

## Lenovo OEM Terms and Conditions

These terms and conditions (“Agreement”) are provided by Lenovo to its OEM Partners and Customers.

### Definitions

- End User = The purchaser of OEM’s Solution for its own use and not for resale
- Enterprise = A party to this Attachment, 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.
- Integrator = the OEM Partner authorized by Lenovo to sell Products to OEM
- Machine = An x86 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 preloaded with the Machine, installed subsequently, or otherwise.
- Machine Code = 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.
- Model = A separately priced model of a hardware Product designated by seven (7) alpha-numeric characters consisting of a four (4) character Machine type and a three (3) character model designator.
- OEM = an original equipment manufacturer that embeds or combines Lenovo Products (with the help of Integrator) in or with OEM’s proprietary hardware, software, or other intellectual property, resulting in a specialized system or solution with industry- or task-specific functionality.
- Option = A separately priced hardware Product designated by alpha-numeric characters that can be ordered for use with another hardware Product.
- Part = Any spare part that is used for maintenance or repair of Products or any field replaceable unit (“FRU”), customer replaceable unit (“CRU”), tool, test equipment or maintenance supply item authorized by Lenovo for maintenance or repair of Products.
- Product(s) = Any Lenovo branded or third-party hardware or software that OEM purchases from Integrator under this Attachment. Hardware Products include personal computers, servers, including Machines, storage devices and accessories. Software products include computer software Programs (whether pre-loaded or provided separately) and related licensed materials such as documentation.
- Program = A software Product and the following, including the original and all whole or partial copies: machine-readable instructions and data; components; audio-visual content (such as images, text, recordings, or pictures); and related licensed materials. The term “Program” includes any Lenovo Program or a non-Lenovo Program and its applicable license terms purchased by OEM under this Attachment. The term “Program” does not include Machine Code.
- Reseller means OEM’s Enterprise or a remarketer, dealer, third party maintainer, or reseller who is authorized by OEM to resell OEM’s Solution
- Solution = OEM’s proprietary hardware, software, or other intellectual property
- Value-Add = OEM’s additions to, modifications to, or incorporation of Products to create OEM’s Solution and includes the hardware, software, support and/or services which OEM or Integrator may integrate with Products to create OEM’s Solution.

### Territory

The Territory in which OEM, OEM’s affiliates or its Resellers may market and distribute Products as part of or in conjunction with OEM’s Solution is worldwide except in those countries subject to comprehensive U.S. economic sanctions, as those sanctions may change from time to time, and where otherwise prohibited by applicable laws. The Territory also excludes the following countries: Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, and Panama, as Lenovo warranty and warranty service is not available in these countries. In the event that OEM exports to these countries, OEM acknowledges warranty and warranty service is not available in such countries and that Lenovo shall have no warranty or warranty service responsibilities. Lenovo may change this list from time to time. OEM shall discontinue distribution of Products in any jurisdiction where Lenovo determines it cannot adequately protect its intellectual property rights in such Products.

### Review of Compliance with this Attachment

Lenovo may review OEM’s records to determine compliance with this Attachment. OEM shall make its records relating to this Attachment available to Lenovo, Integrator, or an independent auditor reasonably acceptable to OEM. The reviews shall occur not more frequently than one (1) time in each twelve (12) month period during the Term of this Attachment. A review may be conducted at OEM’s facility during normal business hours. Lenovo, or its auditor, may make and retain copies of such records. In addition to the reviews described above, Lenovo may conduct a review of OEM’s records at any time it has reason to believe that there has been or may be a material breach of this Attachment. If OEM fails to comply with this Attachment, in addition to any remedies available to Lenovo under any other section of this Attachment or at law, OEM shall refund to Lenovo an amount reasonably equal to the fair value pertaining to the breach. Lenovo shall provide OEM with the results of its review and provide OEM with the opportunity to respond to the findings therein.

### Utilization of Products

As a condition for purchasing or licensing Products, OEM shall combine all Products with OEM’s Value-Add to create OEM’s Solution, which OEM or its Resellers shall market in the regular course of business to End Users in the Territory. OEM or its Resellers will add value to Products by marketing them as part of an integrated solution (OEM’s Solution) that includes hardware, software, support and services. This Value-Add shall be of significant functional value so as to be the primary motivation for OEM’s End Users’ purchase decisions. The Value-Add may include one or more of the following items:

- (1) OEM hardware, software, I/O, or peripheral products
- (2) The unique logos, product names and numbers, packaging, labeling, and customized documentation of OEM;
- (3) OEM's or its Resellers' configuration assistance, installation, integration, warranty and maintenance service, customer relationship management, customer training, pre- and post-sale support, or other services;
- (4) other OEM Value-Add of significant functional value.

OEM may use or sell Parts, either directly or through Resellers, to End Users only for use in upgrading, maintaining, or repairing Products that are included in OEM's Solution. OEM shall ensure that its Resellers use or distribute Products only in compliance with the terms of this Attachment. OEM shall ensure that the terms in any agreement that OEM may have with a Reseller or an End User do not conflict with the terms of this Attachment. OEM may purchase Products for internal use for evaluation, development, demonstration, or other purposes related to OEM's Solution. OEM or its Resellers shall ensure that any Microsoft software including the Microsoft Certificate Authenticity (COA) and Associated Product Material (APM) included with a Personal Computer (not to be priced separately) are provided with the OEM's Solution to End Users, unless specified otherwise by Lenovo.

### **Export and Import**

After delivery by Lenovo or Integrator, OEM will act as the exporter or importer of the Products, commodities, and technical data. OEM warrants to Lenovo and Integrator that at all times relevant to this Attachment, that OEM is and will remain in full compliance with all applicable export and import laws, orders, policies, regulations or rules, including those of the United States, the European Union, and any other applicable jurisdiction. OEM warrants that neither Products, commodities nor technical data provided by Lenovo under this Attachment, nor the OEM's Solution, is intended to be shipped, directly or indirectly, to countries or entities prohibited by the United States, European Union, or other applicable law. OEM further warrants that OEM will undertake to determine any export license requirements, obtain any export license or other government export authorization, carry out any United States or other applicable customs formalities, and otherwise fulfill all relevant requirements for the export of Products, commodities, and technical data, and that any agent acting on OEM's behalf, whether forwarding or otherwise, has proper authorization to obtain any required licenses or determine export authority and to facilitate United States or European Union export shipments for OEM. Lenovo may, in its sole discretion, require OEM to provide Lenovo with written certification of its compliance with the export and import requirements described above.

If OEM is a non-US entity that is taking title in the US, OEM warrants that the designation of Lenovo as the U.S. Principal party in interest to the export and the use by OEM or its designated forwarding agents of any information supplied to OEM by Lenovo will be used solely for completion of the Shipper's Export Declaration (or AES record) for shipment of machines, commodities, and technical data related to a transaction between OEM and Lenovo. OEM shall provide to Lenovo, or have its forwarding agents provide, a copy of every Shipper's Export Declaration (or AES record) in which Lenovo's Employer Identification Number is used. OEM further shall comply with United States' prohibitions on delivery of Products, commodities, and technical data and providing services to certain End Users and for certain end uses including, but not limited to, the following end-uses/End Users: nuclear facilities, space or missile, and weapons systems (including chemical and biological). OEM or its Resellers shall notify End Users of any applicable export laws and regulations, as well as any import requirements of the destination country.

### **Quality Assurance**

Lenovo will follow its standard quality assurance processes/procedures for Products sold under this Attachment. Should questions pertaining to Product quality or testing arise, the parties will meet at mutually agreed-upon location and date at their own expense for the purpose of reviewing Lenovo's quality management system and testing procedures for the Product. Products manufactured in Europe are issued from processes registered to ISO 9001, and ISO 14001 and CE Mark standards. Products manufactured in the United States or Mexico are issued from processes registered to ISO 9001 and ISO 14001.

Engineering Changes ("ECs") are any mechanical, electrical, documentation or manufacturing change to the Product, which may result in a change to a part, field replaceable unit ("FRU"), or customer replaceable unit ("CRU"), and which may affect form, fit or functionality, including, but not limited to, safety, reliability, and maintainability. Lenovo shall have full freedom to implement ECs. If ECs are required to satisfy governmental standards, protect data integrity, eliminate a severe nonconformity to a specification, or for safety or environmental reasons, Lenovo may issue "Mandatory ECs" that must be implemented. Lenovo will make available the earliest commercially reasonable notice to OEM or Integrator prior to the implementation of a Mandatory EC. For Mandatory ECs, Lenovo will provide installation instructions and any special tools, equipment, media and other related requirements for each Mandatory EC. OEM shall be responsible for the installation of the Mandatory EC within a reasonable time period. OEM shall use commercially reasonable efforts to obtain access for Lenovo to install or cause to be installed such Mandatory ECs. If Lenovo requests the return of parts displaced from Products by installation of a Mandatory EC, OEM will return those parts to Lenovo or Integrator within ninety (90) days after installation of such Mandatory EC at Lenovo's cost, and such parts shall become the property of Lenovo. From time to time Lenovo may make available to OEM or Integrator optional ECs that are applicable to Products previously shipped to OEM. OEM shall be responsible for the cost, if any, of such ECs that OEM decides to implement.

### **Hardware Product Warranty**

- A. **Warranty Period for Hardware Product.** Unless mutually-agreed in writing by the parties, the warranty periods for hardware Products are equivalent to the warranty periods as announced for the corresponding hardware Product, plus forty-five (45) days. The warranty period for hardware Products, other than Machines, is a fixed period of time as specified by Lenovo. In addition, Lenovo ships a Lenovo Limited Warranty with each hardware Product (excluding Machines) that provides warranty information. The warranty period for Machines is a fixed period of as specified by Lenovo. In addition, Lenovo ships a warranty information document with each Machine that provides warranty information. Options that are installed into Models have a warranty period of

the longer of: 1) the standalone warranty period of the Option, or 2) the remaining warranty period of the Model into which the Option is installed.

- B. **Parts and Labor Warranty.** Lenovo warrants to the OEM that each hardware Product is free from defects in materials and workmanship under normal use during the warranty period. In all situations involving performance or nonperformance of hardware Products during the applicable warranty period, OEM's exclusive remedy shall be at Lenovo's option, repair, replace with a FRU or a CRU, or provide a credit for parts that OEM determines during the warranty period do not conform to the warranty. OEM shall ship parts that OEM finds to be defective transportation prepaid with a completed Lenovo warranty request return authorization form to the designated Lenovo or Integrator location. Parts returned by OEM will be free from any liens or other defects in title and will become the property of Lenovo. Lenovo will ship repaired or replacement parts back to OEM, transportation prepaid by Lenovo. OEM must return a defective part prepaid to Lenovo within thirty (30) days of receiving the replacement part, or OEM shall be responsible for payment of the replaced part. If OEM returns a part that is not defective, Lenovo shall return that part to OEM, and OEM shall be responsible for all transportation costs and Lenovo's inspection time. Each hardware Product is manufactured from parts that may be new or used. Regardless, the appropriate warranty terms apply.
- C. **Extent of Warranty.** The warranty does not cover repair, replacement, credit or service for hardware Products or parts that are defective due to the following: OEM's or End User's failure to provide a suitable installation environment; accident; disaster; neglect; abuse; misuse; transportation; alterations; attachments; accessories; supplies; parts not approved by Lenovo; unauthorized modification; operated in an unsuitable physical or operating environment; subjected to natural disasters, power surges or unauthorized maintenance; or repairs, maintenance, or other activities improperly performed by non-Lenovo approved service personnel. The warranty does not apply to any third-party product, including those that Lenovo may provide or integrate into a hardware Product at OEM's request; or to software, whether provided with a hardware Product or installed subsequently. The warranty shall be voided by the removal or alteration of identification labels on a hardware Product or its parts. In no event shall the warranty include liability for uninterrupted or error-free operation of a hardware Product, correction of all defects; or any loss of, or damage to data by a hardware Product. Lenovo provides third party products and services, including those that Lenovo may procure and provide with or integrate into a hardware Product at OEM's request, "AS IS" without warranty. However, third party manufacturers, suppliers or publishers may provide their own warranties to OEM. Any technical support, such as assistance with "how-to" questions and assistance regarding hardware Product set-up and installation provided for a Product under warranty will be provided WITHOUT any warranties of any kind. Lenovo is not responsible for any confidential, proprietary, or personal information contained in any hardware Product or Part that OEM or its End User returns to Lenovo, or its designated service provider for any reason. OEM or its End User should remove all such information from the hardware Product or Part prior to its return.
- D. **Warranty Service.** OEM shall contact Lenovo or the Lenovo designated service provider in the country of installation to obtain warranty service. Service is not available in all countries. At its discretion, Lenovo, or its designated service provider, will: (a) either repair or exchange the failing hardware Product; and (b) provide the service either at End User's location or a service center. To obtain service, OEM must provide the applicable hardware Product information to Lenovo at the time of the initial installation of the hardware Product and again if the hardware Product is relocated during the warranty period. This information shall include: (i) machine type and model; (ii) serial number; and (iii) the location (full address including street, city, state (if applicable), and country) of the Product. All service calls shall be placed by OEM to the Lenovo location in the country in which the hardware Product is located. Where applicable, prior to the service call, OEM or its representative shall follow any problem determination, problem analysis or service request procedures provided by Lenovo or its designated service provider. In no event shall End Users place service calls directly to Lenovo. Should an End User place a service call directly to Lenovo that relate to any Machine, OEM shall pay for any services rendered by Lenovo as a result of the End User's call. Some parts of hardware Products are designated as customer replaceable units ("CRUs"), e.g., keyboards, memory, or hard disk drives. Lenovo will ship CRUs to the location specified by OEM for replacement by OEM. OEM must return all defective CRUs to Lenovo within thirty (30) days of OEM's receipt of the replacement CRU. OEM is responsible for downloading designated Machine Code updates or other fixes from an Lenovo internet web site or from other electronic media and following the instructions that Lenovo provides. When warranty service involves the exchange of a hardware Product or Part, the item Lenovo replaces becomes its property and the replacement becomes OEM's or its End User's property. OEM shall ensure that all removed items are genuine and unaltered. The replacement may not be new but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the hardware Product. Before Lenovo exchanges a hardware Product or Part, OEM shall remove all features, parts, options, alterations, and attachments not under warranty service. OEM shall also ensure that the hardware Product is free of any legal obligations or restrictions that prevent its exchange; obtain authorization from the owner to have Lenovo, or its designated service provider service a hardware Product that OEM does not own. In addition, where applicable, before service is provided, OEM shall: (a) follow the problem determination, problem analysis, and service request procedures that Lenovo, or its designated service provider provides; (b) secure all programs, data, and funds contained in a hardware Product; (c) provide Lenovo, or its designated service provider with sufficient, free, and safe access to the facilities to permit them to fulfill these warranty service obligations; and (d) inform Lenovo of changes in a hardware Product's location. Before returning a hardware Product or Part to Lenovo, or its designated service provider, OEM, or its End User shall: (a) ensure all confidential, and proprietary information including personal information about identified or identifiable individuals (Personal Data) is deleted from such hardware Product or Part; and (b) ensure that such processing complies with any laws applicable to such Personal Data.
- E. **OEM's Obligations.** OEM will not make any representations about Lenovo or hardware Products other than those authorized by Lenovo. OEM shall state, and require its Reseller to state, in written agreements with End Users that third party suppliers of the hardware Products disclaim all implied warranties. This disclaimer will include the implied warranties of merchantability and fitness for a particular purpose. These agreements will also limit liabilities to a reasonable amount and state, in comparable words, "The collective liabilities of the seller/licensor and its third-party suppliers are subject to the limitation of liabilities described in this agreement. Third party suppliers disclaim all liability for consequential or other indirect damages. The third-party supplier is an intended beneficiary of these limitations and disclaimers and the limitation of liabilities for seller/licensor and its suppliers are not cumulative." In the event that Lenovo delivers a hardware Product that includes a copy of Lenovo's limited warranty, warranty

information or other documentation concerning Lenovo's warranty terms, OEM or its Resellers shall remove such warranty documentation before delivering the hardware Product included in OEM's Solution to the End User.

- F. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THE WARRANTY OF NONINFRINGEMENT AND NON-INTERFERENCE. PRODUCTS ARE NOT DESIGNED OR INTENDED TO BE USED FOR AIR TRAFFIC CONTROL, AIRCRAFT NAVIGATION, OR AIRCRAFT COMMUNICATIONS. PRODUCTS ARE NOT DESIGNED OR INTENDED TO BE USED FOR THE DESIGN, CONSTRUCTION, OPERATION, OR MAINTENANCE OF ANY NUCLEAR FACILITY. PRODUCTS ARE NOT DESIGNED OR INTENDED TO BE USED FOR MILITARY APPLICATIONS. LENOVO DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION OF FITNESS FOR SUCH USES. ALL SOFTWARE, SERVICES, SUPPORT, PROTOTYPES, AND ALL THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITIONS OF ANY KIND BY LENOVO. THIRD PARTY MANUFACTURERS, SUPPLIERS, DEVELOPERS, SERVICE PROVIDERS, LICENSORS OR PUBLISHERS MAY PROVIDE THEIR OWN WARRANTIES TO OEM.
- G. The foregoing shall constitute OEM's sole and exclusive remedy for all situations involving non-conforming Products.

### **Machine Code**

For each Machine Integrator sells to OEM under this Attachment, Lenovo or its suppliers shall license OEM to use the related Machine Code as stated in the end user license agreements included with the Machine and provided at <http://www.lenovo.com/license>. Lenovo licenses OEM as agent for Lenovo to distribute the Machine Code to its End Users solely for use with the Machine for which the Machine Code was supplied, provided that OEM: (1) does not grant to any such End User any greater rights than OEM has obtained from Lenovo; and (2) requires its End User to accept and be legally bound by the end user license agreement that Lenovo provides with the Machine Code. This license also authorizes OEM as agent for Lenovo to distribute the Machine Code and its updates to OEM's Enterprise members and to Resellers for the sole purpose of supporting the Machine for which the Machine Code was supplied. However, OEM may not grant to its Enterprise members and Resellers any greater rights than OEM has obtained from Lenovo, and OEM's agreement with its Enterprise members and Resellers must include the terms of the license agreement that Lenovo provides with the Machine Code.

### **Trademarks**

Lenovo shall specify the Lenovo trademarks (which include the title, emblem, trademarks and service marks) which OEM is authorized to use during the Term of this Attachment, on a non-transferrable, nonexclusive, non-sublicensable, and royalty-free basis, in the sale of Products in the Territory. OEM shall comply with any guidelines that Lenovo provides to OEM, which Lenovo may modify from time to time, regarding the use of Lenovo trademarks. OEM shall not modify the trademarks in any way. OEM may use Lenovo trademarks only:

1. within the Territory;
2. without modification;
3. in association with Products approved for sale by Lenovo;
4. as described in Lenovo's guidelines; and
5. in association with OEM's obligations under this Attachment.

At OEM's expense, OEM shall promptly modify any advertising or promotional materials that do not comply with Lenovo guidelines. OEM shall promptly notify Lenovo of any complaints related to its use of a Lenovo trademark. Upon termination or expiration of this Attachment, OEM shall promptly cease any use of Lenovo trademarks. If OEM fails to so cease use and Lenovo incurs litigation related costs and attorneys' fees to cause OEM to cease use, OEM shall reimburse Lenovo for any such costs and fees. OEM shall not register or use any mark that is similar to any of Lenovo trademarks. Lenovo trademarks, and any goodwill resulting from OEM's use of such trademarks, shall be the sole and exclusive property of Lenovo.

### **Intellectual Property Infringement Protection**

If a third party claims that a Lenovo branded Product that Integrator sells to OEM under this Attachment infringes that party's patents or copyrights, Lenovo shall defend OEM and Integrator against that claim at Lenovo's expense and pay all costs, damages and attorney's fees that a court finally awards against OEM and/or Integrator or that are included in a settlement approved by Lenovo, but in no case to exceed the total purchase price of the applicable Products sold to OEM under this Attachment, provided that OEM: (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 OEM's obligations in this section. The foregoing is Lenovo's entire obligation to OEM and Integrator regarding any claim of infringement. If such a claim is made or appears likely to be made, and OEM maintains inventory of Products, OEM shall permit Lenovo, in Lenovo's sole discretion, to enable OEM 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, OEM shall promptly return the Products to Lenovo (via Integrator) at its written request. Lenovo shall have no obligation regarding any claim based on: (i) anything OEM or a third party on OEM's behalf provides which is incorporated into, or combined with a Product; (ii) unauthorized modification of a Product by OEM or a third party on OEM's behalf; (iii) the combination, operation, or use of a Product with any products or software not provided by Lenovo as a system, or the combination, operation, or use of a Product with any product, software, data, apparatus or business method that Lenovo did not provide; (iv) Lenovo's compliance with OEM's specifications or requirements; or (v) infringement by a third party product alone.

## **Record Keeping**

OEM shall keep and maintain all books and records related to the creation of OEM's Solution and all marketing, sales and use of OEM's Solution and Products for a period of three (3) years after the Term of this Attachment. Such records include copies of sales receipts, invoices, Reseller or End User agreements, and any other pertinent records.

## **Miscellaneous**

- 1) Survival. Any terms of this Attachment which by their nature survive the expiration or termination of this Attachment, including Intellectual Property Infringement Protection, shall survive any such expiration or termination.
- 2) Code of Conduct. Lenovo has a code of conduct for its employees ("Code of Conduct") available at [http://www.lenovo.com/social\\_responsibility/us/en/2011\\_Lenovo\\_CodeofBusinessConduct\\_EN.pdf](http://www.lenovo.com/social_responsibility/us/en/2011_Lenovo_CodeofBusinessConduct_EN.pdf). The Code of Conduct applies to all Lenovo business dealings. OEM shall not induce or request any Lenovo employee to breach the Code of Conduct.
- 3) Changes to this Attachment. Lenovo or Integrator may on written notice withdraw (a) approval as a Lenovo OEM; and/or (b) approval for Integrator to sell Lenovo Product to OEM; and/or (c) approval for OEM to Sell to any Reseller.
- 4) Preparation of Attachment. Any ambiguities in the language of this Attachment are not to be construed or resolved against either party based on the fact that such party was principally responsible for drafting this Attachment.
- 5) OEM Information. Lenovo and the Enterprise of which it is a part, may store, use and process contact information and other information about OEM, including names, phone numbers, addresses, and email addresses obtained in the course of this Attachment. Such information may be processed and used in connection with this Attachment and the Products. It may be transferred by Lenovo to any country where Lenovo does business and it may be provided to entities acting on Lenovo's behalf in relation to this Attachment and the Products.
- 6) OEM's Warranty. OEM warrants that it owns or has obtained the necessary rights and permission to manufacture and have manufactured, use and market OEM's Solution that incorporates OEM's implementation of the Product.