

## LENOVO SERVICES

### Master Services

#### Attachment #1 (One)

This Master Services Attachment (“MSA”) is incorporated in and made part of a Lenovo Customer Agreement or an equivalent agreement between Monterey County, Information Technology Department, 1590 Moffett Street, Salinas, CA 93905 (“Customer”) and Lenovo (United States) Inc., 1009 Think Place, Morrisville, NC, 27560 (“Lenovo”) (“Agreement” or “LCA”). It governs transactions by which Customer purchases Services from Lenovo.

#### 1. Scope of Services

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

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

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

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

#### 2. Acceptance and Term

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

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

#### 3. Sales through Lenovo Business Partners

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

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

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

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

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

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

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

When Customer purchases a Service, Customer agrees:

- a. to provide Lenovo with an inventory in which Customer shall identify all Eligible Products to be covered at each Specified Location and to notify Lenovo in writing whenever Customer moves, adds, or deletes Eligible Products at an existing Specified Location or set up new Specified Locations;
- b. that when a Service includes Lenovo providing Customer with access codes to electronic diagnostic tools, information databases, or other Service delivery facilities, Customer will limit their use as authorized by Lenovo and only in connection with Eligible Products and Services identified in Transaction Documents;
- c. to provide Lenovo with the necessary information Lenovo requests which is related to its provision of the Services to Customer and to notify Lenovo of any subsequent changes to such information;
- d. to pay any communications charges associated with accessing or provisioning Services including but not limited to phone and internet connection charges, unless Lenovo specifies otherwise in writing;
- e. to use the information obtained under these Services only for the support of the information processing requirements within Customer's enterprise;
- f. to securely erase from any Machine that Customer returns to Lenovo for any reason all programs not provided by Lenovo with the Machine and data, including without limitation, the following: 1) information about identified or identifiable individuals or legal entities ("Personal Data"); and 2) Customer confidential or proprietary information and other data. In the alternative, Customer shall transform such information (e.g. by making it anonymous or encrypting it) that it no longer qualifies as Personal Data under applicable law. In no event shall Lenovo be responsible for loss of data or information on a Machine or Product or any parts thereof to which Lenovo may be provided access in the course of Services to be provided hereunder. Lenovo is not responsible for any programs not provided by Lenovo with the Machine or data contained in a Machine. Customer acknowledges that Lenovo may ship all or part of the Machine or its software to other Lenovo entities or third parties in other countries, and Customer hereby authorizes Lenovo to do so;
- g. that Services may be performed onsite, remotely or at a Lenovo site in Lenovo's sole discretion. Any specific service level shall be mutually agreed between the parties. Customer also acknowledges that Lenovo may use resources (non-permanent legal residents and personnel in other countries) for delivery of Services;
- h. that some devices (for example, fusion I/O devices and solid state devices), have read/write or wear limitations as documented in the hardware product specifications. When these devices have reached the wear limitations, they are not covered under maintenance Services under which Lenovo may provide support, maintenance, or replacement of defective, failed or any other parts, unless such terms specifically identify the device by description and/or part number and describes the terms of support or maintenance coverage applicable to it.
- i. to designate a project manager who will be Customer Point of Contact for all communications and will have the authority to act on Customer behalf in all matters. The Customer Point of Contact will provide a list of the key technical contacts with telephone and email contact information prior to the start of Services.
- j. to provide an on-site contact during normal business hours at each Customer location with access to the buildings/rooms where the Service will be performed and any necessary security.
- k. to provide a safe environment and full unrestricted access to all locations where the Service is to be performed.
- l. if Customer is making available to Lenovo any facilities, software, hardware or other resources in connection with Lenovo's performance of Services, Customer shall obtain any licenses or approvals related to these resources that may be necessary for Lenovo to perform the Services. Lenovo shall be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer shall reimburse Lenovo for any reasonable costs and other amounts that Lenovo may incur related to Customer's failure to obtain these licenses or approvals.

#### **6. Mutual Responsibilities**

- a. Each party will comply with applicable laws, regulations, ordinances, including but not limited to export and import laws and regulations, including those of the United States that prohibit or limit export of certain uses or to certain end users. Each party will cooperate with the other by providing all necessary information to the other, as

needed for such compliance. Each party shall provide the other with advance written notice prior to providing the other party with access to data requiring an export license.

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

## **7. Automatic Inventory Increase**

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

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

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

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

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

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

## **8. Charges and Payment**

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

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

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

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

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

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

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

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

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

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

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

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

Total Services charges may be adjusted whenever:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Customer agrees to:

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

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

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

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

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

- (i) Accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- (ii) Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;

- (iii) Alterations not authorized by Lenovo;
- (iv) Failures caused by a third party product; or
- (v) Service of a Machine on which Customer is using capacity or capability, other than that authorized by Lenovo

**11. Warranty for Lenovo Services**

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

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

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

**12. Limitation of Liability**

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

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

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

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

IN WITNESS WHEREOF, each party has caused this MSA to be signed by its authorized representative effective as of the date of the signature of Lenovo’s authorized representative.

**Insert Customer name**

**Insert Lenovo name**

Monterey County Information Technology  
Department

By \_\_\_\_\_

By \_\_\_\_\_

Authorized signature

Authorized signature

Name: Dianah Neff

Name: John Smith

Title: Director, Information Technology Department

Title: Inside Sales Manager

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Date:

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