

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.

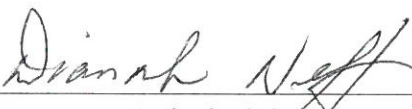
This MSA, its applicable Transaction Documents, and the Agreement comprise the complete agreement regarding Services and replace any prior oral or written communications between Customer and Lenovo.

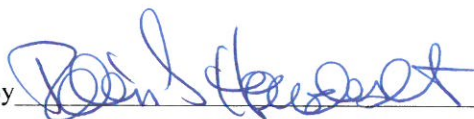
IN WITNESS WHEREOF, each party has caused this MSA to be signed by its authorized representative effective as of the date of the signature of Lenovo’s authorized representative.

Monterey County Information Technology Department

Lenovo (United States) Inc.

Customer

By 
Authorized signature

By 
Authorized signature

Name: Dianah Neff
(type or print)

Name: Robin Howdershelt
(type or print)

Title: Director, Information Technology Department
Date:

Title: Account Sales Director, Inside Sales
Date: April 18, 2016

Customer address:

1590 Moffett
Street
Salinas, Ca 93905

Attn:

Tel

Fax

E-mail address:

Lenovo address:

1009 Think
Place
Morrisville, NC
27560

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This Lenovo Agreement for Services Including Maintenance ("Agreement") governs transactions by which Customer acquires Services from Lenovo (United States) Inc. ("Lenovo").

1. Attachments and Transaction Documents

Additional terms for Services are in documents called "Attachments" and "Transaction Documents" provided by Lenovo. In general, Attachments contain terms that may apply to more than one Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, 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.

2. Definitions

Machine means a server or storage hardware product identified by a Machine Type as well as its features, conversions or upgrades. The term "Machine" does not include any software programs, whether pre-loaded with the Machine, installed subsequently, or otherwise.

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

Machine Upgrade means a change that Lenovo sells for installation on a Machine. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

Materials mean literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that Lenovo may deliver to Customer as part of a Service. The term "Materials" does not include Machine Code, or licensed program products or other items available under their own license terms or agreements.

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

3. Acceptance of Terms

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

A Service becomes subject to this Agreement when Lenovo accepts Customer's order by sending Customer a Transaction Document or providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

4. Charges and Payment

4.1 Charges

A Transaction Document specifies the amount payable for Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as travel related expenses). Lenovo will inform Customer in advance whenever additional charges apply.

Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) Lenovo does not give credits or refunds for any prepaid or other charges already due or paid.

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If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. Lenovo invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

4.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer shall promptly notify Lenovo and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that Lenovo changes the basis of measurement, its terms for changing charges will apply.

4.3 Changes to Charges

From time to time, Lenovo may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, Lenovo may increase recurring charges for Services, labor rates, and minimums for Services provided under this Agreement. Lenovo shall provide Customer three (3) months' written notice of any such increase. An increase shall apply on the first day of the invoice or charging period on or after the effective date specified in the notice.

Lenovo may increase one-time charges without notice.

4.4 Payment

All amounts are due upon receipt of invoice. Any amounts not received by Lenovo within thirty (30) days of receipt of invoice shall be overdue. Customer shall pay a late payment fee of the lesser of one and one half (1.5%) percent per month or the maximum rate permitted by applicable law on the undisputed overdue balance of the invoice amount.

4.5 Taxes

If any authority imposes a duty, tax, levy, or fee, excluding those based on Lenovo's net income, upon any transaction under this Agreement, then Customer shall pay that amount as specified in an invoice, unless Customer supplies exemption documentation.

Additional taxes and tax related charges may apply if Lenovo personnel are required to perform Services outside their normal tax jurisdiction. Lenovo use commercially reasonable efforts to mitigate such additional tax and tax-related charges. Lenovo will inform Customer in advance if these additional charges apply and are payable by Customer.

5. Changes to the Agreement Terms

Lenovo may change the terms of this Agreement by providing Customer at least three (3) months' written notice. However, no such change shall be retroactive. It shall apply to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that Lenovo delay the effective date of the change to the end of the current renewable contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by: i) placing new orders for Services after the change effective date; ii) failing to request that the effective date of the change be delayed until the end of the renewal contract period; iii) allowing transactions to renew after receipt of the change notice; or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

6. Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and shall be responsible for the supervision, direction, control, and compensation of such personnel. Subject to the foregoing, the assignment of either party's personnel and contractors shall be as it determines in its sole discretion.

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Lenovo may engage subcontractors to provide or assist in providing Services, in which case Lenovo remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

7. Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as the parties may agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, Lenovo assigns the ownership of copyrights in such Materials to Customer. Customer grants Lenovo an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

Lenovo or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. Lenovo grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's enterprise only) copies of Type II Materials.

Lenovo or its suppliers retains ownership of the copyright in any of Lenovo's or its suppliers' pre-existing works as well as works that were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

8. Customer Resources

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 and develop Materials. 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.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for: i) any data and the content of any database Customer makes available to Lenovo in connection with a Service under this Agreement; ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data; and iii) backup and recovery of the database and any stored data. Lenovo's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services Transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

9. Service for Machines

9.1 Service Description

Lenovo provides certain types of Service to keep Machines in, or restore them to, conformance with their specifications. Lenovo will inform Customer of the available types of Service for a Machine. At its discretion, Lenovo will: i) either repair or exchange the failing Machine; and ii) provide the Service either at Customer's location or a service center. Lenovo manages and installs selected engineering changes that apply to Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade must be installed on a Machine which is: i) the designated, serial-numbered Machine, if applicable; and ii) at an engineering change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to Lenovo, Customer agrees to ship it suitably packaged (prepaid unless Lenovo specifies otherwise) to a location designated by Lenovo. After Lenovo has repaired or exchanged the Machine, Lenovo will deliver it to Customer at Lenovo's

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expense unless Lenovo specifies otherwise. Lenovo is responsible for loss of, or damage to, Customer's Machine while it is: i) in Lenovo's possession; or ii) in transit in those cases where Lenovo is responsible for the transportation charges.

Customer shall:

- (1) obtain authorization from the owner to have Lenovo service a Machine that Customer does not own;
- (2) before Lenovo provides Service: follow the problem determination and service request procedures that Lenovo provides, secure all programs, data, and funds contained in a Machine, and inform Lenovo of changes in a Machine's location;
- (3) follow the Service instructions that Lenovo provides (which may include installing Machine Code and other software updates either downloaded from an Lenovo Internet Web site or copied from other electronic media); and
- (4) when Customer returns a Machine to Lenovo for any reason:
 - a. securely erase from any Machine all programs not provided by Lenovo with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data"); and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information ,e.g., by making it anonymous, so that it ceases to be Personal Data under applicable law;
 - b. remove all funds from Machines returned to Lenovo. Lenovo is not responsible for any funds or Programs not provided by Lenovo with the Machine, or data contained in a Machine that Customer returns to Lenovo; and
 - c. authorize Lenovo to ship all or part of the Machine or its software to other Lenovo or third party locations around the world to perform its responsibilities under this Agreement.

9.2 Replacements

When Service involves the exchange of a part or Machine, the item replaced by Lenovo becomes Lenovo's property and the replacement becomes Customer's property. Customer represents that all replaced items are genuine and unaltered. A replacement may not be new, but it will be in good working order and at least functionally equivalent to the replaced item. The replacement assumes the warranty or maintenance Service status of the replaced item. Before Lenovo exchanges a part or Machine, Customer shall remove all features, parts, options, alterations, and attachments not under Lenovo's service. Customer shall also: i) only provide a part or Machine that is free of any legal obligations or restrictions that prevents Lenovo from receiving free and clear title to it; and ii) transfer ownership and possession of replaced parts to Lenovo.

Service for some Lenovo Machines involves an exchange replacement part or Machine for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request Lenovo to install the replacement CRU or Machine, however, Customer may be charged for the installation. Lenovo provides information and replacement instructions with Machines as well as upon request. Lenovo may require that a failed CRU or Machine be returned to Lenovo as a condition for replacement. When return is required, return instructions and a container are shipped with the replacement. Customer may be charged for a replacement if Lenovo does not receive the failed CRU or Machine within fifteen (15) calendar days of Customer's receipt of the replacement.

9.3 Items Not Covered

Repair and exchange Services do not cover:

- (1) accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- (2) Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- (3) Machines with removed or altered Machine or part identification labels;
- (4) failures caused by a product for which Lenovo is not responsible;
- (5) service of Machine alterations; or

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(6) service of a Machine on which Customer is using capacity or capability, other than that authorized by Lenovo in writing.

9.4 Maintenance Coverage

When Customer orders maintenance Service for a Machine, Lenovo will notify Customer of the start date. Lenovo may inspect the Machine within one (1) month of the start date. If the Machine is not in an acceptable condition for Service, Customer may have Lenovo restore it for an additional charge or withdraw its request for maintenance Service. Customer will be charged for any maintenance Service that Lenovo has performed at Customer's request.

9.5 Warranty Service Upgrade

For certain Machines, Customer may select an upgrade from the standard type of warranty service for the Machine. Lenovo charges for an upgrade to be added during the warranty period.

Customer may not terminate the upgrade or transfer it to another Machine during the warranty period.

At the end of the warranty period, the Machine will convert to maintenance Service at the same type of Service Customer selected for the warranty service upgrade.

10. Warranty for Lenovo Services

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

10.1 Extent of Warranty

THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

10.2 Items Not Covered by Warranty

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 **WITHOUT WARRANTIES OF ANY KIND**. However, non-Lenovo suppliers may provide their own warranties to Customer.

11. Automatic Service Renewal

Renewable Services renew automatically for a period of the same length unless either party elects not to renew by written notice to the other not less than one (1) month prior to the end of the current period. During an automatic renewal period, Customer may terminate the Service on one (1) month's written notice to Lenovo. Lenovo will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

12. Intellectual Property Protection

12.1 Third Party Claims

If a third party asserts a claim against Customer that a Service or Material Lenovo provides to Customer under this Agreement infringes that party's patent or copyright, Lenovo will defend Customer against that claim at Lenovo's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by Lenovo, provided that Customer:

- a. promptly notifies Lenovo in writing of the claim;
- b. allows Lenovo to control, and cooperates with Lenovo in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Material's applicable license terms and Customer's obligations under (Remedies) below.

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12.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit Lenovo, in Lenovo's discretion, either to: i) enable Customer to continue to use the Service or Material; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If Lenovo determines that none of these alternatives is reasonably available, then on Lenovo's written request, Customer agrees to promptly return the Material to Lenovo or discontinue use of such Service. Lenovo will then give Customer a credit equal to the amount Customer paid Lenovo for the creation of the Materials or a prorated credit equal to the amount Customer paid Lenovo for such Service.

12.3 Claims for Which Lenovo is Not Responsible

Lenovo has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Service or Material or Lenovo's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Service or Material by Customer or a third party on Customer's behalf;
- c. the combination, operation, or use of a Service or Material with any product, hardware device, program, data, apparatus, method, or process that Lenovo did not provide as a system, if the infringement would not have occurred were it not for such combination, operation or use; or
- d. the distribution, operation or use of a Service or Material outside Customer's enterprise.

This Intellectual Property Protection section states Lenovo's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

13. Limitation of Liability

13.1 Items for Which Lenovo May be Liable

Circumstances may arise where, because of a default on Lenovo's part or other liability, Customer is entitled to recover damages from Lenovo. Regardless of the basis on which Customer is entitled to claim damages from Lenovo (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Lenovo's entire liability for all claims in the aggregate arising from or related to each Service (including any Material or Machine Code provided with the Service) or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the charges (if recurring, twelve (12) months' charges apply) for the Service that is the subject of the claim.

This limit also applies to any of Lenovo's subcontractors and program developers. It is the maximum for which Lenovo and its subcontractors and program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection in Section 12 above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which Lenovo is legally liable.

13.2 Items for Which Lenovo is Not Liable

Under no circumstances is Lenovo, its subcontractors, or program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

14. Compliance Verification

Upon reasonable notice, Lenovo may verify usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to: i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification; and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

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Lenovo may also verify Customer's compliance with all other terms of this Agreement (including applicable Attachments and Transaction Documents). Lenovo may use an independent auditor to assist with such verification, provided Lenovo has a written confidentiality agreement in place with such auditor.

Customer shall create, retain, and provide written records, system tools outputs, and other system information to Lenovo and its auditors sufficient to provide auditable verification that Customer complies with the Agreement terms, including Lenovo's applicable licensing and pricing terms. Lenovo will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period during which Services are provided and for two years thereafter.

15. Lenovo Business Partners

Lenovo has agreements with distributors and resellers ("Lenovo Business Partners") to promote, market, and support certain products and Services. Customer may order Lenovo Services that are promoted or marketed to Customer by Lenovo Business Partners or other suppliers, however: i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction; and ii) the applicable Business Partner or supplier remains independent and separate from Lenovo.

Lenovo is not responsible for the actions or statements of Lenovo Business Partners or suppliers, any obligations either has to Customer, or any products or services that they supply to Customer.

16. General Relationship Conditions

16.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

16.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. Lenovo is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for Lenovo to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without Lenovo's prior written consent. Any attempt to do so is void.

16.3 Compliance with Laws

Lenovo will comply with laws applicable to Lenovo generally as a provider of information technology products and Services. Lenovo is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Services that Customer acquires under this Agreement, or that Lenovo's provision of or Customer's receipt of particular Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

16.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

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16.5 Miscellaneous Relationship Conditions

- a. Neither party grants the other the right to use its (or any of its enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. Neither this Agreement nor any transaction under it create an agency, joint venture, or partnership between Customer and Lenovo. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants the other only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated by Lenovo if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that Lenovo may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with Lenovo products and Services or in furtherance of Lenovo's business relationship with Customer. This contact information may be stored, disclosed internally and processed by Lenovo and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described herein provided that any such party complies with applicable data privacy laws related to this processing. Where required by applicable law, Customer shall notify and obtain the consent of the individuals whose contact information may be stored, disclosed internally and processed.
- f. No right or cause of action of any third party is created by this Agreement or any transaction under it, nor is Lenovo responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which Lenovo is legally liable to that third party.
- g. Customer is responsible for selecting the Services that meet its needs and for the results obtained from the use of the Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations relating to events beyond its control.
- j. As reasonably required by Lenovo to fulfill its obligations under this Agreement, Customer shall provide Lenovo with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to Lenovo. Lenovo is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

17. Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of Customer's and Lenovo's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

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18. Termination

18.1 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its material terms, provided the party not in compliance is given written notice and reasonable time to cure the non-compliance.

Any terms of this Agreement that by their nature extend beyond the termination of this Agreement shall remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

18.2 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to Lenovo provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible product, for which the Service is provided, from productive use within Customer's enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives Lenovo one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay Lenovo for: i) all charges for Services Lenovo provides and any products and Materials Lenovo delivers through Service termination; and ii) reimbursable expenses Lenovo incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses Lenovo incurs as a result of such termination (which Lenovo will take reasonable steps to mitigate).

Lenovo may withdraw a Service or support for an eligible product on three months' written notice to Customer. If Lenovo withdraws a Service for which Customer has prepaid and Lenovo has not yet fully provided it to Customer, Lenovo will give Customer a prorated refund.

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

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer acquires Services from Lenovo. It replaces all prior or contemporaneous oral or written communications, representations, understandings, warranties, promises, covenants and commitments between Customer and Lenovo. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) shall be of no effect and are void.

Each party accepts, on behalf of its enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Services ordered under this Agreement are subject to it.

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County of Monterey

Customer

By _____

Authorized signature

Title:

Name (type or print):

Date:

Customer number:

Enterprise number:

Customer address:

Attn:

Tel

Fax

E-mail address:

Lenovo (United States) Inc.

Lenovo

By  _____

Authorized signature

Title:

Name (type or print):

Robin Howdershelt

Inside Account Sales Director

Date: April 18, 2016

Agreement number:

Lenovo address:

Lenovo

1009 Think Place

Morrisville, NC 27560

Attn: Kathy O'Neil

Tel 919 294 2862

Fax 919 294 4987

E-mail address: kaoneil@lenovo.com

After signing, please return a copy of this Agreement to the Lenovo address shown above.

Reviewed as to fiscal provisions



Auditor-Controller
County of Monterey

4-22-16