



# Customer Agreement

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**NOTICE: PLEASE READ THE FOLLOWING TERMS CAREFULLY. THIS LENOVO CUSTOMER AGREEMENT (“AGREEMENT”) IS A BINDING LEGAL AGREEMENT BETWEEN YOU (“YOU” OR “CUSTOMER”) AND THE LENOVO AFFILIATE DESCRIBED BELOW (“LENOVO”). YOU ACCEPT THESE TERMS BY PLACING AN ORDER, EXECUTING A SCHEDULE, AND/OR USING THE LENOVO SERVICE DESCRIBED HEREIN. IF YOU DO NOT WISH TO ACCEPT THESE TERMS AND/OR THE SERVICES YOU MUST IMMEDIATELY ADVISE YOUR LENOVO REPRESENTATIVE OF YOUR REJECTION PRIOR TO LENOVO’S PERFORMANCE OF SUCH SERVICES. IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES, INTENDING TO BE LEGALLY BOUND, AGREE TO THE TERMS OF THIS AGREEMENT.**

Products and Services in the United States and Canada are sold by different Lenovo entities. This Agreement is between You and the respective Lenovo affiliate within the United States or Canada in which You purchased and utilized the Lenovo Product(s) and/or Service(s). For Products and Services sold to You in the United States, this Agreement is held between You and Lenovo Global Technology (United States) Inc. For Products and Services sold to You in Canada, this Agreement is held by Lenovo Global Technology (Canada) Inc. The rights and obligations under this Agreement apply to, and are owed by, the relevant Lenovo only. In the event that You are being provided Products and Services in association with this Agreement in both the United States and Canada, You acknowledge that under such relationship, You have effectively entered into two (2) distinct and separate Agreements with the two different Lenovo entities referenced above under the same terms.

You and Lenovo may be referred to collectively in this Agreement as “parties” and individually as “party.”

## 1. Definitions

**1.1 Product** means any Lenovo branded or third party hardware or software that Lenovo makes available for purchase by Customer under this Agreement. Hardware Products include servers, storage devices and accessories. Software Products include computer software Programs (whether pre-loaded or provided separately) and related licensed materials such as documentation.

**1.2 Service** means the performance of a task; the provision of advice or assistance; or access to a resource such as an information database that Lenovo makes available to Customer under this Agreement.

**1.3 Machine** means a server or storage hardware Product identified by a Machine Type as well as its features, conversions or upgrades. The term “Machine” does not include any Programs, whether pre-loaded with the Machine, installed subsequently, or otherwise.

**1.4 Program** means a software Product.

## 2. Attachments and Transaction Documents

Additional terms for Products and Services may be in documents called "Attachments" and "Transaction Documents." In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to an individual transaction. There may be one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions. If there is a conflict among the terms of this Agreement, an Attachment or a Transaction Document, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

## 3. Applicability, Orders and Delivery

Customer accepts the terms in Attachments and Transaction Documents by: (i) signing the Attachments or Transaction Documents (by hand or electronically); (ii) using the Product or Service, or allowing others to do so; or (iii) making any payment for a Product or Service. A Product or Service becomes subject to this Agreement when Lenovo accepts Customer's order by sending Customer written acceptance of the order; by shipping the Product; or by otherwise making the Program or Service available to Customer. Confirmation of Lenovo's receipt of a Customer order does not constitute Lenovo's acceptance of the order.

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs that Lenovo provides to Customer in tangible form, Lenovo fulfills its shipping and delivery obligations upon the delivery of such Programs to the Lenovo-designated carrier, unless otherwise agreed to in writing by Customer and Lenovo. An Attachment or Transaction Document will be signed by both parties if requested by either party.

#### **4. Prices and Payment**

Prices for Products and Services shall be as set forth in Attachment A or as otherwise agreed by the parties in writing. If not paid in advance of shipment, all amounts are due upon receipt of invoice. Any amounts not received by Lenovo within thirty (30) days of receipt of invoice shall be overdue. Customer shall pay a late payment fee of the lesser of one and one half (1.5%) percent per month or the maximum rate permitted by applicable law on the undisputed overdue balance of the invoice amount. Customer shall pay any applicable sales, use or similar taxes, fees or duties unless Customer provides exemption documentation to Lenovo. Customer is responsible for taxes, if any, on Products and Services from the date Lenovo ships them to Customer or the date on which the Services are provided by Lenovo. No other discounts, quantity entitlements, or promotions apply unless expressly agreed in writing by Lenovo. Delivery charges, if applicable, will be specified in an invoice.

#### **5. Title and Risk of Loss**

**5.1** Lenovo transfers title to hardware Products to Customer upon delivery to Lenovo's designated carrier for shipment to Customer. Lenovo does not transfer title to Programs.

**5.2** Lenovo shall bear the risk of loss or damage to hardware Products until they are delivered to Lenovo's designated carrier for shipment to Customer. Thereafter, Customer assumes risk of loss or damage. Hardware Products will be covered by insurance, arranged and provided by Lenovo for Customer, covering the period until they are delivered to Customer.

#### **6. Warranties**

##### **6.1 Servers and Storage Products**

###### **6.1.1 Warranty for Machines**

Lenovo warrants that each Machine is free from defects in materials and workmanship under normal use during the warranty period. Unless Lenovo specifies otherwise, the warranties apply only in the market of acquisition. The warranty period for a Machine is a fixed period of time specified in Attachment B: Warranty Service Information (Servers and Storage Products) or as specified in a Transaction Document. The warranty period starts on the original date of purchase specified on Lenovo's invoice unless specified otherwise by Lenovo in writing. During the warranty period, Lenovo shall provide repair and exchange Service for the Machine, without charge, under the type of Service designated by Lenovo for the Machine. If a defect in material or workmanship is discovered during the warranty period and Lenovo is unable to either: (i) repair it; or (ii) replace it with one that is at least functionally equivalent, Customer may return it to Lenovo for a prorated refund.

###### **6.2 Warranty for Services**

Lenovo warrants that it performs Service using reasonable care and skill and according to its current description contained in this Agreement, an Attachment, or an order. Customer shall provide timely written notice of any failure to comply with this warranty in order that Lenovo may take corrective action.

###### **6.3 Items to which these warranties do not apply**

These warranties shall not apply to any hardware Product which has been subjected to misuse, accident, unauthorized modification; operated in an unsuitable physical or operating environment; subjected to natural

disasters, power surges or unauthorized maintenance; to any third party hardware product, including those that Lenovo may provide or integrate into a hardware Product at Customer's request; or to software, whether provided with a hardware Product or installed subsequently. These warranties do not include any technical support, such as assistance with "how-to" questions and those regarding hardware Product set-up and installation. These warranties shall be voided by the removal or alteration of identification labels on a hardware Product or its parts. In no event shall these warranties include liability for uninterrupted or error-free operation of a hardware Product, correction of all defects; or any loss of, or damage to data by a hardware Product.

**6.4 THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. ALL SOFTWARE, SUPPORT AND ALL THIRD PARTY PRODUCTS AND SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIRD PARTY MANUFACTURERS, SUPPLIERS, DEVELOPERS, SERVICE PROVIDERS, LICENSORS OR PUBLISHERS MAY PROVIDE THEIR OWN WARRANTIES TO CUSTOMER.**

## **7. General**

**7.1 Product, Part or Component Changes.** Lenovo may change components or parts of a hardware Product without notice provided that the substituted components or parts provide equal or better performance. Any such change shall be at no additional cost to Customer, and will not change Customer's rights under the Lenovo hardware Product warranty.

**7.2 Customer Sale of Products and Services.** If Customer sells Products or Services purchased from Lenovo in competition with Lenovo resellers, Lenovo may terminate this Agreement and discontinue sales to Customer.

**7.3 Personal Information.** Lenovo will collect, access, retain and, as appropriate, share (collectively "Process") the names and contact information of Customer, as well as machine types and serial numbers of the Products sold to Customer (collectively "Personal Information"). This Personal Information will be Processed by Lenovo in order to perform the obligations of this Agreement, including contractual warranties. Lenovo will Process Personal Information of Customer consistent with its general website and product privacy statements available at <https://www.lenovo.com/us/en/privacy/> and/or, as applicable, privacy statements designed for a specific Lenovo Product or Service. To perform its obligations pursuant to this Agreement in relation to the Products and Services, Lenovo may transfer Personal Information (i) from any country to any other country in the world where Lenovo and its Enterprise operate, and (ii) to Lenovo's Enterprise and Lenovo Service Providers acting on Lenovo's behalf in relation to this Agreement and/or the Products or Services. Lenovo and Customer will comply with all data privacy or data protection laws applicable to their Processing of Personal Information pursuant to this Agreement. Lenovo and Customer will have appropriate technical and organizational security measures in place to protect Personal Information from unauthorized access, use, or release. If Customer accesses any Personal Information directly from a Lenovo order visibility platform or other data system, Customer (i) shall have in place appropriate administrative, physical, and technical controls to address threats to the confidentiality and security of Lenovo's platform or data system and associated information and (ii) shall not transfer across international borders any Personal Information it receives from Lenovo without Lenovo's express prior written consent. Lenovo and Customer agree to cooperate as needed to address any actual or suspected Personal Information incident that may occur within the scope of this Agreement, including actual or suspected breaches of Personal Information, and to take any necessary steps to investigate, address, remediate and/or mitigate such incidents. Furthermore, Lenovo and Customer agree to appropriately respond to any individual's requests to review, correct, amend or delete his or her Personal Information Processed within the scope of this Agreement.

## **7.4 Limitation of Liability.**

**7.4.1** In any action arising out of or related to this Agreement or any order issued hereunder, neither party nor its affiliates shall be liable to the other party or its affiliates for any of the following even if informed of their possibility and whether arising in contract, tort, (including negligence) or otherwise: (a) third-party claims for damages; (b) loss of, or damage to, data; (c) special, incidental, indirect, punitive, exemplary or consequential damages; or (d) loss of profits, business, revenue, goodwill or anticipated savings; and

**7.4.2** The maximum cumulative liability of either party and its affiliates to the other party and its affiliates for all actions arising out of or related to this Agreement and all orders issued hereunder, regardless of the form of the action or the theory of recovery, shall be limited to the total amount paid or payable by Customer and its affiliates to Lenovo and its affiliates for all orders issued under this Agreement.

**7.4.3** The provisions of Sections 7.4.1 and 7.4.2 shall also limit the liability of Lenovo, its subcontractors, suppliers and program developers, collectively, to Customer and its affiliates.

**7.4.4** The provisions of Sections 7.4.1 and 7.4.2 shall not apply to: (i) bodily injury (including death); (ii) damage to real property; or (iii) damage to tangible personal property.

**7.5 Intellectual Property Infringement Protection.** If a third party claims that a Lenovo branded Product provided by Lenovo to Customer under this Agreement infringes that party's patent or copyright, Lenovo will defend Customer against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved by Lenovo, provided that Customer: (i) promptly notifies Lenovo in writing of the claim; (ii) allows Lenovo to control, and cooperates with Lenovo in, the defense and any related settlement negotiations; and (iii) is and remains in compliance with Customer's obligations in this Section 7.5. The foregoing is Lenovo's entire obligation to Customer and Customer's exclusive remedy regarding any claim of infringement. If such a claim is made or appears likely to be made, Customer shall permit Lenovo, in Lenovo's sole discretion, to enable Customer to continue to use the Product; to modify it; or to replace it with one that is at least functionally equivalent. If Lenovo determines that none of these alternatives is reasonably available, Customer shall promptly return the Product to Lenovo at its written request. Lenovo will then provide a credit to Customer in an amount equal to the net book value of the Product according to generally accepted accounting principles. Lenovo shall have no obligation regarding any claim based upon: (i) anything Customer or a third party on Customer's behalf provides which is incorporated into, or combined with, a Product; (ii) modification of a Product by Customer or a third party on Customer's behalf; (iii) the combination, operation, or use of a Product with any products not provided by Lenovo as a system, or the combination, operation, or use of a Product with any product, data, apparatus or business method that Lenovo did not provide; (iv) Lenovo's compliance with Customer's specifications or requirements; or (v) infringement by a third party Product alone.

**7.6 Assignment.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party. Neither party shall unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, by either party to an affiliate or to a successor organization by merger or acquisition, does not require the consent of the other party. Lenovo may assign its rights to payments under this Agreement without Customer's consent.

**7.7 Governing Law.** This Agreement and all orders issued hereunder shall be governed under the laws of the country of the Lenovo entity subject to this Agreement. In the event that the entity is a U.S. entity, then this Agreement shall be governed under the laws of the State of New York, without regard to its conflict of laws principles. In the event that the entity is a Canadian entity, then this Agreement shall be governed under the laws of the Province of Ontario, without regard to its conflict of laws principles. Neither party may bring an action arising out of or related to this Agreement more than two (2) years after the cause of action arose. The rights and obligations of each party are valid only in the country in which the transaction is performed or, if Lenovo agrees, the country where the Product is placed in productive use, except that all licenses are valid as specifically granted. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**7.8 Survival.** Any terms of this Agreement, which by their nature survive the expiration or termination of this Agreement, including but not limited to Limitation of Liability and Intellectual Property Infringement Protection, shall survive the expiration or termination of this Agreement.

**7.9 Force Majeure.** Except for payment obligations, neither party shall be liable to the other for any failure or delay in the performance of its obligations, to the extent such failure or delay is caused by fire, flood, earthquakes, other elements of nature; acts of war; terrorism, riots, civil disorders, rebellions or revolutions; epidemics, communication line or power failures; governmental laws, court orders or regulations; or any other cause beyond its reasonable control.

**7.10 Term and Termination.** The term of this Agreement shall begin on the effective date and continue for three (3) years. Either party may terminate this Agreement without cause upon thirty (30) days' prior written notice to the other party. This Agreement may be extended as agreed by the parties in writing. Either party may terminate this Agreement if the other fails to comply with any material term, provided the party alleged not to be in compliance is given written notice of the non-compliance and reasonable time to cure.

**7.11 Complete Understanding.** This Agreement is the sole and complete understanding of the parties regarding the subject matter hereof, superseding all prior or contemporaneous agreements and understandings, whether written or oral. Additional Product or Service Descriptions, Price Lists, or Statements of Work may become part of this Agreement only when added by an amendment signed by both parties. Any additional or different terms not in a writing signed by both parties and any contrary terms on a Customer purchase order shall not be a part of this Agreement.

**7.12 Customer Affiliates.** Customer affiliates may place orders with Lenovo for the purchase of Products and Services under this Agreement subject to: (a) proof of creditworthiness satisfactory to Lenovo; or (b) Lenovo's receipt of a guarantee of payment from Customer for each such Customer affiliate in a form provided by Lenovo.

**7.13 Severability.** If the whole or any part of a provision of this Agreement is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, it shall be deleted and the remainder of this Agreement shall remain in full force and effect.

**7.14 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

**7.15 Attachments.** The following documents are incorporated herein and made a part of this Agreement:

Attachment A: Pricing, Products and Services Descriptions

Attachment B: Warranty Service Information – Machines (Servers and Storage Products)

Attachment C: Master Services Attachment

**Attachment A**  
**Pricing, Products and Services Descriptions**

<b>Products /Service Description</b>	<b>Ordering Part Number or Machine Type / Model</b>	<b>Price (purchases directly from Lenovo only)</b>
As Configured		

**This Attachment A may be modified from time to time as agreed by Lenovo and Customer. At Lenovo's option, Lenovo may make the information on this Attachment A available to Customer by a Customer Product Catalog or Website.**

**Prices:**

1. Invoices shall be based on the lower of the prices above or the price set by Lenovo at time of Customer's order.
2. These prices or discounts may not be combined with any other discounts or promotions unless approved by Lenovo.
3. Customer may only disclose the prices or discounts to Customer employees or contractors who have a need to know. Customer may not disclose Lenovo's prices or discounts to any other third party without Lenovo's prior written approval.
4. The prices only apply to purchases directly from Lenovo.
5. Purchases from a Lenovo reseller shall be subject to the terms, conditions and prices specified by the Lenovo reseller.

**Attachment B  
Warranty Service Information  
Machines  
(Servers and Storage Products)**

**Warranty Information**

Machine Type(s)	Warranty Period	Type of Warranty Service	Service Level
As Configured			

The performance of warranty service is subject to the following: (i) the time Customer's request for service is received; (ii) Machine technology and redundancy; and (iii) availability of parts. Customer should contact their local Lenovo representative, or the subcontractor or reseller performing services on behalf of Lenovo, for market and location specific information.

**Types of Warranty Service**

**Type 1 - Customer Replaceable Unit ("CRU") Service**

Lenovo provides replacement CRUs to Customer for installation by Customer. CRU information and replacement instructions are shipped with each Machine and are available from Lenovo at any time upon request. CRUs are designated as being either a Tier 1 (mandatory) or a Tier 2 (optional) CRU. Installation of a Tier 1 CRU is a responsibility of Customer. If Lenovo installs a Tier 1 CRU at Customer's request, Customer will be charged for the installation. Customer may install a Tier 2 CRU or request Lenovo to install it, at no additional charge, under the type of warranty service designated for Customer's Machine. In the materials shipped with a replacement CRU, Lenovo may require that a defective CRU be returned to Lenovo. When return is required by Lenovo: (1) return instructions and a container are shipped with the replacement CRU; and (2) Customer may be charged for the replacement CRU if Lenovo does not receive the defective CRU within fifteen (15) days of Customer's receipt of the replacement CRU.

**Type 5 - CRU and On-site Service**

At Lenovo's discretion, Customer will receive CRU service or Lenovo, or a Lenovo subcontractor or reseller, will repair the defective Machine at Customer's location and verify its operation. Customer must provide suitable working area to allow disassembly and reassembly of the Machine. The area must be clean, well lit and suitable for the purposes of repair.

**Type 6 - CRU and Courier or Depot Service**

At Lenovo's discretion, Customer will receive CRU service or Customer will disconnect the defective Machine and make it available for collection arranged by Lenovo. Lenovo will provide Customer with a shipping container for return of Customer's Machine to a designated service center. A courier will pick up Customer's Machine and deliver it to the designated service center. After repair or exchange, Lenovo will arrange the return delivery of the Machine to Customer's location. Customer is responsible for installation of the Machine and verification of its operation.

**Type 7 - CRU and Customer Carry-In or Mail-In Service**

At Lenovo's discretion, Customer will receive CRU service or Customer will ship (prepaid unless Lenovo specifies otherwise) the defective Machine suitably packaged to a location designated by Lenovo. After Lenovo has repaired or exchanged the Machine, Lenovo will make it available for collection by Customer. In the case of Mail-in Service, Lenovo will return the Machine to Customer at Lenovo's expense, unless Lenovo specifies otherwise. Customer is responsible for installation of the Machine and verification of its operation.

**Type 8 - CRU and Machine Exchange Service**

At Lenovo's discretion, Customer will receive specified CRU service or Lenovo will initiate shipment of a replacement Machine to Customer's location. Customer must pack the defective Machine into the shipping container that contained the replacement Machine and return the defective Machine to Lenovo. Transportation charges, both ways, shall be paid by Lenovo. Customer may be charged for the replacement Machine if Lenovo does not receive the defective Machine within fifteen (15) days of Customer's receipt of the replacement Machine. Customer is responsible for installation of the Machine and verification of its operation.

## **Attachment C**

### **Master Services Attachment**

This Master Services Attachment (“MSA”) is incorporated in and made part of a Lenovo Customer Agreement or an equivalent agreement between Customer and Lenovo (“Agreement”). It governs transactions by which Customer purchases Services from Lenovo. The terms of this MSA are in addition to or modify the terms of the Agreement. To the extent that any terms of this MSA conflict with those of the Lenovo Customer Agreement in effect between the parties, the terms of this MSA will prevail.

#### **1. Scope of Services**

Lenovo will provide Services as described in this MSA and, if applicable, Statements of Work (“SOW”) and Change Authorizations to support Customer hardware and software products (called “Eligible Machines”, “Eligible Programs”, and together “Eligible Products”).

This MSA contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a SOW, Schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to an individual transaction. There may be one or more Transaction Documents for a single transaction.

Lenovo will identify the Eligible Products and Services that apply to them and the Services transaction contract period in a Schedule that references this Attachment and any associated Statements of Work and Change Authorizations. Each Schedule will also identify the Specified locations at which the Services will be provided. A Specified Location means Customer’s entire information processing environment, or a portion thereof, which may be located at multiple sites or a single building.

The terms contained in this MSA and its Statements of Work and Change authorizations apply only when Customer has purchased Services for Eligible Products as specified in a Transaction Document. If there is a conflict among the terms of the LCA, MSA or Transaction Document, those of this MSA prevail over those of the LCA, and the terms of the Transaction Document prevail over those of the LCA and this MSA.

#### **2. Acceptance and Term**

Customer accepts the terms in this MSA and Transaction Documents by: (i) signing the MSA or Transaction Document (by hand or electronically); (ii) using the Eligible Product or Service, or allowing others to do so; or (iii) making any payment for an Eligible Product or Service.

Any dates are estimates unless specified otherwise in a Transaction Document. The Services described in this MSA shall be provided for the period specified in the Transaction Document or renewal thereof notwithstanding the Term of the Agreement.

#### **3. Sales through Lenovo Business Partners**

Customer may purchase Services through Lenovo Business Partners, or their designee authorized to resell Lenovo Services. Lenovo Business Partners establish the price and terms of sale at which they sell Lenovo Services to Customer and they may communicate these directly to Customer for all transactions they initiate with Customer. However, Lenovo establishes the terms of each Service and will provide the Services as described in this MSA and its associated Transaction Documents.

Whenever Lenovo is required to provide notification to Customer or Customer is required to provide notification to Lenovo, each of us also agrees to notify the applicable Lenovo Business Partner, if any.



In the event that Customer has purchased Services through a Lenovo Business Partner that is no longer able to offer such Services for any reason, Lenovo will use reasonable endeavors to notify Customer in writing. Customer may continue to receive the Services by instructing Lenovo (in writing) to transfer administration of the Services to either: 1) another Lenovo Business Partner of Customer's choice that is approved to offer Customer Lenovo Services; or 2) Lenovo under a direct relationship that enables Lenovo to generate charges and invoicing.

Lenovo is not responsible for: 1) any acts, actions, omissions of Lenovo Business Partners or their designees; 2) any obligations that Lenovo Business Partners or their designees may have to Customer; or 3) any products or services Lenovo Business Partners or their designees supply to Customer.

#### **4. Lenovo Responsibilities**

When Customer purchases a Service, Lenovo shall provide the Service in accordance with the terms of this MSA and the associated Transaction Documents.

#### **5. Customer Responsibilities**

When Customer purchases a Service, Customer agrees:

a. to provide Lenovo with an inventory in which Customer shall identify all Eligible Products to be covered at each Specified Location and to notify Lenovo in writing whenever Customer moves, adds, or deletes Eligible Products at an existing Specified Location or set up new Specified Locations;

b. that when a Service includes Lenovo providing Customer with access codes to electronic diagnostic tools, information databases, or other Service delivery facilities, Customer will limit their use as authorized by Lenovo and only in connection with Eligible Products and Services identified in Transaction Documents;

c. to provide Lenovo with the necessary information Lenovo requests which is related to its provision of the Services to Customer and to notify Lenovo of any subsequent changes to such information;

d. to pay any communications charges associated with accessing or provisioning Services including but not limited to phone and internet connection charges, unless Lenovo specifies otherwise in writing;

e. to use the information obtained under these Services only for the support of the information processing requirements within Customer's enterprise;

f. to securely erase from any Machine that Customer returns to Lenovo for any reason all programs not provided by Lenovo with the Machine and data, including without limitation, the following: 1) information about identified or identifiable individuals or legal entities ("Personal Data"); and 2) Customer confidential or proprietary information and other data. In the alternative, Customer shall transform such information (e.g. by making it anonymous or encrypting it) that it no longer qualifies as Personal Data under applicable law. In no event shall Lenovo be responsible for loss of data or information on a Machine or Product or any parts thereof to which Lenovo may be provided access in the course of Services to be provided hereunder. Lenovo is not responsible for any programs not provided by Lenovo with the Machine or data contained in a Machine. Customer acknowledges that Lenovo may ship all or part of the Machine or its software to other Lenovo entities or third parties in other markets, and Customer hereby authorizes Lenovo to do so;

g. that Services may be performed onsite, remotely or at a Lenovo site in Lenovo's sole discretion. Any specific service level shall be mutually agreed between the parties. Customer also acknowledges that Lenovo may use resources (non-permanent legal residents and personnel in other markets) for delivery of Services;

h. that some devices (for example, fusion I/O devices and solid state devices), have read/write or wear limitations as documented in the hardware product specifications. When these devices have reached the wear limitations, they are not covered under maintenance Services under which Lenovo may provide support, maintenance, or replacement of defective, failed or any other parts, unless such terms specifically identify the

device by description and/or part number and describes the terms of support or maintenance coverage applicable to it;

i. to designate a project manager who will be Customer Point of Contact for all communications and will have the authority to act on Customer behalf in all matters. The Customer Point of Contact will provide a list of the key technical contacts with telephone and email contact information prior to the start of Services;

j. to provide an on-site contact during normal business hours at each Customer location with access to the buildings/rooms where the Service will be performed and any necessary security;

k. to provide a safe environment and full unrestricted access to all locations where the Service is to be performed; and

l. if Customer is making available to Lenovo any facilities, software, hardware or other resources in connection with Lenovo's performance of Services, Customer shall obtain any licenses or approvals related to these resources that may be necessary for Lenovo to perform the Services. Lenovo shall be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer shall reimburse Lenovo for any reasonable costs and other amounts that Lenovo may incur related to Customer's failure to obtain these licenses or approvals.

## **6. Mutual Responsibilities**

a. Each party will comply with applicable laws, regulations, ordinances, including but not limited to export and import laws and regulations, including those of the United States that prohibit or limit export of certain uses or to certain end users. Each party will cooperate with the other by providing all necessary information to the other, as needed for such compliance. Each party shall provide the other with advance written notice prior to providing the other party with access to data requiring an export license.

b. Each party will assign personnel that are qualified to perform the tasks required of such party and shall be responsible for the supervision, direction, control, and compensation of such personnel.

## **7. Automatic Inventory Increase**

If specified as a selected option in a Schedule, Lenovo will automatically increase the inventory count and associated Services at Specified Locations whenever an Eligible Machine is added to the inventory.

If the Machine is under warranty when added, Services will commence at warranty end date.

If the Machine is not under warranty when added, Services will commence at the later of: a) the warranty end date; or b) the previous annual anniversary of the Schedule.

Eligible Machines specifically excluded from coverage at transaction contract period start will remain outside the scope of this Section unless Customer requests Lenovo add them during the transaction contract period and Lenovo agrees. However, all Eligible Machines added to Customer inventory during the transaction contract period will be included in the inventory count and receive Services as applicable.

Newly installed Machines of the same type for which Customer has already selected Warranty Service Upgrade will be added at date of actual installation and will be covered at the same Warranty Service Upgrade support level.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory

## **8. Charges and Payment**

**Purchases through Lenovo:** Customer prices are calculated taking into account Customer Service selections including price protection option, payment option, and for prepayments, length of the prepay period. Any special pricing may be identified in a separate Transaction Document.

**FOR EACH TRANSACTION CUSTOMER MAY SELECT ONE OF THE FOLLOWING PRICE PROTECTION OPTIONS. CUSTOMER SELECTION WILL BE SPECIFIED IN THE SCHEDULE ASSOCIATED WITH THAT TRANSACTION.**

### **OPTION #1 ANNUAL - PRICE PROTECTION DURING EACH TRANSACTION CONTRACT YEAR ONLY**

Lenovo may revise charges. However, any rate increase will not take effect until the next annual contract anniversary date. At the start of each transaction contract year, Customer will be invoiced at the charge rates that are then in effect and that invoice will serve as Customer notice of charge rate changes.

All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will receive the price that applied for these at the previous annual contract anniversary date. Eligible Products and Services that become generally available during the contract period will be added at the price that applied on their initial availability date

### **OPTION #2 FULL - PRICE PROTECTION FOR ENTIRE TRANSACTION CONTRACT PERIOD, INCLUDES PROTECTION FOR NEWLY ADDED MACHINE TYPES**

For the entire transaction contract period, charges for included Eligible Product configurations and Services will not increase. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date. Customer will receive the benefit of a price decrease for amounts which become due on or after the effective date of the decrease.

### **OPTION #3 PREPAY - PRICE PROTECTION FOR TRANSACTION CONTRACT PERIOD PREPAY**

Since Customer has selected to prepay for the entire transaction contract period, Customer will not be subject to increases in charges (during that period) for included Eligible Product configurations and Services. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at transaction contract period start with adjustment for the reduced prepay period. Eligible Products and Services that become generally available during the transaction contract period will be added subject to the charge rate that applied on their initial availability date with adjustment for the reduced prepay period. If Customer elects to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period). Customer must provide Lenovo written notification (at least one month prior to the start of the renewal period) to change the length of the contract renewal period.

**Purchases through Business Partner:** The Lenovo Business Partner sets the charges and terms governing those charges. The Lenovo Business Partner may impose an additional charge for some items or actions. The Lenovo Business Partner will advise if Customer will incur an additional charge or is entitled to a credit or refund. Customer shall make payments directly to the Lenovo Business Partner.

Lenovo may charge Customer directly for certain expenses Lenovo incurs in performance of a Service (e.g. actual travel and living expenses, out-of-pocket expenses) Lenovo will not incur these expenses without Customer's prior written approval.

**FOR EACH TRANSACTION, THE FOLLOWING CHARGE ADJUSTMENT TERMS APPLY.**

Total Services charges may be adjusted whenever:

1. a review of the inventory count indicates a change from the last accounting period; or
2. a Specified Location is affected by a change that results in additional costs (e.g. a change in tax rates), Eligible Machine type, or Service is added, deleted, or changed.

## **9. Renewal and Termination of Services**

Lenovo will automatically renew Services unless Customer or the Lenovo Business Partner requests otherwise. The Schedule will specify the number of years (0 or greater) for which the Services have been renewed ("Renewal Contract Period"). Whenever this number is greater than 0, Lenovo will renew the applicable Services at the end of the transaction contract period for the number of years specified. Thereafter, Lenovo will automatically renew the Services for same length periods unless Customer or the Lenovo Business Partner notifies Lenovo in advance of Customer's desire to change the length of the renewal. Customer, Customer's Lenovo Business Partner, or Lenovo can select not to renew by providing written notification (at least one month prior to the end of the current transaction contract period) to the others of its decision not to renew. Non-renewal notification sent to Customer by Lenovo or received by Lenovo from either Customer or Customer's Lenovo Business Partner will result in Lenovo ceasing to provide Customer the applicable Services at the end of the current transaction contract period.

In the case of renewals, charges are recalculated at the start of each renewal period. For purchases from Lenovo, the new charges will be based on the length of the Renewal Contract Period and then current charges associated with Customer's contracted: a) Services; b) price protection option; and c) payment option.

### **FOR ALL NON-GOVERNMENT CUSTOMERS:**

**One of the following termination provisions will apply based on the length of the transaction contract period specified in the Schedule.**

#### **PROVISION #1 - ONE YEAR TRANSACTION CONTRACT PERIOD**

Customer may terminate Services for an Eligible Product, on notice to Lenovo, if Customer permanently removes it from productive use within Customer enterprise. Otherwise, Services must be under a Services contract for at least one year. If Customer selects automatic renewals, Customer may also terminate Services after the first full year of Service by providing Lenovo one month's written notice prior to the end of Customer's first year of Service. Customer will receive a credit for any remaining prepaid period associated with Services Customer terminates in accordance with this provision.

#### **PROVISION #2 - MULTI-YEAR TRANSACTION CONTRACT PERIOD**

Customer has committed to continue Services for the entire transaction contract period. However, Customer may terminate Services for an Eligible Product, on notice to Lenovo, if Customer permanently removes it from productive use within Customer Enterprise. Otherwise, if Customer chooses to terminate Services and these are not being replaced by equivalent Services, Customer may cancel by providing Lenovo six month's written notice.

However, the Services must have been under contract for at least one year upon termination Customer may receive a credit for any remaining prepaid period associated with Services Customer terminates in accordance with this provision.

### **FOR ALL QUALIFIED GOVERNMENT CUSTOMERS:**

Customer has committed to continue Services for the entire transaction contract period. However, Customer may terminate Services for an Eligible Product, on notice to Lenovo, if Customer permanently removes it from productive use within Customer Enterprise. Customer may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated. Customer agrees to request such funds from the applicable legislative body.

Otherwise, if Customer chooses to terminate Services and these are not being replaced by equivalent Services, Customer may do so by providing Lenovo one month's written notice. However, the Services must have been under contract for at least one fiscal year upon termination.

Customer may receive a credit for any remaining prepaid period associated with Services Customer terminates in accordance with this provision.

## **10. Service Description and Exclusions**

**a.** For all Services described below, details about (including but not limited to) Specified Location, Eligible Machine will be specified in a Transaction Document.

### **(i) Warranty Service Upgrade**

Extending or upgrading the service level of limited hardware warranty. For Eligible Machines, Customer may select a service upgrade to the limited hardware warranty which may include additional months of services, increased service levels and committed response times. Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will become part of Customer standard inventory count and will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

A machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. All Eligible Machines must be in good working order.

### **(ii) Post Warranty Service**

For serialized Machines, Post Warranty Service is provided for Eligible Machines where either the Lenovo limited hardware warranty period has expired or the purchased Warranty Service Upgrade has expired, whichever is applicable. Post Warranty Service is also available for Non-serialized Lenovo machines whose Lenovo limited hardware warranty has expired.

Eligible Products may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution.

A machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. All Eligible Machines must be in good working order.

### **(iii) Keep Your Hard Drive - Multi Drive**

Lenovo will modify Service for Machines to allow Customer to retain a defective hard drive that is replaced in the course of Service by Lenovo. If the Customer's reported problem requires the replacement of hard drive, a replacement will be supplied by Lenovo and the removed defective drive will be provided to Customer as Customer property for disposal by Customer. The applicable Schedule will identify the Eligible Machines by Specified Location, and period for which Customer has contracted for this Service. Eligible Machines must be under Lenovo limited hardware warranty or separately covered by Post Warranty Service with Lenovo.

If Customer has selected Automatic Inventory Increase for Machines, that selection will also apply to this option except this Service will commence upon a Machines addition to inventory regardless of the Machines warranty status.

Customer agrees to:

1. Identify a customer representative to receive the retained defective device from Lenovo;
2. Refrain from placing the defective device into productive use; and
3. Dispose of all retained devices in compliance with applicable environmental laws and regulations.

Lenovo is not responsible for the loss or disclosure of, or damage to, any data that may be contained on a removed defective device. Any removed device that is not returned to Customer will be Lenovo's property.

### **(iv) Remote Technical Support Service**

Remote Technical Support Service is available for Eligible Products as may be identified in the Transaction Documents. The service delivers comprehensive remote support for servers, storage, operating systems and applications via a toll free number. Service is available for non-critical issues Monday to Friday, 9 hours per day (9x5), local hours, where available, excluding national holidays, and critical issues 24 hours per day, 7 days per week, 365 days per year (24x7x365)

**b. Services do not cover the following and any request for such Service would incur additional charges**

(i) Accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);

- (ii) Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- (iii) Alterations not authorized by Lenovo;
- (iv) Failures caused by a third party product; or
- (v) Service of a Machine on which Customer is using capacity or capability, other than that authorized by Lenovo

#### **11. Warranty for Lenovo Services**

Lenovo warrants that it performs each Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this MSA or a Transaction Document. Customer shall provide timely written notice of any failure to comply with this warranty.

**THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. ALL THIRD PARTY PRODUCTS AND SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIRD PARTY MANUFACTURERS, SUPPLIERS, DEVELOPERS, SERVICE PROVIDERS, LICENSORS OR PUBLISHERS MAY PROVIDE THEIR OWN WARRANTIES TO CUSTOMER.**

Lenovo does not warrant uninterrupted or error-free operation of any Service or that Lenovo will correct all defects. Unless otherwise specified in an Attachment or Transaction Document, Lenovo provides Materials and non-Lenovo Services.

#### **12. Limitation of Liability**

In any action arising out of or related to Services, this MSA or any Transaction Documents issued hereunder, neither party nor its affiliates, shall be liable to the other party or its affiliates for any of the following even if informed of their possibility and whether arising in contract, tort, (including negligence) or otherwise: (a) third-party claims for damages; (b) loss of, or damage to, data; (c) special, incidental, indirect, punitive, exemplary or consequential damages; or (d) lost profits, business, revenue, goodwill or anticipated savings.

12.1 The total liability of either party and its affiliates to the other party and its affiliates for all actions arising out of or related to a Schedule issued hereunder, regardless of the form of the action or the theory of recovery, shall be limited to the amount paid or payable by Customer or its affiliate to Lenovo or its affiliate under the applicable Schedule.

12.2 The limits in Sections 12.1 and 12.2 also apply to Lenovo's subcontractors and suppliers and it is the maximum amounts for which Lenovo and its subcontractors and suppliers may be liable collectively.

**This MSA, its applicable Transaction Documents, and the Agreement comprise the complete agreement regarding Services and replace any prior oral or written communications between Customer and Lenovo.**