



## Agreement for Resellers

**BY CLICKING THE BOX INDICATING YOUR AGREEMENT TO THE LENOVO AGREEMENT FOR RESELLERS, YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND AGREE TO (AND ARE AUTHORIZED TO AGREE TO) THE TERMS OF THE LENOVO AGREEMENT FOR RESELLERS FOR THE LEGAL ENTITY ON WHOSE BEHALF YOU ARE ACCEPTING ITS TERMS AND CONDITIONS AND THAT THE REGISTRATION INFORMATION YOU PROVIDED IS TRUE AND CORRECT.**

This Lenovo Agreement for Resellers (“Agreement”) is entered into by and between Lenovo (Canada) Inc., a Canadian corporation, having an office at 55 Idema Rd., Markham, Ontario L3R 1A9 (“Lenovo”) and the participant in the Lenovo Partner Network Program (“Reseller”). For the purposes of this Agreement, the term “Lenovo” includes entities that control, are controlled by, or are under common control with Lenovo (Canada) Inc. This Agreement shall be effective on the date the Reseller is approved to be a participant in the Lenovo Partner Network Program.

Reseller and Lenovo may be referred to collectively in this Agreement as “parties” and individually as “party”. In consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Reseller and Lenovo hereby agree as follows:

### 1. Authorization and Scope

**1.1** Lenovo hereby authorizes Reseller to market and sell Lenovo Products and Services within Canada (“Territory”) to End Users in accordance with the terms of this Agreement. Reseller may not market or sell Products or Services, directly or indirectly, to End Users outside the Territory.

**1.2** A Product or Service becomes subject to this Agreement when Reseller places an order with a Lenovo Distributor.

### 2. Definitions

**2.1 Distributor** means a business entity that distributes Lenovo Products and Services to Resellers.

**2.2 End User** means the purchaser of Products or Services for its own use and not for resale.

**2.3 Enterprise** means a party to this Agreement, and any entity that is controlled by, controls, or is under common control or ownership with such party, including its sister companies, parent, affiliates or subsidiaries.

**2.4 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 software programs, whether pre-loaded with the Machine, installed subsequently, or otherwise.

**2.5 Machine Code** means all code provided for a Machine (including, without limitation, a Machine’s firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code. The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

**2.6 Product** means any Lenovo branded or third party hardware or software that Lenovo provides to Reseller under this Agreement. Hardware Products include personal computers, servers, storage devices and accessories. Software products include computer software Programs (whether pre-loaded or provided separately) and related licensed materials such as documentation.

**2.7 Program** means a software Product and the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;

2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any Lenovo Program or a non-Lenovo Program provided under its applicable license terms that Lenovo may approve Reseller to market. The term "Program" does not include Machine Code.

**2.8 Service** means the performance of a task; the provision of advice or assistance; or the access to a resource that is provided by Lenovo for sale by Reseller.

### **3. Prices of Products and Services**

**3.1** Each party shall set its own prices and terms for the sale of Products and Services to End Users.

**3.2** Neither party shall provide information to the other regarding its prices and terms for the sale of Products and Services to third parties.

**3.3** Reseller shall only provide Products at special bid prices or discounts to the End User specified by Lenovo in a special bid program.

### **4. Attachments and Transaction Documents**

**4.1** 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, Service or method of marketing Products and Services, while Transaction Documents (such as invoices, order acknowledgments or addendums) contain specific details and terms related to an individual transaction. There may be one (1) 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.

**4.2** If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, 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.

### **5. Review of Reseller Compliance with this Agreement**

**5.1** Lenovo may review Reseller's books and records to determine compliance with this Agreement. Reseller shall make its records relating to this Agreement available to Lenovo or an independent auditor reasonably acceptable to Reseller. The reviews shall occur not more frequently than one (1) time in each twelve (12) month period during the Term of this Agreement. Each review shall be conducted at Reseller's facility during normal business hours. Lenovo may make and retain copies of such records. In addition to the reviews described above, Lenovo may conduct a review of Reseller's books and records at any time it has reason to believe that there has been or may be a material breach of this Agreement.

**5.2** If Reseller fails to comply with this Agreement, an offer letter or a program announcement, in addition to any remedies available to Lenovo under any other section of this Agreement or at law, Reseller shall refund to Lenovo an amount equal to the sum of the discount, fee, marketing funds, promotional offerings or special bid advance discounts or rebates as were provided to Reseller by Reseller's Distributor or Lenovo. Reseller shall pay the refund to Reseller's Distributor or Lenovo upon demand or Reseller's Distributor or Lenovo may deduct it from any amounts due to Reseller. Lenovo shall provide Reseller with the results of its review and provide Reseller with the opportunity to respond to Lenovo's findings before requiring the refund of any discounts or fees.

## **6. Reseller's Responsibilities To Lenovo**

Reseller shall:

1. develop annual business plans, including marketing plans, and provide such plans to Reseller's Distributor or Lenovo as Lenovo specifies;
2. maintain trained personnel as specified by Lenovo;
3. upon request of Lenovo, provide relevant financial information about Reseller including, but not limited to, an audited annual financial report;
4. ensure that the terms in any agreement that Reseller may have with an End User does not conflict with this Agreement;
5. maintain records of each Product and Service transaction (for example, marketing, sales, special bid discounts, marketing funds, promotional offerings, installation reporting and inventory information, a credit or a warranty claim) for three (3) years after the Term of this Agreement;
6. comply with any applicable regulations and laws before disclosing any personally identifiable information to Lenovo;
7. promptly report any suspected Product defects or safety problems to Reseller's Distributor and assist Reseller's Distributor or Lenovo in tracing and locating such Products; and use reasonable efforts to enable Lenovo to correct defects on Products whether located at Reseller or End User facilities;
8. refrain from making payments or gifts of any kind to anyone for the purpose of influencing decisions in favor of Lenovo, directly or indirectly;
9. inform End Users that certain Machine features, conversions and upgrades require removed parts be returned to Lenovo and become Lenovo property. If an End User does not allow Lenovo to install the feature, conversion or upgrade within thirty (30) days of delivery from Lenovo, Lenovo may terminate the transaction and Reseller shall ensure that the End User returns the feature, conversion or upgrade to Reseller for return to Lenovo by Reseller at Reseller's expense;
10. provide combined hardware Products and software Programs to End Users in the same combination as received from Reseller's Distributor;
11. for Programs Reseller installs for the End User: i) secure legally enforceable documentation confirming that the End User has accepted the license documents and has authorized Reseller to take actions necessary to accept the license documents on the End User's behalf; ii) retain such documentation for a minimum of three (3) years; and iii) provide such documentation to Lenovo upon request for Lenovo to verify compliance with this section;
12. ensure that the Microsoft Certificate of Authenticity (COA) and Associated Product Material (APM) included with Lenovo Products (not to be priced separately) are included with the Lenovo Product provided to End Users;
13. access Lenovo's information systems only in support of marketing activities associated with the Lenovo Reseller relationship. Programs that Lenovo provides for use with Lenovo's information systems, which are in support of Reseller's marketing activities, are subject to the terms of the applicable license agreements, except that they may be not transferred. Reseller agrees to comply with all applicable license terms and the additional restrictions in this Agreement and use the Programs only for the purposes for which they were provided;
14. assist Distributor or Lenovo in locating Products if requested by Lenovo;
15. promptly provide to Lenovo information, notifications and documents that the End User is responsible to provide Lenovo through the Lenovo Reseller, as specified by Lenovo; and
16. conduct business activities with Lenovo, as Lenovo specifies, which may be in an operations guide, using Lenovo's automated electronic system if available. Reseller agrees to pay all expenses associated with its use of Lenovo's system (for example, Reseller's equipment and communication costs).

## **7. Reseller's Responsibilities to End Users**

Reseller shall:

1. provide the support necessary to maintain customer satisfaction and participate in customer satisfaction programs established by Lenovo;
2. provide Product configuration, installation and post-installation support for the Products including serving as the primary contact for Product information, technical advice and operational advice. Reseller may delegate these support responsibilities to another Reseller approved by Lenovo; however, Reseller shall remain

responsible for customer satisfaction. Lenovo shall bear customer satisfaction responsibility for such support in those cases where Reseller markets applicable Lenovo Services to End Users;

3. assist End Users to achieve productive use of the Products and Services;
4. refund the amount paid for a Product returned by an End User if such return is permitted under the Lenovo warranty or software Program license;
5. provide a copy of the Lenovo Limited Warranty or Lenovo Statement of Limited Warranty, as applicable, along with the name and address of the warranty service provider and a description of the Customer Replaceable Unit process to End Users;
6. provide a copy of the Lenovo License Agreement for Machine Code to the End User and inform them of those Machines containing Machine Code and that they must record on the sales receipt, that the Machine is a Machine using Machine Code;
7. advise End Users that any modification to a Product may void the Lenovo Limited Warranty or Lenovo Statement of Limited Warranty, as applicable, and that the Lenovo warranty may not apply to exported Products;
8. comply with all applicable export and import laws, including those of the United States;
9. provide a dated sales receipt which specifies the End User's name, the part number or the Machine type/model, and serial number if applicable to End Users; and
10. inform End Users that the sales receipt or proof of purchase will be necessary to obtain warranty service or software Program upgrades.

## **8. Special Bids**

Special Bids means a special discount or price for a Product or Service provided to Reseller from information provided by Reseller to Lenovo or Reseller's Distributor in a Special Bid request. If the information provided in a Special Bid request changes, Reseller shall immediately notify Lenovo or Reseller's Distributor. In such event, Lenovo reserves the right to modify the terms of the Special Bid or to cancel the Special Bid authorization. If Reseller fails to provide truthful and accurate information on Special Bid requests, then Lenovo or Reseller's Distributor shall be entitled to recover from Reseller (and Reseller shall be obligated to repay) the amount of any additional discounts Lenovo provided in the Special Bid and take any other actions authorized under this Agreement. Special Bid authorizations and the terms applicable to that Special Bid are considered Lenovo Confidential Information (as defined in Section 11).

Reseller accepts the terms of a Special Bid by:

1. accepting the Products or Services for which the Special Bid was granted;
2. providing the Products or Services to Reseller's End User; or
3. paying for the Products or Services.

The Special Bid discount or price for eligible Products or Services are subject to the following terms:

1. no other discounts, incentive offerings, rebates, or promotions apply to the Products and Services, unless Lenovo or Reseller's Distributor specifies otherwise in writing;
2. the applicable Products and Services are subject to availability;
3. Reseller agrees to the additional terms contained in a Special Bid addendum; and
4. Reseller must resell the Product or Service to the End User associated with the Special Bid by the date indicated in the Special Bid request.

Reseller may only market the Products and Services to the End User Reseller stated in the Special Bid request for the transaction specified in the Special Bid request.

If Reseller requests a specific End User price or discount in a Special Bid request, Reseller agrees that it will ensure that the intended End User receives the financial benefit of the Special Bid.

### **8.1 Lenovo's Audit of Special Bid Transactions**

Lenovo may audit any Special Bid transaction in accordance with the terms of Section 5 (Review of Reseller Compliance with this Agreement). Upon Lenovo's request, Reseller agrees to provide Lenovo or its auditors with documentation including, but not limited to, evidence; i) of shipment of the applicable Special Bid Products to the designated End User; ii) such as invoices, purchase orders, or other documentation when the Special Bid

is based on pricing requested for the End User; or iii) that Reseller owns and uses the Special Bid Products for at least the service period to provide to End Users the service offerings described in the details of the Special Bid.

Reseller is prohibited from entering into agreements with others or otherwise accepting obligations that restrict Lenovo's ability to audit Special Bid transactions. If this prohibition is violated, Lenovo or Reseller's Distributor may invalidate the Special Bid and charge Reseller for each Special Bid Product up to the difference between: (i) the discounted price to which Reseller is entitled on the date of the Special Bid transaction; and (ii) the amount Lenovo invoiced Reseller's Distributor.

## **9. Services**

The following are the conditions under which Reseller may market Services, which Reseller's Distributor makes available to Reseller:

- a. if Reseller marketed a Product to the End User; or
- b. regardless of whether Reseller marketed a Product to the End User, Reseller may market the Services Lenovo specifies in this Agreement.

Reseller may market Services on eligible non-Lenovo Products regardless of whether Reseller marketed a Product.

### **9.1 Remarketing of Services**

Services may be either standard offerings or customized to the End User's specific requirements. Each Service transaction may include one or more Services that:

- a. expire at task completion or an agreed upon date;
- b. automatically renew as another transaction with a specified contract period. Renewals shall continue until the Service is terminated; or
- c. do not expire and are available for use until either party terminates the Service, or Lenovo withdraws the Service.

If Lenovo makes a change to the terms of a renewable Service that affects the End User's current Service Agreement contract period and the End User considers it unfavorable and Reseller advises Reseller's Distributor, who is responsible to advise Lenovo in writing, Lenovo shall defer the change until the end of that contract period. Prepaid Services shall be used within the applicable contract period. If Lenovo withdraws a Service which has been prepaid, and Lenovo has not fully provided such Service, Lenovo shall provide a prorated refund to Reseller's Distributor. Otherwise, Lenovo does not give credits or refunds for unused prepaid Services.

If an End User is eligible for a credit or refund under the terms of the Lenovo Service Agreement, such as for a satisfaction guarantee or for withdrawn or terminated Services not fulfilled, Reseller agrees to ensure the applicable prorated credit or refund is issued to the End User directly. Lenovo shall issue the appropriate credit or refund to Reseller's Distributor.

Reseller may market Services Lenovo makes available to Reseller's Distributor on a recurring-charge basis, only on a recurring charge basis.

During the Service period Reseller may update the requirements, including adding Products to be covered by the Service, as well as increasing the Service requirements. Lenovo shall adjust Lenovo's invoicing to Reseller's Distributor accordingly. Check with Reseller's Distributor to determine if Reseller will incur an additional charge.

If either Lenovo or the End User does not meet its obligations concerning a Service, the other party may terminate the Service. Lenovo shall inform Reseller's Distributor of any such termination.

Reseller may terminate an expiring or renewable Service transaction. Check with Reseller's Distributor to determine if Reseller will incur a charge for such termination.

### **9.2 Marketing of Services for a Fee**

The following are the conditions under which Reseller may market eligible Services to an End User for transactions Lenovo performs at prices Lenovo sets and under the terms of a Services Agreement, signed by the End User.

### **9.2.1 Fee for Marketing Services**

If Reseller markets a Lenovo Service which is eligible for a fee and which Reseller's Distributor makes available to Reseller, Lenovo shall pay the fee to Reseller's Distributor. Alternatively, if such Lenovo Service is not available from Reseller's Distributor, but is available to Reseller from Lenovo, Lenovo shall pay the fee to Reseller.

In either case Lenovo pays the fee when:

1. Reseller identifies the opportunity and perform the marketing activities; and
2. Reseller provides the order and any required documents signed by the End User.

### **9.2.2 Lead Pass Fee**

For Services Lenovo specifies, and which are not available from Reseller's Distributor, Reseller shall receive a fee for a lead for eligible Services when the lead:

1. is submitted on the form provided by Lenovo;
2. is for an opportunity which is not known to Lenovo; and
3. results in the End User ordering the Service from Lenovo within six (6) months from the date Lenovo receives the lead from Reseller.

Reseller agrees to provide leads to Lenovo according to Lenovo's guidelines. Lenovo shall inform Reseller in writing of acceptance or rejection of the lead. For orders fulfilled directly by Lenovo, Lenovo will manage the ordering process from scheduling through delivery, or the Service start date, as applicable.

Leads for government organizations (solely determined within Lenovo's discretion) are not eligible for fee payment under the terms of this Agreement.

### **9.2.3 Fees and Compensation for Services**

Lenovo may increase fees or compensation at any time. Lenovo may decrease fees or compensation on one (1) month's written notice. Reseller earns its fee on the date of Lenovo's invoice to the End User. Lenovo shall pay Reseller the fee after one (1) month from when Reseller earns its fee and Lenovo receives Reseller's request formatted as specified by Lenovo. If Lenovo does not receive Reseller's request within four (4) months from when the fee is earned, no payment will be made. Reseller is only entitled to compensation for orders Lenovo accepts during the contract duration.

Lenovo will not pay Reseller the fee if:

1. the Product is already under the applicable Service;
2. Lenovo has an agreement with the End User to place the Product under the applicable Service; or
3. the Service was terminated by the End User within the last six (6) months.

If Reseller receives a fee under the terms of this Agreement, it may not receive a fee from Lenovo for the same Product or Service for the same transaction under any other agreement.

If the Service is terminated within three (3) months of the date payment from the End User was due to Lenovo, Reseller agrees to reimburse Lenovo for any associated payments received. The reimbursement may be prorated if the Service is on a recurring charge basis.

Lenovo may periodically reconcile amounts paid to Reseller to the amounts Reseller actually earned. Lenovo may deduct amounts due to Lenovo from future payments made, or ask Reseller to pay amounts due Lenovo. Each party agrees to promptly pay the other any amounts due.

### **9.2.4 Marketing to Public Sector End Users**

If Reseller is marketing to a public sector entity and is eligible for fees or compensation, under the Lenovo Public Sector Influencer Program, Reseller's participation is subject to the terms and conditions set forth in the applicable program announcement.

## **10. Engineering Changes**

Reseller agrees to allow Lenovo to install mandatory engineering changes (such as those required for safety) on all Products in Reseller's inventory or that it has acquired for internal use, demonstration, or development purposes, and to use best efforts to enable Lenovo to install such engineering changes on your customers' Products. Mandatory engineering changes are installed at Lenovo's expense and any removed parts become Lenovo property.

During the warranty period, Lenovo shall manage and install engineering changes at:

1. Reseller or Reseller's End User's location for Product for which Lenovo provides warranty Service; and
2. Reseller's location for other Products.

Alternatively, Lenovo may provide Reseller with the parts (at no charge) and instructions to do the installation. Lenovo will reimburse Reseller for labor as specified by Lenovo.

## **11. Confidential Information**

**11.1** Confidential Information shall mean information that either party marks or otherwise conspicuously identifies as confidential, or which the receiving party should reasonably understand to be confidential, including but not limited to: non public information about Products and Services; business plans; market data; financial data; customer data; and sales information.

**11.2** Each party shall:

1. use the same care and discretion to avoid disclosure, publication or dissemination of Confidential Information as it uses with its similar information that it keeps confidential, but in no case less than a reasonable standard of care; and
2. use Confidential Information solely for the purpose for which it was disclosed or otherwise for the benefit of the discloser.

**11.3** Either party may disclose Confidential Information to:

1. employees of entities within its Enterprise that have a need to know in order to accomplish the purposes of this Agreement; and
2. any third party with the discloser's prior written consent.

**11.4** Any disclosure of Confidential Information by a party to a third party shall be on terms no less restrictive than those in this Agreement.

**11.5** Confidential Information shall not include information that is: i) already in the possession of a party without obligation of confidentiality; ii) developed by a party independently of Confidential Information received from the other party; iii) obtained from a source other than the other party without obligation of confidentiality; iv) publicly available when received or subsequently made publicly available through no fault of the recipient; or v) disclosed to a third party without obligation of confidentiality.

**11.6** Either party may use the ideas, concepts and know-how contained in the Confidential Information of the other which is retained in the unaided memories of recipient's employees.

**11.7** CONFIDENTIAL INFORMATION OF EITHER PARTY IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY OR IMPLIED.

**11.8** The receipt of Confidential Information by either party shall not preclude, or in any way limit, the recipient from: 1) providing to others products or services which may be competitive with products or services of the discloser; 2) providing products or services to others who compete with the discloser; or 3) assigning its employees in its sole discretion.

**11.9** Either party may disclose Confidential Information of the other to the extent required by law; however, the recipient shall promptly notify the discloser of any such requirement in order that the discloser may take action to prevent or limit such disclosure.

## **12. Status Change**

Reseller shall provide prompt written notice to Lenovo of any substantive change to the information provided in the Reseller's application. Upon notification of such change, or in the event of Reseller's failure to provide notice of such change, Lenovo may, at its sole discretion, terminate this Agreement.

## **13. Marketing Funds and Promotional Offerings**

Lenovo may provide marketing funds or promotional offerings to Reseller. The terms and conditions applicable to Reseller's eligibility for such funds and offerings shall be as set forth in this Agreement and in an offer letter or a program announcement. Reseller shall use any such funds or materials solely as designated by Lenovo. In the event that Lenovo terminates this Agreement, Reseller shall immediately cease use of marketing funds and promotional offerings.

## **14. Production Status**

**14.1** Lenovo personal computer hardware Products are manufactured with new parts. Lenovo shall inform Reseller if any personal computer hardware Products to be delivered to Reseller include used parts. Reseller shall inform its End User if a Lenovo personal computer hardware Product includes used parts.

**14.2** Lenovo Machines are manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, Lenovo's appropriate warranty terms apply. Reseller shall inform its End Users of these terms in writing.

## **15. Installation, Features/Upgrades**

**15.1** Lenovo shall provide instructions for the operation of Lenovo hardware Products to Reseller. Unless Lenovo specifies otherwise, Reseller shall provide these materials to the End User for review prior to conclusion of the sale of a Product. Lenovo is not responsible for the operation of Lenovo hardware Products in combination with Programs or third party hardware Products installed after shipment without Lenovo authorization.

Lenovo provides instructions to enable the installation of Lenovo Products. Lenovo is not responsible for the installation of Programs or third party hardware Products. Lenovo does, however, pre-load Programs onto certain hardware Products.

**15.2** Lenovo sells features, conversions and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial numbered Machine. Many of these transactions involve the removal of parts and their return to Lenovo. Such parts become Lenovo property. As applicable, Reseller represents that it has the permission from the owner and any lien holders to:

2. install features, conversions and upgrades; and
3. transfer the ownership and possession to Lenovo of those removed parts which are required to be returned to Lenovo.

Reseller further represents that all removed parts which are required to be returned to Lenovo are genuine, unaltered and in good working order. A part that replaces a removed part shall assume the warranty and maintenance Service status of the replaced part. Reseller agrees to allow Lenovo to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, Lenovo may terminate the transaction and Reseller shall return the feature, conversion, or upgrade to Lenovo at Reseller's expense. Further Reseller agrees to inform its End User that until installed, the feature, conversion, or upgrade, as well as any parts removed that are required to be returned to Lenovo, shall be kept in a protected location and shall not be tampered with.

**15.3** For third party Products Lenovo approves Reseller to market or sell, Reseller shall inform its End User in writing: 1) that the Products are non-Lenovo; 2) the manufacturer, supplier, service provider or publisher who is responsible for warranty (if any); and 3) of the procedure to obtain any warranty service.



## 16. Warranty

**16.1** Lenovo provides a copy of our applicable hardware Product warranty statement to Reseller. Reseller shall provide it to the End User for review before the sale is finalized, unless Lenovo specifies otherwise. Further, Reseller shall inform the End User if a hardware Product contains a Customer Replaceable Unit ("CRU") such as a mouse, keyboard, speaker, memory, or hard disk drive). Lenovo provides replacement CRUs to the End User for installation by the End User.

**16.2** Programs are provided under a license agreement that ships with each Program. The applicable license agreement will specify warranty for the Program, if any.

**16.3 ALL SUPPORT AND ALL THIRD PARTY PRODUCTS AND SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIRD PARTY MANUFACTURERS, SUPPLIERS, SERVICE PROVIDERS OR PUBLISHERS MAY PROVIDE WARRANTIES DIRECTLY TO RESELLER OR END USERS.**

## 17. Lenovo Warranty Service

If Lenovo approves Reseller to provide warranty service, Reseller shall only provide such service for those Products specified by Lenovo and according to the guidelines provided by Lenovo. If Reseller is not approved to perform warranty service, warranty service will be performed by a local service organization. Products shall be subject to the Lenovo warranty applicable in the country of installation.

## 18. Export and Import

**18.1** Reseller warrants to Lenovo that at all times relevant to this Agreement, it is, and will continue to be, in compliance with all applicable export and import laws, regulations, orders and policies, as well as those of the United States, including any clearances, licenses, exemptions and filings associated therewith. If Reseller exports or imports Products, Services or technical data, Reseller, and not Lenovo, shall act as the exporter or importer of record. Lenovo may, in its sole discretion, require Reseller to provide Lenovo with written certification of its compliance with the export and import requirements described above.

**18.2** Unless specified otherwise by Lenovo, Lenovo shall have no responsibility under this Agreement related to a Product that has been exported from the Territory specified in Section 1.1. Reseller shall notify End Users of any applicable export laws and regulations, as well as any import requirements of the destination country.

**18.3** Products exported by Reseller, or purchased from Reseller by an End User for use outside the Territory specified in Section 1.1 shall not be taken into consideration when determining Reseller's performance of objectives or qualification for promotional offerings or marketing funds.

## 19. Trademarks

**19.1** Lenovo shall specify the Lenovo title and emblem which Reseller is authorized to use, on a non-transferrable, non-exclusive, royalty free basis, in the sale of Lenovo Products and Services. Lenovo shall provide Reseller with guidelines, which Lenovo may modify from time to time, regarding the use of the Lenovo title and emblem. Reseller shall not modify the emblem in any way. Reseller may use Lenovo trademarks (which include the title, emblem, trademarks and service marks) only:

1. within the Territory specified in Section 1.1;
2. in association with Products and Services approved for sale by Lenovo;
3. as described in Lenovo's guidelines; and
4. in association with Reseller's obligations under this Agreement.

**19.2** At Reseller's expense, Reseller shall promptly modify any advertising or promotional materials that do not comply with Lenovo guidelines. Reseller shall promptly notify Lenovo of any complaints related to its use of a Lenovo trademark. Upon termination or expiration of this Agreement, Reseller shall promptly cease any use of Lenovo trademarks. If Reseller fails to so cease use and Lenovo incurs litigation related costs and attorneys' fees to cause Reseller to cease use, Reseller shall reimburse Lenovo for any such costs and fees.

**19.3** Reseller shall not register or use any mark that is similar to any of Lenovo trademarks. Lenovo trademarks, and any goodwill resulting from Reseller's use of such trademarks, shall be the sole and exclusive property of Lenovo.

## **20. Limitation of Liability**

**20.1** In any action arising out of or related to this Agreement or any order issued hereunder to Reseller's Distributor, neither party, including the Enterprise of which it is a part shall be liable to the other party or the Enterprise of which it is a part 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

**20.2** The maximum cumulative liability of either party and the Enterprise of which it is a part to the other party and the Enterprise of which it is a part for all actions arising out of or related to this Agreement and all orders issued hereunder to Reseller's Distributor, regardless of the form of the action or the theory of recovery, shall be limited to the total amount paid or payable by Reseller and the Enterprise of which it is a part to Reseller's Distributor for all orders issued under this Agreement.

**20.3** The provisions of Sections 20.1 and 20.2 shall also limit the liability of Lenovo, its subcontractors, suppliers and program developers, collectively, to Reseller and the Enterprise of which it is a part.

**20.4** The provisions of Sections 20.1 and 20.2 shall not apply to: (i) Lenovo's obligations under Section 22.1 below; and (ii) Reseller's obligations under Section 22.2 below.

## **21. Intellectual Property Infringement Protection**

If a third party claims that a Lenovo branded Product that Reseller obtains from Reseller's Distributor under this Agreement infringes that party's patents or copyrights, Lenovo shall defend Reseller against that claim at Lenovo's expense and pay all costs, damages and attorney's fees that a court finally awards against Reseller, or that are included in a settlement approved by Lenovo, provided that Reseller: (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 Reseller's obligations in this Section 21. The foregoing is Lenovo's entire obligation to Reseller regarding any claim of infringement. If such a claim is made or appears likely to be made, and Reseller maintains inventory of Products, Reseller shall permit Lenovo, in its discretion, to enable Reseller to continue to use and sell the Products; to modify them; or to replace them with Products that are at least functionally equivalent. If Lenovo determines that none of these alternatives is reasonably available, Reseller shall promptly return the Products to Reseller's Distributor upon Lenovo's written request. Lenovo will then provide a credit to Reseller's Distributor equal to the amount paid for the Products. Lenovo shall have no obligation regarding any claim based on: i) anything Reseller, Reseller's Distributor or a third party on Reseller's behalf provides which is incorporated into, or combined with a Product; ii) unauthorized modification of a Product by Reseller, Reseller's Distributor or a third party on Reseller'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 Reseller's specifications or requirements; or (v) infringement by a third party product alone, as opposed to its combination with Lenovo Products.

## **22. Indemnification**

**22.1** If a third party claims that a Lenovo branded Product Reseller obtains from Reseller's Distributor under this Agreement is responsible for causing bodily injury (including death); damage to real property; or damage to tangible personal property, Lenovo shall defend Reseller against that claim at Lenovo's expense and pay all costs, damages and attorney's fees that a court finally awards against Reseller or that are included in a settlement approved by Lenovo, provided that Reseller promptly notifies Lenovo in writing of the claim, and allows Lenovo to control, and cooperates with Lenovo in, the defense and any related settlement negotiations. This is Lenovo's entire obligation to Reseller regarding any such claims.

**22.2** Reseller shall defend, indemnify and hold harmless Lenovo, including the Enterprise of which it is a part; and their officers, directors and employees, from and against any and all claims, demands, suits damages, losses, liabilities, fines, penalties, judgments, or costs of whatsoever nature (including reasonable attorneys' fees) arising out of or connected with: i) a breach of this Agreement; ii) a violation of any applicable law, regulation or order, including but not limited to those relating to import and export; iii) a breach of any representation or warranty; iv) asserted or actual infringement of any intellectual property rights by Reseller; v) personal injury, death or property damage; vi) unlawful, unfair, or deceptive trade practices; vii) any unauthorized modification of a Product by Reseller; or viii) any other acts or omissions by Reseller or Reseller's contractors.

## **23. Term and Termination**

**23.1** The term of this Agreement ("Term") shall begin on the effective date and continue for a period of two (2) years. Unless Lenovo specifies otherwise in writing, the Agreement shall be renewed automatically for subsequent two year periods.

**23.2** Either party may terminate this Agreement without cause, on three (3) month's written notice. If, under applicable law, a longer period is mandatory, then the notice period shall be the minimum notice period required by such law.

**23.3** If either party breaches a material term of the Agreement, the other party may terminate the Agreement immediately on written notice. A material breach shall include but not be limited to:

1. Reseller's failure to comply with the terms regarding the use of: i) Product and Services offerings; ii) Special Bid programs; or iii) the use of marketing funds or promotional offerings; or
2. any material misrepresentations made to Lenovo by Reseller.

**23.4** Lenovo may, in its sole discretion authorize Reseller to perform certain activities under this Agreement after its termination or expiration. Any such activities shall be conducted in accordance with the terms of this Agreement.

## **24. Miscellaneous**

**24.1 Changes.** Lenovo may change the terms of this Agreement on one (1) month's written notice to Reseller. In such event, Reseller may terminate this Agreement effective upon the last day of the notice period.

**24.2. Returns.** Products may not be returned to Lenovo except as Lenovo, in its sole discretion, may designate from time to time.

**24.3 Assignment.** Reseller may not assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of Lenovo. Lenovo may assign this Agreement, in whole or in part, as well as its rights and obligations hereunder, at any time. Any such assignment shall become effective as to Reseller upon Reseller's receipt of notice thereof.

**24.4 Survival.** Any terms of this Agreement which by their nature survive the expiration or termination of this Agreement, including Limitation of Liability, Intellectual Property Infringement Protection and Indemnification, shall survive any such expiration or termination.

**24.5 Limitation on Actions.** Neither party may bring a legal action arising out of this Agreement against the other party more than two (2) years after the cause of action arose.

**24.6 Waiver.** The failure by either party to insist on the strict performance of the other party, or to exercise a right when entitled to do so, shall not be deemed a waiver of that party's right to insist upon strict performance or to exercise such right on any other occasion.

**24.7 Compliance with Laws.** Each party shall comply with all applicable laws and regulations, including those governing consumer transactions.

**24.8 Code of Conduct.** Lenovo has a code of conduct for its employees ("Code of Conduct") available at [http://www.lenovo.com/social\\_responsibility/us/en/2011\\_Lenovo\\_CodeofBusinessConduct\\_EN.pdf](http://www.lenovo.com/social_responsibility/us/en/2011_Lenovo_CodeofBusinessConduct_EN.pdf). The Code of Conduct applies to all Lenovo business dealings. Reseller shall not induce or request any Lenovo employee to breach the Code of Conduct.

**24.9 Severability.** In the event that any provision of this Agreement, in whole or in part, is invalid, unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, such provision shall be replaced, to the extent possible, with a provision which accomplishes the original business purposes of the provision in a valid and enforceable manner, and the remainder of this Agreement shall remain in effect.

**24.10 Remedies.** Reseller acknowledges and agrees that Lenovo's remedy at law for breach of Reseller's obligations hereunder would be inadequate, and hereby agrees that temporary and permanent injunctive relief and/or specific performance may be granted in any proceeding which may be brought to enforce this Agreement without the necessity of proof of actual damage, in addition to all other remedies provided hereunder or available at law.

**24.11 Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws in the Province of Ontario, without regard to its or any other jurisdiction's conflicts of laws principles. All claims or disputes arising out of or in connection with this Agreement shall be heard exclusively by a court located in Toronto, Canada. To that end, each party irrevocably consents to the exclusive jurisdiction of, and venue in, such courts, and waives any: (i) objection it may have to any proceedings brought in any such court; (ii) claim that the proceedings have been brought in an inconvenient forum; and (iii) right to object (with respect to such proceedings) that such court does not have jurisdiction over such party. Without limiting the generality of the forgoing, each party specifically and irrevocably consents to personal and subject matter jurisdiction for such claims or disputes in a court located in Toronto, Canada, and to the service of process in connection with any such claim or dispute by the mailing thereof by registered or certified mail, postage prepaid such party, at the address set forth in, or designated pursuant to, this Agreement. To the fullest extent permitted by law, each party hereby expressly waives (on behalf of itself and on behalf of any person or entity claiming through such party) any right to a trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or in any manner connected with this Agreement or the subject matter hereof.

**24.12 Independent Contractors.** This Agreement does not create, nor should it be construed to create, the relationship of employer-employee, principal and agent, partners, or joint venture between the parties. At all times relevant hereto, Reseller and Lenovo shall be independent contractors. Neither party may act on behalf of the other; bind the other in any way; or represent to a third party that the other party is in any way responsible for its acts or omissions. Each party shall be solely responsible for its costs and expenses related to this Agreement and its rights and obligations hereunder.

**24.13 Preparation of Agreement.** Any ambiguities in the language of this Agreement are not to be construed or resolved against either party based on the fact that such party was principally responsible for drafting this Agreement.

**24.14 Reseller Information.** Lenovo and the Enterprise of which it is a part, may store, use and process contact information and other information about Reseller, including names, phone numbers, addresses, and email addresses obtained in the course of this Agreement. Such information may be processed and used in connection with this Agreement and the Products or Services. It may be transferred by Lenovo to any country where Lenovo does business and it may be provided to entities acting on Lenovo's behalf in relation to this Agreement and the Products or Services.

**24.15 Counterparts and Electronics Signature.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile or other electronic signature in a manner agreed upon by the parties hereto.

**24.16 Communications.** Communications between the parties may be by electronic means, and any such communication shall be valid and binding to the extent permissible under applicable law. In all electronic communications, an identification code ("Lenovo ID") contained in an electronic document shall be sufficient to verify the sender's identity and the document's authenticity.

**24.17 Headings.** Headings used in this Agreement are for the purposes of convenience only and will not affect the legal interpretation of this Agreement.

**24.18 Complete Agreement.** 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. In the event your business is considered by Lenovo to be a Tier 1 partner, acceptance of this Agreement, while required for initial use of the Lenovo Partner Portal Hub, will be superseded by the specific Tier 1 Reseller Agreement terms that will be ultimately agreed between you and Lenovo.

**24.19 Attachments.** Reseller accepts the terms of an Attachment when Reseller participates in the offering described in the Attachment. When Reseller participates in an offering or when Reseller is approved by Lenovo to participate in an offering, the Attachment is incorporated herein and made a part of this Agreement:

Attachment A: Lenovo Service Provider Program

# **lenovo** Attachment A: Lenovo Service Provider Program

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The terms of this Attachment A: Lenovo Service Provider Program attachment (the "Attachment") applies to Resellers approved by Lenovo to acquire Lenovo Machines for use as part of a Reseller's Managed Services Solution, as defined below in Section 1. When Reseller is approved to participate in the Lenovo Service Provider Program, the terms of this Attachment are incorporated in and made part of the Lenovo Agreement for Resellers between Lenovo (Canada) Inc. and Reseller (the "Agreement"), and are in addition to or modify the terms of the Agreement.

Subject to the terms of the Agreement and this Attachment, Reseller may acquire Lenovo Machines approved to market from Lenovo Distributors for use in Reseller's Managed Services Solution.

The following terms apply to Resellers approved for participation in the Lenovo Service Provider Program:

## **1. Managed Services Solution**

Managed Services Solutions include those solutions for which Reseller:

- a. manages a revenue generating network and
- b. provides commercial solutions that operate exclusively on End User data.

Reseller's solution must connect to and utilize a revenue generating network and include at least one of the following:

- a. Internet access,
- b. Web, e-commerce, application hosting, Cloud Services or
- c. Internet, intranet, or extranet services.

## **2. Machines**

Reseller shall retain title to the Machines which are used in conjunction with its Managed Services Solution. When Reseller retains title to the Machines, it may provide Managed Services Solutions to multiple End Users unless otherwise noted. Reseller shall retain such Machines for a minimum of twelve months. While maintaining title of the Machines, they may be located on Reseller's, an End User or a third party's premises.

## **3. Programs**

When, as part of your Managed Services Solution, Reseller acquires a Lenovo Program for installation on a Machine; Reseller controls the Program; and Reseller and the End User have access to such Program, regardless of the Machine's physical location, Reseller is the Program's licensee.

## **4. Ordering and Delivery**

If Reseller acquires Machines from its Distributor, Reseller shall advise its Distributor at the time the Machines are ordered, that Reseller will retain title for the Machines ordered.

## **5. Charges**

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size for Programs). Reseller agrees, if required by Lenovo, to provide actual usage data and promptly notify its Distributor, of changes to the environment that impact use charges (for example, change

processor size or configuration for Machines). Lenovo will accordingly adjust the recurring charges it bills Reseller or if applicable, Reseller's Distributor who will inform Reseller of any adjustments.

**Unless Lenovo agrees otherwise, Lenovo does not give credits or refunds for charges already due or paid. In the event that Lenovo changes the basis of measurement, the Lenovo Agreement for Resellers terms for notification will apply.**

## **6. Termination**

Termination of this Attachment will result in termination of the approvals specified in this Attachment, subject to the terms of the Term and Termination section of the Agreement. However, either party may terminate this Attachment upon one months' written notice to the other.