implied or otherwise understood), all tangible forms of that work product will have **any page** which contains the other's Confidential Information labeled **"NEC America Confidential"** or **"DEVELOPER Confidential"**, as appropriate. The Confidential Information contained in such work product will be handled in the same manner, and shall be as fully governed by the terms of this Agreement, as the original version of such Confidential Information.

   For purposes of this Paragraph, an "internal work product" includes any "hard copy", "printout" or other transfer of all or portions of Confidential Information into a medium and form discernable by human beings. It shall be the responsibility of the receiving party to insure that the medium to which such transfers might be made will, by "hand stamping" or other appropriate method, contain notices concerning the Confidential Information in the form described in Paragraph 5 above.

6. **Except for internal distribution on a "need to know" basis as set forth in Paragraph 4 above, for the purposes set forth in Paragraph 2 above,** NECAM and DEVELOPER agree not to copy or otherwise reproduce any written Confidential Information without the express prior written consent of the disclosing party. In any event, all such Confidential Information and copies thereof shall remain the sole property of the disclosing party, and all copies (including internal copies) shall be promptly returned to the disclosing party when: (a) the receiving party's need for it has expired, or (b) upon the disclosing party's request.

7. NECAM and DEVELOPER shall each comply, and do all things necessary to enable the other to comply, with all applicable Federal, State and local laws, regulations and ordinances, including but not limited to, the Regulations of the United States Department of Commerce relating to the Export of Technical Data, insofar as they may relate to the activities to be performed by the parties. NECAM and DEVELOPER agree to obtain any and all required government documents and approvals prior to the exportation of any Confidential Information which includes such technical data disclosed by the other.

8. Both NECAM and DEVELOPER shall provide the same type and degree of care to prevent disclosure or unauthorized use of the other party's Confidential Information as they would provide to protect their own confidential information. As a **minimum** requirement, NECAM and DEVELOPER shall retain each other's Confidential Information in one or more secure places with access limited only to their respective representatives, officers, employees or agents who have a "need to know" such Confidential Information for the purposes set forth in Paragraph 2 herein.

9. Notwithstanding the definition contained in Section 1 herein, the term "Confidential Information" **does not include** information which:

   (a) has been published by the disclosing party or is otherwise in the public domain through no fault of the receiving party;

   (b) is properly within the legitimate possession of the receiving party prior to its disclosure hereunder and without any obligation of confidence;

(c)   after disclosure, is lawfully received by the receiving party from a third party having rights in such Confidential Information and such third party was not restricted from disclosing the information to the receiving party hereunder;

(d)   is independently developed by the receiving party through persons who have not had access to, or knowledge of, the Confidential Information; or

(e)   is approved for disclosure by the owner of the Confidential Information, in writing, prior to its disclosure.

10.   Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure is in response to a valid order of a court or other governmental body or is otherwise required by law; provided, however, that the responding party first shall have given notice to the other party hereto and shall have, **as appropriate:**

(a)   fully cooperated in the other party's attempt to obtain a "protective order" from the appropriate court or other governmental body, or

(b)   attempted to classify such documents to prevent access by the public, in accordance with the provisions of the federal Freedom of Information Act ("FOIA") or similar State statutes.

11.   No license or immunity is granted under this Agreement by either party to the other, directly or by implication, estoppel, or otherwise, under any patents, copyrights, trademarks, service marks, or trade secrets, except that to the extent the Confidential Information of NECAM is furnished to DEVELOPER, DEVELOPER shall be permitted to use the Confidential Information as contemplated under Appendix A, made part thereof. None of the Confidential Information which may be disclosed shall constitute any representation, warranty, assurance or guaranty by either party to the other with respect to the infringement of patents or other rights of others.

12.   (a)   Because monetary damages are difficult to ascertain and would be inadequate as a remedy in the event of a violation of the terms of this Agreement, both parties agree that either party may seek to obtain an injunction to prevent unauthorized use or disclosure of Confidential Information, in addition to any other legal or equitable remedies which may be available to it. Each party further agrees to indemnify and hold harmless the other from any and all foreseeable loss or liability to third parties which may result from the unauthorized disclosure of the Confidential Information.

(b)   The prevailing party in any court action or other proceeding to enforce or arising from the provisions of this agreement, may recover the costs therein incurred, including but not limited to reasonable attorneys' fees. For these purposes, the prevailing party will be deemed to be the party that a restraining order, injunction or judgment for declaratory relief or for damages or other legal or equitable relief is entered in its favor on some or all of its claims.

13.   The receiving party agrees to obtain prior written confirmation from the disclosing party as to whether or not particular information is Confidential Information prior to disclosure of such information, if the receiving party is uncertain as to the nature of such particular information.

14.   The confidentiality obligations set forth in this agreement shall terminate three years after execution of this agreement. The remaining portions of this agreement shall remain effective after such date. In the event that any portion of this Agreement shall be ruled invalid by a court of competent jurisdiction, the remaining portions shall be deemed valid and in effect, and interpreted as if the invalid portion had never been a part hereof.

15.   This Agreement cannot be amended, nor its provisions waived, except by a writing signed by officers of NECAM and DEVELOPER.

16. (a) This Agreement shall be governed by the laws of the State of New York. There are no other understandings, agreements or representations, express or implied, between NECAM and COMPANY regarding the subject of this Agreement.

(b) DEVELOPER hereby agrees that any dispute arising from the provisions of this or any other agreement between the parties may be litigated in the courts of the State of New York or of the United States District Court for the Eastern District of New York and DEVELOPER accordingly hereby consents to submit to the jurisdiction of such courts and expressly waives any objections or defenses based upon lack of personal jurisdiction or venue.

IN WITNESS WHEREOF, NECAM and DEVELOPER have executed this Agreement through their duly authorized representatives as of the day first written above.

NEC America, Inc.

By: _____

Name (Print or type): _____

Title: _____

Date: _____

Developer: _____

By: _____

Name (Print or type): _____

Title: _____

Date: _____

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APPENDIX A: Items Covered by this Agreement

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Other Developer Products.

Purchase of these NEC Developer Products require a "Non Disclosure Agreement" to be executed between NEC America, Inc. and the Developer.

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Advanced Documentation	Price
OpenWorX Developer's Kit Advanced Documentation CD containing the following documents: • OAI Library Programming Guide for Microsoft Windows NT Server and Workstation • Open Application Interface (OAI) Facility Manual • Infolink Programming Guide	$200

General CTI Market APIs	Price
TAPI Developers Guide - Interface specifications for NEC TAPI products: PC Telephony Adapter, Dterm PC, and TAPI Link.	$100

Command Level Links	Price
Message Center Interface specifications supporting NEC's Voice Processing Applications	$100
Property Management System Interface – NEAX 2400 The PMS Interface service feature provides an interface to the Property Management System (PMS) computer using the standard IBM® BISYNC (Binary Synchronous Communication) protocol. This interface allows a PMS computer to accommodate both front and back office hospitality management features.	$100
Property Management System Interface – NEAX 2000 The PMS Interface service feature provides an interface to the Property Management System (PMS) computer using the standard IBM® BISYNC (Binary Synchronous Communication) protocol. This interface allows a PMS computer to accommodate both front and back office hospitality management features.	$100
SMDR Interface Specification The System Message Detail Record (SMDR) feature assembles call events, such as trunk seizures, off-hook, call duration, etc., into coherent call records. A call record message provides detailed information about a particular call. The SMDR interface sends out the Outgoing/Incoming C.O. call information to the SMDR terminal (Personal Computer/Host Computer).	$100
Host Link Specification	$250

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