

Lenovo Services Reseller Agreement



BY CLICKING THE BOX INDICATING YOUR AGREEMENT TO THE LENOVO SERVICES RESELLER AGREEMENT, YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND AGREE TO (AND ARE AUTHORIZED TO AGREE TO) THE TERMS OF THE LENOVO SERVICES RESELLER AGREEMENT (INCLUDING ALL ATTACHMENTS THEREIN) 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 Services Reseller Agreement (“Agreement”) is entered into by and between Lenovo (Australia & New Zealand) Pty Limited of Generator, Level 10, 11 Britomart Place, Britomart, Auckland 1010 New Zealand (“Lenovo”) and the reseller applicant in the Lenovo Cloud Marketplace (“Reseller”). This Agreement shall be effective on the date the Reseller is approved to be a participant in the Lenovo Cloud Marketplace. Lenovo and the Partner may be referred to collectively in this Agreement as “parties” and individually as “party”.

This Agreement comprises:

1. Attachment A – Details of the Relationship
2. Attachment B – Subscription Services Attachment
3. Lenovo Services Reseller Agreement General Terms

In the event of any inconsistency between the above documents, such inconsistency shall be resolved by way of the priority set out in the above list.

Attachment A
Details of the Relationship



Term

This Agreement shall continue unless terminated by either party in accordance with Section 28.

Territory

Reseller is authorized to market and sell Products and Services only in New Zealand.

Additional Terms

The following documents are attached hereto and made a part hereof:

Products and Services

- Lenovo Think hardware Products
- Software Products
- Services

Reseller may order software Products and Services from either of Lenovo or a Lenovo Distributor, however Reseller may only order Think hardware Products from a Lenovo Distributor.

Attachment B

Subscription Services Attachment

Definitions

“**Business Day**” means a day on which trading banks are open for business in New Zealand, except a Saturday, Sunday or public holiday.

“**Default**” means (a) a material breach by Reseller of any of the obligations under this Attachment, and that breach is not capable of remedy; (b) Reseller’s failure to comply with any of the obligations under this Attachment, failure of which continues for fourteen (14) days after written notice of the breach from Lenovo to Reseller; (c) Reseller’s failure to pay Usage Fees as and when they fall due; (d) Reseller’s actual or suspected bankruptcy, insolvency, or if Reseller ceases to operate its business as a going concern; and (e) Reseller uses the Subscription Services ordered under this Attachment for its own internal business purposes.

“**Subscription Period**” means the number of months purchased by Reseller for the End User to access the Subscription Services.

“**Subscription Services**” means those software services, managed or other services as provided by Lenovo and specified in the applicable Schedule to this Attachment.

“**Territory**” means New Zealand.

“**Usage Fees**” means those usage fees for Services specified in the applicable Schedule to this Agreement

“**Vendor**” means the organization, entity, corporation or person who develops, produces and offers Services for use by an End User.

A capitalized term used in this Attachment, which is defined in the Agreement, but is not defined in this Definition section, has the meaning given to it in the Agreement.

1. Attachment

- 1.1. This Attachment shall form part of and shall be read subject to all of the terms and conditions set out in, the Agreement.

2. Authorisation

- 2.1 Lenovo authorises Reseller to resell and market the Subscription Services to End Users within the Territory. Reseller may not resell or market the Subscription Services to End Users located outside of the Territory, nor accept orders or receive payment for Subscription Services from End Users located outside of the Territory.
- 2.2 A Subscription Service becomes subject to this Attachment when Lenovo makes the Subscription Service available to Reseller for provision to an End User. Confirmation of Lenovo’s receipt of a Reseller order does not constitute Lenovo’s acceptance of the order.

3. Compliance

- 3.1 Reseller warrants that, at all times, it will comply at times with:
 - (A) The terms applicable to the Subscription Service to the extent the terms apply to the Reseller;

- (B) All additional terms and conditions applicable to the Subscription Service as notified to Reseller in writing from time to time by Lenovo or by the Vendor of that Subscription Service, either directly from that Vendor to Reseller or by way of Lenovo;
 - (C) All lawful directions from Lenovo to Reseller relating to the reselling or marketing of the Subscription Services to End User or the End User's use of the Subscription Services.
- 3.2 Reseller must complete and/or execute, or arrange for End User to complete and/or execute (as directed by Lenovo), all additional documentation required by Lenovo from time to time that are necessary for Reseller to continue to market and resell the Subscription Services or for the End User to use the Subscription Services, including, but not limited to, agreements by and between Reseller and/or End User, Lenovo and any applicable Vendor.
- 3.3 Reseller warrants the End User's use of Subscription Service must be in compliance with all applicable laws, government regulations and any applicable usage policies as mandated by Lenovo or any applicable Vendor.
- 3.4 Reseller must maintain complete and accurate records relating to its performance under the Attachment ("**Relevant Records**") during the term of this Attachment and for two (2) years after the later of either (i) the termination of this Attachment or the Agreement; or (ii) the date of issuance of final invoice by Lenovo to Reseller in respect of all Subscription Services resold by Reseller to End Users (collectively, the "**Audit Period**"). Relevant Records include, but may not be limited to, complete financial statements and all documents related to acquisition, reproduction, installation, distribution, and other disposition of each unit of Product. The Relevant Records must not contain any false, misleading, incomplete, inaccurate, or artificial entries. If Relevant Records are co-mingled with Reseller's other non-relevant information, Reseller may redact the Relevant Records with respect to such nonrelevant information.
- 3.5 Upon prior written request during the Audit Period, Reseller must make available such Relevant Records for examination by Lenovo. Lenovo may make and retain copies of all Relevant Records made available to it and Lenovo may make available such Relevant Records or any copies thereof to any Vendor to whom those Relevant Records relate to.
- 3.6 Without limiting Reseller's indemnification obligations under the Agreement, Reseller shall 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 attorney's fees) arising out of or connected with a breach of this clause 3.
- 4. Usage Fees, Invoicing**
- 4.1 The applicable Usage Fees payable by Reseller to Lenovo, type of subscription and, unless ordered on a month-to-month basis, the Subscription Period that Reseller purchases from Lenovo for resale to an End User will be specified in the ordering document provided by Lenovo. Lenovo reserves the right to change Usage Fees prior to renewal of Subscription Services for an additional Subscription Period, providing no less than (14) day notice.
- 4.2 Usage Fees shall be invoiced at the date of Reseller's order.
- 4.3 Payment of Usage Fees is due in full and shall be paid upon receipt of Reseller's order. Any amounts not received by Lenovo within thirty (30) days of receipt of invoice shall be overdue. Reseller shall pay a late payment fee in the amount of the lesser of one and one half (1.5%) percent per month or the maximum rate permitted by law on the undisputed overdue balance of the invoice amount.

- 4.4 All Usage Fees or other amounts payable under this Attachment include applicable Goods and Services tax ("GST"). If the rate of GST changes, Lenovo may adjust the charge or other amount payable under this Attachment to take into account any such change from the date the change becomes effective.
- 4.5 If any government or authority imposes a duty, tax (other than income tax), levy or fee ("charge"), on this Attachment or on a Product or Service, that is not otherwise provided for in the amount payable under clause 4.4 above, Reseller shall pay such charge to Lenovo as specified in Lenovo's invoice.
- 4.6 Nothing in this Attachment or the Agreement (including any default by the End User or any errors or interruptions in use of the Subscription Service), will relieve the Reseller from its obligation to pay the Usage Fees for the each Subscription Service ordered in full, without abatement, deduction, withholding, set-off or any other reduction whatsoever.

5. Cancellation of Subscription Services

- 5.1 Where Reseller notifies Lenovo of any cancellation of any Subscription Services, at End User's request or otherwise:
 - (a) Where such Subscription Services are ordered on a month-to-month basis and billed in advance, any unused Usage Fees paid by Reseller shall be refundable;
 - (b) Where such Subscription Services are ordered on a month-to-month basis and billed in arrears, Lenovo shall invoice Reseller for the Usage Fees for that month and Reseller shall pay such Usage Fees; or
- 5.2 Lenovo may cancel the Subscription Services, without liability to Reseller or any End User, where:
 - (a) Reseller or End User is in Default; or
 - (b) for reasons outside Lenovo's reasonable control, Lenovo can no longer make the Subscription Services available to Reseller and/or an End User; or
 - (c) Where such Subscription Services are ordered for a Subscription Period, Reseller shall pay, as liquidated damages and as a genuine estimate of Lenovo's loss of bargain, any the balance of all Usage Fees payable for that Subscription Service as invoiced by Lenovo.
- 5.3 Where Lenovo cancels the Subscription Services on account of Reseller's Default:
 - (a) Where such Subscription Services are ordered on a month-to-month basis and billed in advance, all Usage Fees paid by Reseller shall be non-refundable;
 - (b) Where such Subscription Services are ordered on a month-to-month basis and billed in arrears, Lenovo shall invoice Reseller for the Usage Fees for that month and Reseller shall pay such Usage Fees; or
 - (c) Where such Subscription Services are ordered for Subscription Period, Reseller shall pay, as liquidated damages and as a genuine estimate of Lenovo's loss of bargain, any the balance of all Usage Fees payable for that Subscription Service as invoiced by Lenovo.
- 5.4 Lenovo may suspend the Subscription Services where Reseller fails to pay the Usage Fees as and when they fall due. Lenovo shall have no liability to Reseller on account of any End User claim against Reseller arising from such suspension.

6. General

6.1. **Changes.** Lenovo may vary the terms of this Attachment at any time upon notice to Reseller.

6.2. **Term and Termination.** The authorization granted by this Attachment shall begin on the commencement of the Agreement and shall continue until terminated by Lenovo in accordance with the terms of this Attachment or upon termination of the Agreement. Lenovo may terminate this Attachment (and the authorization granted) for any reason by providing at least thirty (30) days prior written notice to Reseller, or immediately where the Reseller is in Default or for reasons outside Lenovo's reasonable control, Lenovo can no longer make the Subscription Services available to Reseller. For the avoidance of doubt, termination of this Attachment by Lenovo shall not terminate the Agreement unless the Agreement is terminated by Lenovo.

6.3. **Consequences of Termination by Reseller or due to Reseller Default.** Where this Attachment is terminated by Reseller for any reason or by Lenovo by reason of Reseller Default:

- (a) for all Subscription Services that are ordered on a month-to-month basis and billed in advance as at the date of termination, all Usage Fees paid by Reseller shall be non-refundable;
- (b) for Subscription Services that are ordered on a month-to-month basis and billed in arrears as at the date of termination, Lenovo shall invoice Reseller for all Usage Fees for that month and Reseller shall pay such Usage Fees; and
- (c) for all Subscription Services are ordered on a Subscription Period basis as at the date of termination, Reseller shall pay, as liquidated damages and as a genuine estimate of Lenovo's loss of bargain, any the balance of all Usage Fees payable for those Subscription Service as invoiced by Lenovo.

6.4. **Consequences of Termination in other circumstances.** Where this Attachment is terminated by Lenovo for any reason other than Reseller Default, Lenovo will provide Reseller a pro-rated refund for the balance of each Subscription Period for the Subscription Services ordered by Reseller. If there are no valid Subscription Periods in place as at the date of termination, Lenovo shall be under no obligation to provide any refund to Reseller.

6.5. **Default.** Exercise of any rights contained in this Attachment in response to Default by Reseller shall not prejudice or limit Lenovo's rights against Reseller at law, equity or otherwise under the Agreement. Damages may not be an adequate remedy for a breach of this Attachment, so Lenovo has the right to obtain equitable relief, without bond or security, in addition to Lenovo's rights to obtain damages and other legal remedies

6.6. **Reseller and End User Information.** Lenovo and its affiliates may store, use and process contact information and other information about Reseller and any End User, including names, phone numbers, addresses, and e-mail addresses, necessary to provide the Subscription Services. Such information will be processed and used in connection with this Agreement and the Subscription Services. It may be transferred by Lenovo to any country where Lenovo does business; and may be provided to entities acting on Lenovo's behalf in relation to this Agreement and the Subscription Services as well as provided to Vendors. Lenovo may also disclose such information where required by law.

Lenovo Services Reseller Agreement General Terms



1. Authorization and Scope

- 1.1. Lenovo hereby authorizes Reseller to market and sell Lenovo Products and Services within the Territory specified in Attachment A 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; or when Lenovo accepts Reseller's order in writing; ships the Product; or makes the software Product or Service available to Reseller. Confirmation of Lenovo's receipt of a Reseller order does not constitute Lenovo's acceptance of the order.

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 Services or Products 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. **Product** means any Lenovo branded or third party hardware or software that Lenovo provides to Reseller under this Agreement. Hardware Products include personal computers, storage devices and accessories. Software products include computer software Programs (whether pre-loaded or provided separately) and related licensed materials such as documentation.
- 2.5. **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.

- 2.6. **Reseller** means the purchaser of Products and Services for sale to End Users only.
- 2.7. **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.

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. Without limiting clause 3.1, Reseller shall only provide Products at special bid prices or discounts to the End User specified by Lenovo in a special bid program.

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.

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. 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. Notwithstanding the forgoing, Lenovo may either (i) request Reseller to verify the identity of an End User, and Reseller must use best endeavours to comply with such request; or (ii) conduct its own End User verification process, and Reseller must provide Lenovo with all assistance it will require in as part of this process.
- 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 Lenovo for transactions related to the breach. Reseller shall pay the refund to Lenovo upon demand 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.

Reseller Responsibilities To Lenovo

Reseller shall:

- 6.1. develop annual business plans, including marketing plans, and provide to Lenovo for approval;
- 6.2. order Products and Services as specified by Lenovo;
- 6.3. maintain trained personnel as specified by Lenovo;
- 6.4. upon request of Lenovo, provide relevant financial information about Reseller including an audited annual financial report;
- 6.5. maintain sufficient inventory of Products to meet End User demands;



- 6.6. ensure that the terms in any agreement that Reseller may have with an End User does not conflict with this Agreement;
- 6.7. 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;
- 6.8. comply with any applicable regulations and laws before disclosing any personally identifiable information to Lenovo;
- 6.9. promptly report any suspected Product defects or safety problems to Lenovo and assist Lenovo in tracing and locating Products; and use reasonable efforts to enable Lenovo to correct defects on Products whether located at Reseller, or End User;
- 6.10. refrain from making payments or gifts of any kind to anyone for the purpose of influencing decisions in favor of Lenovo, directly or indirectly;
- 6.11. provide combined hardware Products and software Products to End Users in the same combination as received from a Distributor or Lenovo;
- 6.12. 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 Resellers or End Users; and
- 6.13. 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.

Reseller's Responsibilities To End Users

Reseller shall:

- 7.1. provide the support necessary to maintain customer satisfaction and participate in customer satisfaction programs established by Lenovo;
- 7.2. 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;
- 7.3. assist End Users to achieve productive use of the Products and Services;
- 7.4. refund the amount paid for a Product returned by an End User if such return is permitted under the Lenovo warranty or software Product license;
- 7.5. provide a copy of the Lenovo Limited Warranty along with the name and address of the warranty service provider and a description of the Customer Replaceable Unit process to End Users;
- 7.6. advise End Users that any modification to a Product may void the Lenovo Limited Warranty and that the Lenovo warranty may not apply to exported Products;

- 7.7. comply with all applicable export and import laws, including those of the United States;
- 7.8. provide a dated sales receipt to End Users;
- 7.9. inform End Users that the sales receipt or proof of purchase will be necessary to obtain warranty service or software Product upgrades;
- 7.10. assist Distributor or Lenovo in locating Products;
- 7.11. retain records of each transaction for three years from the date of sale;
- 7.12. provided combined hardware Products and software Products to End Users in the same combination as provided by Distributor or Lenovo;
- 7.13. 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;
- 7.14. provide pre- and post-installation support, including configuration support to End Users for Products and Services, and be responsible for End User satisfaction;
- 7.15. assist End Users in problem determination and resolution; and
- 7.16. for Lenovo Programs sold to End Users who install Programs, require End Users to: (i) sign 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.

8. Special Bids

- 8.1. Special Bids means a special discount or price for a Product or Service sold to Reseller from information provided by Reseller to Lenovo in a Special Bid request. If the information provided in a Special Bid request changes, Reseller shall immediately notify Lenovo. 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 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 below).

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 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 provided by Lenovo; 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.
- 8.2. Reseller may only market the Products and Services to the End User that Reseller stated in the Special Bid request for the transaction specified in the Special Bid request. Reseller is responsible to require with any applicable Special Bid addendum that Lenovo provides for the Special Bid.
- 8.3. 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.

9. Lenovo's Audit of Special Bid Transactions

- 9.1. 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 own and use 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.
- 9.2. 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 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.

10. Services

- 10.1. Services may be either standard offerings or customized to the End User's specific requirements. Each Service transaction may include one or more Service that: (i) expires at task completion or an agreed upon date; or (ii) automatically renews as another transaction with a specified contract period. Renewals will continue until the Service is terminated by either party, or Lenovo withdraws the Service. If Lenovo makes a change to the terms of a renewable Service that affects the End User's current contract period and the End User considers it unfavorable and Reseller advises Lenovo in writing, Lenovo will defer the change until the end of that contract period.

The following are the conditions under which Reseller may market Services if Reseller marketed a Product to the End User, Reseller may market the Services, specified in **Attachment A - Details of the Relationship** for the Reseller's marketing to such End User.

Reseller may market Services on eligible third party Products regardless of whether a Lenovo hardware Product or Program was marketed to the End User by Reseller.

10.2. Remarketing of Services

The terms of sale applicable to Services provided by Lenovo shall be as set forth by Lenovo in this Agreement, a Services Attachment or Transaction Document provided to Reseller. Lenovo or a Lenovo designated service provider shall perform the Services under the terms of a separate agreement with the End User.

10.3. Other Responsibilities

Each party agrees to give the other party a copy of notices or requests received from or sent to an End User applicable to a Lenovo Master Services Agreement or other Lenovo Services agreement (collectively "Services Agreement").

Reseller agrees to ensure certain Services Agreements, Services Attachments and Transaction Documents, as specified to Reseller in writing are made available to End Users for their signature and returned to Lenovo. Reseller agrees to promptly provide to Lenovo information and notifications that the End User is responsible to provide Lenovo through the Reseller, as set forth in a Services Agreement, Services Attachment or Transaction Document.

Reseller agrees to become thoroughly familiar with Service Agreements and other documents for Services that Reseller is approved to market.

10.3.1. Service Charge

The amount Reseller is responsible to pay Lenovo for a Service acquired from Lenovo for remarketing to an End User shall be based on one or more of the following types of charges: one time, recurring (for example, a periodic charge for support Services); time and materials (for example, charges for hourly Services); or fixed price (for example, a specific amount agreed to between us for a custom Service). Services made available to Reseller on a recurring-charge basis are made available for the period indicated in Lenovo's invoice, statement of work, or other Transaction Document, as applicable. Reseller may market such Services only on a recurring charge basis.

Lenovo may increase recurring charges for Services, as well as hourly or daily rates and minimums for Services Lenovo performs under any Services Agreement, by giving Reseller three (3) month's written notice. An increase applies on the first day of the applicable invoice or charging period, on or after the effective date specified in the notice.

Reseller receives the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

Charges for Services are billed as specified by Lenovo, which may be: (i) in advance; (ii) periodically during the performance of the Service; or (iii) after the Service is completed.

Unless specified otherwise by Lenovo, prepaid Services shall be used within the applicable contract period. No credits or refunds shall be issued for unused prepaid Services.

If an End User is eligible for a credit or refund under the terms of a Services 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. Lenovo will issue the appropriate credit or refund to Reseller.

Lenovo may specify in a Services Agreement additional charges that apply under specific conditions. When applicable, such charges may apply to Reseller. Depending on the particular Service or circumstance, if other charges apply, Lenovo shall inform Reseller in advance.

10.3.2. Services Requirements Changes

During the Service period, Reseller may update requirements, including adding Products to be covered by the Service, as well as increasing the Service requirements. Lenovo will adjust invoicing to Reseller accordingly.

10.4. Termination of Services

Either party may terminate a Service if the other party or the End User does not meet its obligations concerning the Service and the terminating party notifies the other party in writing of any such termination.

Reseller may terminate a Service on one (1) month's written notice to Lenovo provided Reseller has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents. For a maintenance Service, Reseller may terminate without adjustment charge provided any of the following circumstances occur:

1. Reseller's End User permanently removes the eligible product, for which the Service is provided, from productive use within the Enterprise;
2. the eligible location, for which the Service is provided, is no longer controlled by Reseller's End User (for example, because of sale or closing of the facility); or
3. the Product has been under maintenance Service for at least six (6) months and Reseller provides Lenovo one month's written notice prior to terminating the maintenance Service.

Reseller agrees to pay Lenovo for:

1. all Services Lenovo provides and any materials Lenovo delivers through the effective date of Service termination;
2. all expenses Lenovo incurs through Service termination; and
3. any charges Lenovo incurs in terminating the Service.

Lenovo may withdraw a Service or support for an eligible Product on three (3) months' written notice to Reseller. If Lenovo withdraws a Service for which Reseller has prepaid and Lenovo has not yet fully provided it to Reseller's End User, Lenovo will give Reseller a prorated refund. If Lenovo terminates this Agreement, Lenovo may continue to provide Services for the remainder of the contract period for which Reseller has already paid. However no additional Services may be added.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

10.5. Marketing of Services

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. The fee for such Services and the methodology used are specified in the applicable Service offering.

10.5.1. Fee for Marketing Services

Reseller shall receive a fee for marketing eligible Services when:

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

10.5.2. Lead Pass Fee

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.

10.5.3. 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 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.

10.6. Services Lenovo Performs As Reseller's Subcontractor

Lenovo provides terms to Reseller in an applicable Service Attachment governing the provision of the Services Lenovo performs as Reseller's subcontractor. Such Services are those that an End User purchases from Reseller under the terms of Reseller's service agreement.

11. 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 customer'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.

12. Confidential Information

- 12.1. 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.
- 12.2. 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.
- 12.3. 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.
- 12.4. Any disclosure of Confidential Information by a party to a third party shall be on terms no less restrictive than those in this Agreement.
- 12.5. Confidential Information shall not include information that is: (1) already in the possession of a party without obligation of confidentiality; (2) developed by a party independently of Confidential Information received from the other party; (3) obtained from a source other than the other party without obligation of confidentiality; (4) publicly available when received or subsequently made publicly available through no fault of the recipient; or (5) disclosed to a third party without obligation of confidentiality.
- 12.6. Either party may use the ideas, concepts and know-how contained in the Confidential Information of the other which is retained in the memories of recipient's employees.
- 12.7. CONFIDENTIAL INFORMATION OF EITHER PARTY IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND WHETHER EXPRESS, STATUTORY OR IMPLIED.
- 12.8. 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.

- 12.9. 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.

13. 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.

14. 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 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.

15. Ordering and Delivery

- 15.1. Products may only be ordered in minimum order quantities as advised by Lenovo from time to time, or as applicable in an Operations Guide.
- 15.2. Any special promotional offering from Lenovo may not be combined with other Lenovo programs.
- 15.3. All orders shall be placed through Lenovo's standard electronic ordering system. Lenovo may apply additional charges to orders not placed through its standard electronic ordering system.
- 15.4. Products may be shipped from different sources of supply and Reseller may receive multiple shipments and invoices relating to a single order.
- 15.5. All Products and Services ordered by Reseller and the destinations specified for shipments shall be only as approved by Lenovo.
- 15.6. Lenovo shall ship a Program's media and documentation to Reseller, as specified in an order. For Programs Lenovo provides in tangible form, Lenovo fulfills its shipping and delivery obligations upon the delivery of such Programs to the Lenovo-designated carrier.
- 15.7. Upon becoming aware of any discrepancy between the shipping manifest and the Products and Services received from Lenovo, Reseller shall immediately notify Lenovo. Lenovo shall work with Reseller to reconcile any discrepancies.
- 15.8. Lenovo shall select the method of shipment and pay the associated charges for the shipment of Products. Reseller may request shipment by another method when they place the order and shall pay Lenovo for any resulting additional shipping charge.
- 15.9. Lenovo may apply a cancellation charge for orders canceled by Reseller.

16. Returns

- 16.1. Products may not be returned to Lenovo for credit except as Lenovo, in its sole discretion, may designate from time to time.

- 16.2. In the event that Lenovo elects to allow Products to be returned for credit, Lenovo will issue an announcement specifying the terms on which the Product may be returned to Lenovo. In addition, all returns of Products for credit shall be subject to the following:
1. prior approval of Lenovo;
 2. Products consisting of hardware Products and software Products sold by Lenovo under a single part number may only be returned in the same complete combination as received from Lenovo;
 3. Products must have been purchased directly from Lenovo;
 4. Products must be received by Lenovo within one (1) month of the date of Lenovo's approval of the return;
 5. Products must be returned in their original, unopened package with no damage;
 6. any credit shall be in the amount of the purchase price of Product;
 7. transportation costs for the return of Products shall be borne by Lenovo;
 8. Products shall be free of any liens or encumbrances; and
 9. Products must be from within the country from which they were shipped by Lenovo.

17. Price, Invoicing, Payment and Taxes

17.1. Price and Discount

The price or discount applicable to a Product or Service may be made available by Lenovo in either published form or through Lenovo's electronic information system.

17.2. Price and Discount Changes

Lenovo may change prices and increase discounts applicable to Products or Services at any time. Lenovo may decrease discounts on one (1) month's notice to Reseller.

17.3. Invoicing, Payment and Taxes

If not paid in advance of shipment, all amounts are due upon receipt of invoice. Any payment not received by Lenovo within thirty (30) days of date of invoice shall be overdue.

Reseller may use a credit only after issuance by Lenovo.

If any governmental authority requires Lenovo to collect a duty, tax, levy, or fee on a transaction under this Agreement, excluding any tax based on Lenovo's net income, then Reseller shall pay such amount as specified in Lenovo's invoice. Reseller is responsible for any personal property taxes for each Product from the date of shipment by Lenovo.

If Reseller claims to be exempt from any taxes relating to the Products and Services purchased from Lenovo, then Reseller shall provide Lenovo with evidence sufficient to support such claim.

Lenovo may offset any amounts due Reseller or designated for Reseller's use, e.g. marketing funds, promotional offerings, incentives or special bid rebates, against amounts due Lenovo from Reseller.

17.4. Failure to Pay Any Amounts Due

If Reseller fails to pay any amounts due in the required period of time, or payment of an invoice is overdue, Lenovo may:

1. impose a finance charge of the lesser of one and a half (1.5%) percent per month or the maximum rate permitted by law on the undisputed overdue balance of the invoice amount;
2. require payment on or before delivery of Products and Services;
3. repossess any Products for which Reseller has not paid, at Reseller's expense, including reasonable attorneys' fees;
4. refuse Reseller's orders until any amounts due are paid;
5. terminate this Agreement; or
6. pursue any other remedy available at law.

18. Reporting

Reseller shall:

1. Provide sales-out reports weekly on a date specified by Lenovo for the previous week for sales into the approved Territory, including date, Product description, machine type, model or part number and serial number (when applicable), destination country, unit and extended cost, quantity and End User name.
2. Provide inventory reports weekly on a date and in a format as specified by Lenovo including on-hand inventory, by Product (machine type, model or part number) and quantity.

19. Title and Risk of Loss

- 19.1. When Reseller orders hardware Products, Lenovo transfers title to Reseller upon delivery to the Lenovo-designated carrier. Hardware Products are owned by Lenovo until title has been transferred to Reseller. Lenovo does not transfer title to software Products.
- 19.2. Reseller right to possession of hardware Products will cease if Reseller has not yet fully paid for the hardware Products and: 1) Reseller's actions entitle any person to appoint a receiver or administrative receiver of Reseller's property; 2) Reseller becomes subject to any form of insolvency proceedings (or Lenovo has reason to believe any of the preceding events is likely to occur); 3) Reseller fails to make payments hereunder when due; or 4) the Agreement is terminated. Lenovo may then, in addition to any other remedies available to it, enter any premises to recover unpaid hardware Products and requires Reseller not to resell or part with possession of hardware Products until Reseller has paid Lenovo, in full, all sums due to it.
- 19.3. Reseller will pass title to any returned hardware Products to Lenovo free from all encumbrances.
- 19.4. For each hardware Product, Lenovo bears the risk of loss or damage up to the time it is delivered to the Lenovo-designated carrier for shipment to Reseller. Thereafter, Reseller assumes the risk. Each hardware Product will be covered by insurance, arranged and provided by Lenovo for Reseller, covering the period until it is delivered to Reseller.

20. Production Status

- 20.1. 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 Reseller or End User if a Lenovo personal computer hardware Product includes used parts. Reseller shall identify, and shall cause Resellers to identify, Lenovo person computer Products which include used parts.

- 20.2. 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.

21. Installation and Warranty

- 21.1. Lenovo shall provide instructions for the operation of Lenovo hardware Products and the applicable Product warranty 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., Reseller shall advise End Users that replacement Customer Replaceable Units ("CRU") such as a mouse, keyboard, speaker, memory, or hard disk drive, will be provided directly to the End User. Lenovo is not responsible for the operation of Lenovo hardware Products in combination with software Products or third party hardware Products installed after shipment without Lenovo authorization.
- 21.2. Lenovo is not responsible for the installation of software Products or third party hardware Products. Lenovo does, however, pre-load software Products onto certain hardware Products. Lenovo provides a copy of our applicable 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.
- 21.3. TO THE EXTENT PERMITTED BY LAW, ALL SOFTWARE, SERVICE, 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.
- 21.4. 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.

22. Lenovo Warranty Service

If Lenovo approves Reseller to provide warranty service, Reseller shall only provide such service for those Products specified 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.

23. Export and Import

- 23.1. 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 including those of the United States, including any as well as the clearances, licenses, exemptions and filings associated therewith, and will maintain records sufficient for Lenovo to Reseller's compliance with all applicable laws, regulators, orders and policies (including, but not limited to, information sufficient to identify End Users). 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.



- 23.2. Unless specified otherwise by Lenovo, Lenovo shall have no responsibility under this Agreement related to a Product that has been exported from the Territory. Reseller shall notify End Users of any applicable export laws and regulations, as well as any import requirements of the destination country.
- 23.3. Products exported by Reseller, or purchased from Reseller by an End User for use outside the Territory shall not be taken into consideration when determining Reseller's performance of objectives or qualification for promotional offerings or marketing funds.
- 23.4. Notwithstanding anything contained in clause 23.1, Reseller will permit Lenovo, at all reasonable times, to inspect its records to validate its compliance with all with all applicable export and import laws, regulations, orders and policies, and will cooperate with all reasonable Lenovo requests to obtain information from Reseller's End Users.

24. Trademarks

- 24.1. Lenovo shall specify the Lenovo title and emblem which Reseller is authorized to use, on a 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;
 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.
- 24.2. At Reseller expense, Reseller shall 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.
- 24.3. 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.

25. Limitation of Liability

To the extent permitted by law, except for: (i) bodily injury (including death); (ii) damage to real property or tangible personal property; and (iii) Lenovo's obligations under Section 26 below:

- (1) Neither party, including its officers, employees, agents, contractors and affiliates, shall be liable to the other party or its officers, employees, agents, contractors and 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
- (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



26. Infringement Claims

If a third party claims that a Lenovo or IBM branded Product that Lenovo sells to Reseller 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 25. 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 Lenovo at its written request. Lenovo will then provide a credit to Reseller equal to the amount paid for the Products. Lenovo shall have no obligation regarding any claim based on: (i) anything Reseller or a third party on Reseller's behalf provides which is incorporated into, or combined with, a Product; (ii) any unauthorized modification of a Product by Reseller; (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; or (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.

27. Indemnification

- 27.1. If a third party claims that a Lenovo or IBM branded Product Lenovo provides 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.
- 27.2. 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 attorney's 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; or (vii) any unauthorized modification of a Product by Reseller; or (viii) any other acts or omissions by Reseller or Reseller's contractors.

28. Term

- 28.1. The term of this Agreement ("Term") shall be as specified in **Attachment A** – Details of the Relationship.
- 28.2. 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.

- 28.3. 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 is not 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.
- 28.4. 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.

29. Miscellaneous

- 29.1. **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.
- 29.2. **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.
- 29.3. **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.
- 29.4. **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.
- 29.5. **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.
- 29.6. **Compliance with Laws.** Each party shall comply with all applicable laws and regulations, including those governing consumer transactions.
- 29.7. **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. 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.
- 29.8. **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.
- 29.9. **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.

- 29.10. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand, 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 brought exclusively in a court located New Zealand. 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 New Zealand, 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.
- 29.11. **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.
- 29.12. **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.
- 29.13. **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 and the Enterprise of which it is a part does business; and it may be provided to entities acting on Lenovo's behalf in relation to this Agreement and the Products or Services.
- 29.14. **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.
- 29.15. **Headings.** Headings used in this Agreement are for the purposes of convenience only and will not affect the legal interpretation of this Agreement.
- 29.16. **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.