

MASTER PRICE AGREEMENT  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
LENOVO GLOBAL TECHNOLOGY (United States) INC.  
EFFECTIVE SEPTEMBER 1, 2022, through JUNE 30, 2025

THIS AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission (hereinafter MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, for the benefit of the Eligible Organizations located in the MHEC member states, and Lenovo Global Technology (United States) Inc., (hereinafter Lenovo or Supplier) 8001 Development Drive Morrisville, NC 27560. For purposes of this Master Agreement MHEC and Lenovo are referred to collectively as the "Parties" or individually as "Party".

**Whereas**, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

**Whereas**, MHEC has established a Technology Initiative for the purpose of which is to determine, negotiate and make available quality and affordable technology products and services to the not-for-profit and public education related entities in the MHEC Member States; and

**Whereas**, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE) and the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, SREB Member States, and the WICHE Member States access MHEC's Technology Initiative contracts, including this Master Agreement; and

**Whereas**, NEBHE Member States refers to any state that is a member, or affiliate member of NEBHE. Current NEBHE Member States are: Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont; and

**Whereas**, SREB Member States refers to any state that is a member or an affiliate member of SREB. Current SREB Member States are: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

**Whereas**, WICHE Member States refers to any state that is a member or an affiliate member of WICHE. Current WICHE Member States are: Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and U.S. Pacific Territories and Freely Associated States; and

**Whereas**, Lenovo offers certain quality technology related products and services; and

**Whereas**, MHEC conducted a competitive sourcing event for End User Computing and Peripherals, Device Lifecycle Management, and Associated Services MHEC-RFP-10282021, dated October 28, 2021, and upon completion of the competitive process Lenovo received an award; and

**Therefore**, in consideration of mutual covenants, conditions, and promises contained herein, MHEC and Lenovo agree as follows:

1. DEFINITIONS

1. **Documentation:** refers to the license made available by Supplier to Procuring Eligible Organization of documentation relating to any Hardware or Software as well as any manuals provided by Supplier with the Hardware or Software and relating to the Hardware or Software.
2. **Eligible Organizations:** This Master Agreement shall be the framework under which Eligible Organizations can acquire solution offerings consisting as defined in section Products and acquire Services as defined in section Services from Lenovo. Eligible Organizations shall include:
  - A. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions);
  - B. All K-12 schools and school districts;
  - C. All city, county, and other local governments; and
  - D. All state governments and their departments;
  - E. located in a Member State.

Eligible Organizations shall also include all not-for-profit private and public institutions and/or systems of higher education; K-12 schools and districts; city, county, and other local governments; and state governments and their departments located within the following other education Compacts in the country; the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).

3. **Hardware:** refers to Supplier's portfolio of Hardware devices, servers, storage, hyperconverged infrastructure (HCI), networking, and related support and services and the relevant components of each, including firmware, made available for sale by Supplier to Eligible Organizations under this Master Agreement. Supplier may incorporate changes to their Hardware offering: however, any changes must be within the scope of the End User Computing and Peripherals, Device Lifecycle Management, and Associated Services MHEC-RFP-10282021 award.
4. **Large Order Negotiated Prices:** refers to the price offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of the Eligible Organization and Supplier. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions negotiated by Supplier and the Eligible Organization.
5. **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, whether pre-loaded with the Machine, installed subsequently, or otherwise.
6. **Order:** refers to an Eligible Organization's purchase order or other ordering document evidencing its intent to procure Products or Services from Supplier or Reseller under the terms and conditions of this Master Agreement.

7. **Price Agreement:** refers to an indefinite quantity contract, which requires Supplier, or through Reseller, to furnish Products or Services to a Procuring Eligible Organization that issues a valid Order document.
8. **Procuring Eligible Organization:** refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed an Order.
9. **Products:** means any Lenovo branded or third-party Hardware or Software that Lenovo makes available for purchase by Eligible Organizations under this Master Agreement
10. **Product List:** refers to the complete list of Products and the corresponding prices for those Products made available for purchase by Eligible Organizations under this Master Agreement. The Product List contains an item number, item description and the maximum price for each Product. Price List for all Products will be set forth at <https://www3.lenovo.com/le/listprice/us/en/listprice> and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.
11. **Promotional Prices:** refers to prices that are offered nationally or regionally to a specific category of customers intended to include Eligible Organizations for defined time periods under defined terms and conditions.
12. **Reseller:** refers to Resellers authorized by Supplier to resell Products and Services to Eligible Organizations in Member States, and which have agreed to the terms and conditions set forth herein,. Supplier will certify and register Resellers by ensuring that when reselling to Eligible Organizations, Resellers adhere to terms no less material than those set forth in this Master Agreement. At any time during the term of this Master Agreement should MHEC protest the inclusion of a Reseller on this list for cause, Supplier will require that Reseller to undergo recertification. Supplier must maintain and provide a list of authorized Resellers to MHEC.
13. **Services:** refers to the services offered by Supplier under this Agreement including: pre-implementation design, installation/de-installation, migration, optimization, maintenance, technical support, training, and services accessible over the internet. Supplier may incorporate changes to their service offering; however, any changes must be within the scope of the End User Computing and Peripherals, Device Lifecycle Management, and Associated Services MHEC-RFP-10282021 award. Examples of these services include but not limited to the following:
  1. **Support Services:** Such as warranty services, maintenance, installation, de-installation, factory integration (software or hardware components), asset management, and recycling/disposal. Supplier's support services will be described in the applicable Supporting Material, which will cover the description of Supplier's offering, eligibility requirements, service limitations and Eligible Participant's responsibilities, as well as the Eligible Participant's systems supported.
  2. **Training and certification.**
  3. **Professional Services:** Such as assessments, disaster recovery planning and support, services desk/help desk, software, and application development, and any other directly related technical support and/or IT related services required for the effective operation of the Hardware and Software offered or supplied.
  4. **Everything-as-a-Service:** refers to the delivery of a variety of hybrid services and applications accessible on demand over the internet including:
    - A. **Software-as-a-Service (SaaS):** refers to a software delivery method that provides access to software and its functions remotely as a web-based service.

- B. Infrastructure-as-a-Service (IaaS): refers to computer infrastructure, such as virtualization, being delivered as a service. Sample Lenovo TruScale Infrastructure Services Agreement are included in Exhibit D.
- C. Platform-as-a-Service (PaaS): refers to a computing platform being delivered as a service.
- D. Storage-as-a-Service: refers to a storage model where an entity rents or leases storage space.
- E. Desktop-as-a-Service (DaaS): refers to virtual desktop infrastructure (VDI).
- F. Disaster Recovery-as-a-Service (DRaaS) refers to backup and restore data services.

Services may require additional contractual terms and conditions. Eligible Participants purchasing on-site Support, on-site Training, Professional or IT as a Service shall negotiate the terms and conditions of such purchase with Supplier, including, as applicable, service level agreements and/or statements of work.

- 5. Managed Services refers to ongoing monitoring, management, provisioning, and optimization of hyper-converged infrastructure systems
- 14. **Services List:** refers to the complete list of Services made available for purchase by Eligible Organizations under this Master Agreement. The Services List contains the item description for each service. Pricing shall be provided based on unique requirements to each Eligible Organization. Where travel is necessary to perform the Services, additional reasonable costs may be levied. The Service List is set forth as Exhibit B – Services List and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.
- 15. **Software:** refers to Supplier’s full offerings of Software for a) end user computing and peripherals, b) device lifecycle management, c) associated services made available for sale by Supplier to Eligible Organizations under this Master Agreement. Software Products include computer software programs (whether pre-loaded or provided separately) and related licensed materials such as documentation. Supplier may incorporate changes to their Software offering: however, any changes must be within the scope of the End User Computing and Peripherals, Device Lifecycle Management, and Associated Services MHEC-RFP-10282021 award.
- 16. **Supplier:** refers to Lenovo or Reseller.
- 17. **Third-Party Products:** refers to any Hardware (“Third-Party Hardware”) or Software (“Third-Party Software”) other than parts that are Lenovo branded or originally listed as components of Lenovo branded Products. Third-Party Software is not considered components of Lenovo branded Products.
- 18. **Third-Party Services:** refers to any Services performed by someone other than Lenovo or its subcontractors.

## 2. SCOPE OF OFFERING

Procuring Eligible Organizations shall purchase from Supplier or Reseller, and Supplier or Reseller shall distribute to Procuring Eligible Organizations Products and Services in accordance with the terms of this Master Agreement. All Eligible Organizations are qualified to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with Supplier or Reseller. Accordingly, Supplier or Reseller shall provide Products or Services only upon the issuance and acceptance by Supplier or Reseller of a valid Order. Orders may be issued to purchase any Products listed on the

Product List or for any Services listed on the Services List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in Supplier's Product List and Services List at the prices stated therein. For Large Order Negotiated Prices, Eligible Organization and Supplier or Reseller may negotiate quantity discounts below the Product and Services List price(s) for a given purchase order. As it sees fit, Supplier or Reseller may offer under this Master Agreement Promotional Price discounts that result in prices below those listed in the Product List and the Services List. Supplier is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Master Agreement. MHEC shall not be liable for any Eligible Organization that executes an Order under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

### 3. DUE DILIGENCE

Notwithstanding MHEC's role in entering into this Master Agreement and any additional efforts by MHEC, Eligible Organization acknowledges and agrees that:

- A. Eligible Organization is solely responsible for its own due diligence regarding any Master Agreement;
- B. MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of any Master Agreement for the Eligible Organization specifically;
- C. MHEC has not made any legally binding representations regarding Suppliers Products, or Services and that MHEC does not guarantee or warrant the Products or Services of Supplier; and
- D. MHEC is not responsible for the actions or omissions of Supplier.

Issues of interpretation and eligibility for participation are solely within the authority of the procurement and statutory rules and regulations applicable to the Eligible Organization. The Eligible Organization is responsible for assuring it has the authority to place Orders under this Master Agreement.

### 4. QUANTITY GUARANTEE

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. MHEC is not obligated to make any affirmative efforts to induce any purchases. The quantity of products and services that may be purchased is undetermined. An estimate quantity based on history or other means may be used as a guide but shall not be a representation by MHEC or any Eligible Organization. This Master Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain Products and Services from other sources during the term of this Master Agreement.

### 5. MASTER AGREEMENT TERM

This Master Agreement shall be effective on September 1, 2022, and shall remain in effect until June 30, 2025, (Term Ending Date) unless otherwise terminated pursuant to the terms of this Master Agreement. This Master Agreement may be mutually renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the Term Ending Date anniversary. Eligible Organizations may procure Products and Services from the technology solution Supplier under the terms of this Master Agreement at any time during the duration of this Master Agreement.

### 6. ORDER OF PRECEDENT

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and Supplier may enter into an addendum to amend the terms and conditions of this Master Agreement to conform to the Eligible Organization's state and/or institutional laws and regulations. Similarly, the Eligible Organization participating in this Master Agreement may enter into a separate supplemental agreement to further

define the level of service requirements over and above the minimum defined in this contract i.e., invoice requirements, ordering requirements, specialized delivery, etc. Any addendum or supplemental agreement is exclusively between the participating Eligible Organization and Supplier. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Addendum between Eligible Organization and Supplier
- B. The terms and conditions of this Agreement
- C. Exhibits to this Agreement
- D. The list of Products and Services contained in the Order

7. PURCHASING UNDER MASTER AGREEMENT

- A. **Products:** Procuring Eligible Organization shall purchase from Supplier the Products listed on the Price List under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Master Agreement; (iv) the “bill-to” address; (v) the “ship-to” address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Master Agreement. Supplier must notify Procuring Eligible Organization if it intends to substitute any item(s) that has been ordered by the Procuring Eligible Organization using this contract; the Procuring Eligible Organization will then have the option to cancel the order if such substitute item is not acceptable.
- B. **Services:** Procuring Eligible Organization shall purchase from Supplier the Services listed on the Price List under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service(s); (iii) the price of the Service in accordance with this Master Agreement; (iv) the “bill-to” address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement.
- C. Each Order that is accepted by Supplier will become a part of this Master Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Master Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Supplier is binding.
- D. Procuring Eligible Organization may request in writing a change or cancellation of an Order that Supplier has previously accepted up until the time Supplier has begun manufacturing the Products or performing the Services.
- E. Supplier will accept a purchasing card for order placement in addition to accepting a purchase order. In addition, nothing in this section precludes any agreements for the use of electronic purchase orders and Supplier will provide electronic commerce assistance to Eligible Organization, if desired, for the electronic submission of purchase orders, purchase order tracking and reporting. The use of any purchasing card or electronic purchase orders may be subject to limitations and/or additional fees set forth by Supplier and agreed to by Procuring Eligible Organization.

8. PAYMENT PROVISIONS

- A. **Acceptance.** A Procuring Eligible Organization shall determine whether all Products and Services delivered meet the Suppliers published specifications. No payment shall be made for any Products or Services until the Procuring Eligible Organization has accepted the Products or Services. Unless otherwise agreed upon between the Procuring Eligible Organization and Supplier, the Eligible Organization shall within thirty (30) calendar days from the date of delivery,

issue a written notice of partial acceptance or rejection of the Products or Services; otherwise, the Products or Services shall be deemed accepted.

- B. **Return Policy.** Procuring Eligible Organization may return a new, standard Product that is still in its sealed, unopened package, to Lenovo for any reason within twenty-one (21) days of the date of invoice for a refund or credit. Procuring Eligible Organizations may only return the entire Product or all such Products for a refund or credit. Partial refunds or credits for Products that are not standard; or Products configured to Procuring Eligible Organization's requirements, including installation of software Product options; or quantities of Products that are not separately priced, are not available to Procuring Eligible Organizations. In order to receive a credit or refund, Procuring Eligible Organization must contact its Lenovo Procuring Eligible Organization Support Representative to obtain a return-authorization form. Procuring Eligible Organization must return the new Product, including all documentation and accessories, intact and in its unopened original packaging to the location and by the date specified by Lenovo. A copy of the invoice, the return-authorization form, and the shipping label must accompany the returned Product. Shipping and handling charges will not be refunded or credited to Procuring Eligible Organization. Products returned without a Lenovo return-authorization form, or returned after the date specified by Lenovo, may be subject to a restocking fee in the amount of fifteen percent (15%) of the price paid.

Procuring Eligible Organization agrees to pay the restocking fee if charged by Lenovo. A refund or credit is not available for the return of Products which are not generally available to Procuring Eligible Organizations and for which Lenovo created a unique machine type model (MTM) or a part number. Returns of Products shipped as a result of a Lenovo error will be accepted by Lenovo. Lenovo will initiate a return of such Products with appropriate documentation at no charge to Procuring Eligible Organization if Lenovo is notified of the error within twenty-one (21) days of the date of the invoice. If Procuring Eligible Organization acquired a software Product separate from a hardware Product, and paid a software license fee, but does not agree to the terms of the license, Procuring Eligible Organization may return the software Product within twenty-one (21) days of the date of invoice and receive a refund or credit in the amount of the fee.

If for any reason, whether based on applicable law or on a specific contractual provision under this Agreement, Procuring Eligible Organization is entitled to return a Hardware Product to Lenovo, Procuring Eligible Organization is responsible, before returning the Hardware Product for: (i) resetting the system to its original factory settings as provided by Lenovo to Procuring Eligible Organization; (ii) ensuring that such Hardware Product is entirely free of any Procuring Eligible Organization or Third Party security interest or deposit; and (iii) securely erasing any Procuring Eligible Organization or Third Party personal and other data stored on the Hardware Product. If Procuring Eligible Organization fails to do so, Lenovo shall be entitled to erase all such stored data. Lenovo is not responsible to maintain any program or other data stored in or on any returned Hardware Product and shall not be liable for any such data. Lenovo may operate disposal procedures according to Lenovo defined processes and in accordance with applicable laws. In any event, Procuring Eligible Organization shall not return any Hardware Products to Lenovo unless Procuring Eligible Organization has obtained a returned goods authorization from Lenovo for the applicable Hardware Products, and otherwise complies with the return policy of Lenovo then in effect

- C. **Payment of Invoice.** Invoices shall be submitted to the Procuring Eligible Organization. Payments shall be remitted to Supplier at the address shown on the invoice. Payment shall be tendered to Supplier within thirty (30) days of the date of the invoice unless there exists a good faith dispute.

In the absence of a good faith dispute and after the thirtieth (30) day from the date of the invoice, unless mutually agreed to, interest shall be paid on the unpaid balance due to Supplier at the rate of one and one-half percent (1½%) per month or the maximum rate allowed by the applicable state laws of Procuring Eligible Organization. The Procuring Eligible Organization shall make a good faith effort to pay within thirty (30) days after the date of the invoice.

- D. **Dispute Notice.** Procuring Eligible Organization shall make a good faith effort to notify Supplier of any billing discrepancies or disputes about an invoice within fifteen (15) business days after receiving it, specifying with particularity the basis of any such dispute (“Dispute Notice”) or in accordance with the applicable state laws of the Procuring Eligible Organization. Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Supplier will be subject to interest charges accruing from the original due date.
- E. **Partial Shipment.** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Supplier unless the Procuring Eligible Organization has clearly specified “No Partial Shipment” on each purchase order.
- F. **Payment of Taxes.** The Prices List under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Supplier for, any and all taxes and/or duties assessed against or payable by Supplier in connection with the sale of Products and Services except for taxes imposed upon Supplier’s net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

#### 9. REIMBURSEMENTS

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Supplier in performance of this Master Agreement may be reimbursed with prior written approval from Procuring Eligible Organization’s authorized representative. Provided that Supplier shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount then provided for in the current U. S. General Services Administration “GSA” Per Diem Rates or pursuant to Procuring Eligible Organization reimbursement policies.

#### 10. SHIPPING

Supplier will ship products F.O.B. destination. Title to products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organizations destination point. Risk of loss or damage to Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Supplier shall bear the risk of loss with respect to returned products except for loss or damage directly attributable to the negligence of the Procuring Eligible Organization. All Products must be shipped fully configured with the required components unless otherwise specified.

#### 11. PRODUCT DELIVERY

- A. Unless otherwise agreed to by Procuring Eligible Organization and Supplier, Supplier agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order. If delivery cannot be made within thirty (30) calendar days, Supplier will notify Procuring Eligible Organization within five (5) business days following Order placement, and Procuring Eligible Organization, as its exclusive remedy, can cancel the order by written, electronic, or facsimile notification. Failure of the Supplier to adhere to delivery schedules as specified or to promptly replace defective Product shall render the Supplier liable for all costs in excess of the contract price when alternate procurement is necessary. Supplier acknowledges that all locations of any particular Eligible Organization may not be within the MHEC region.

- B. If deliveries prove to be unsatisfactory, or other problems arise, MHEC reserves the right to delete Products or Services from this Master Agreement and/or cancel Master Agreement. Similarly, if deliveries prove to be unsatisfactory or other problems arise under this Master Agreement for a Procuring Eligible Organization, the Procuring Eligible Organization retains all of its remedies for a default. Failure of MHEC or the Procuring Eligible Organization to exercise its rights of termination for cause or other remedies for default due to a Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights or other default remedies in any other instance.
- C. Suppliers may choose to deliver Products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

## 12. INSTALLATION

When installation is required, unless otherwise negotiated with the Eligible Organization, Supplier must provide the cost of installation as separate line item on their quotation. Installation includes, as applicable, all packing, freight, insurance, set-up, instruction, and operation manual charges. Equipment must be set in place in an area designated by Procuring Eligible Organization personnel. Upon request, Supplier will provide a services quote with a Statement of Work (SOW) to remove any and all debris from the Procuring Eligible Organization site. Upon installation, all operating instructions will be provided either physically or electronically to Procuring Eligible Organization personnel identified on the purchase Order. Unless otherwise stated in the Statement of Work (SOW), Supplier will conduct the manufacturer's standard installation and test procedures to confirm completion.

## 13. PRODUCT CATEGORIES AND DISCOUNT

All Procuring Eligible Organizations shall pay the lowest prices for Products and Services contained in the Suppliers published Product List price at: <https://www3.lenovo.com/le/listprice/us/en/listprice>. All Product Categories & Discount Guarantees as set forth in the Exhibit A Lenovo Global Technology (United States) Inc.– Product Categories & Discounts and shall not decrease throughout the term of this Master Agreement. When Eligible Organizations purchase under this Master Agreement, Supplier shall not sell Products to Eligible Organizations at prices higher than those awarded via this Master Agreement. If available, promotional prices, higher discounts, and volume discounts may be offered under this Master Agreement to Procuring Eligible Organization at the time of purchase. Eligible Organizations may inquire from Supplier if such promotions are available.

## 14. SERVICES PRICING

Supplier agrees to maintain the Service List in accordance with the following provisions:

- A. For any standard Services, in which the Services and corresponding pricing are on the List Price, the pricing will be as described in section 13. List Price and Discount Guarantees, and the applicable discount percentage as noted in Exhibit B – Services List will apply.
- B. For any custom Services that are not included on the List Price or require a Statement of Work, the prices for such Services purchased under this Master Agreement will be as mutually agreed upon by both Supplier and Procuring Eligible Organization and as set forth in a Supplier quote or an applicable Statement of Work or negotiated agreement.

## 15. LEASING AND FINANCING

Eligible Organizations may elect to finance purchases under a separate finance agreement. Lenovo Financial Services ([www.lenovo.com/us/en/outletus/landingpage/lenovo-financial-services/](http://www.lenovo.com/us/en/outletus/landingpage/lenovo-financial-services/)) offers Eligible Organizations procurement options including: Capital Purchase, Lease (CAPEX or OPEX), and

Subscription. The Parties recognize that finance agreements are separate and independent agreements between Eligible Organization and the finance entity, with terms and conditions thereof constituting the entire agreement for financing. Sample Master Lease Agreement and Schedules are included in Exhibit C.

#### 16. LICENSE

The terms applicable to any Software are in its license agreement, included with the Software media packaging, or presented to Procuring Eligible Organization during the installation or use of the Software. Supplier will provide applicable Software licensing terms and conditions for each licensed product. Procuring Eligible Organization will work with the Software License manufacturer on any Third-Party Software licensing terms needed to be amended to meet statutory requirements. If a separate license agreement exists between Procuring Eligible Organization and the manufacturer or the owner of the Software, that license agreement will control and will apply according to its terms and conditions.

#### 17. WARRANTY

- A. **Personal Computer Products:** Supplier warrants that each Supplier branded Hardware Product, other than a Machine, purchased by Eligible Organization for such Eligible Organization's own use and not for resale, is free from defects in material and workmanship under normal use during the Warranty Period. The Warranty Period for a Hardware Product starts on the original date of purchase specified on Supplier's or Reseller invoice unless specified otherwise by Supplier in writing. The Warranty Period and type of warranty service that apply to a Hardware Product are specified in Attachment A: Warranty Service Information (Personal Computer Products).
- B. **Machines:** Supplier warrants that each Machine is free from defects in materials and workmanship under normal use during the warranty period. Unless Supplier specifies otherwise, the warranties apply only in the country of acquisition. The warranty period for a Machine is a fixed period of time specified in Attachment B: Warranty Service Information (Servers and Storage Products) or as specified in a Order. The warranty period starts on the original date of purchase specified on Supplier's or Reseller's invoice unless specified otherwise by Supplier in writing. During the warranty period, Supplier shall provide repair and exchange Service for the Machine, without charge, under the type of Service designated by Supplier for the Machine. If a defect in material or workmanship is discovered during the warranty period and Supplier is unable to either: (i) repair it; or (ii) replace it with one that is at least functionally equivalent, Eligible Organization may return it to Supplier for a prorated refund.
- C. **Services:** Supplier warrants that it performs each Service using reasonable care and skill and according to its current description contained in this Agreement, a Statement of Work, an Attachment, or an Order. Eligible Organization shall provide timely written notice of any failure to comply with this warranty in order that Lenovo may take corrective action.
- D. **Items to which these warranties do not apply:** These warranties shall not apply to any Hardware Product which has been subjected to misuse, accident, unauthorized modification; operated in an unsuitable physical or operating environment; subjected to natural disasters, power surges or unauthorized maintenance; to any third party hardware product, including those that Supplier may provide or integrate into a Hardware Product at Eligible Organization's request; or to software, whether provided with a Hardware Product or installed subsequently. These warranties do not include any technical support, such as assistance with "how-to" questions and those regarding Hardware Product set-up and installation. These warranties shall be voided by the removal or alteration of identification labels on a Hardware Product or its parts. In no event shall these warranties include liability for uninterrupted or errorfree operation of a Hardware Product, correction of all defects, or any loss of, or damage to data by a Hardware Product.

- E. Supplier warrants that Procuring Eligible Organization shall acquire good and clear title to Lenovo branded Products being purchased under this Master Agreement, free and clear of all liens and encumbrances. For any non-Lenovo branded Products, Supplier warrants that it has the right to provide such products to the Procuring Eligible Organization.
- F. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. ALL SOFTWARE, SUPPORT AND 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 ELIGIBLE ORGANIZATION.

#### 18. TRANSFER OF TITLE

Unless otherwise specified in the Order or addendum, Supplier warrants that Procuring Eligible Organization shall acquire good and clean title to Products and Services being purchased under this Master Agreement, free and clear of all liens and encumbrances.

#### 19. TERMINATION

This Master Agreement may be canceled by either the Supplier or MHEC at any time without cause during its term upon ninety (90) days written notice to the other party. The inability of the Supplier to provide sufficient Products or Services at the expected service level and/or to perform Services on a timely basis may serve as grounds for an Order or contract termination. Poor performance as demonstrated by slow response time, failure to adhere to safety practices and regulations, failure to pursue the work with diligence, poor productivity, inefficient work, and poor workmanship may, without limitation, constitute grounds for immediate termination of an Order under this Master Agreement by Procuring Eligible Organization or of this Master Agreement by MHEC. MHEC also reserves the right to remove from participation Services associated with this Master Agreement any Supplier's employee and/or subcontractor whose conduct is deemed unsatisfactory by MHEC. Termination of this Master Agreement shall in no way limit the parties' remedies at law and equity.

#### 20. NON-APPROPRIATIONS

This provision applies only to publicly funded Eligible Organizations. Any resultant Order is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Procuring Eligible Organization may terminate its obligations if sufficient appropriations are not made by the governing entity to pay amounts due. In the event of non-appropriations, the Supplier shall be notified in writing of such non-appropriation at the earliest opportunity.

#### 21. INDEMNITY, GENERAL, AND INTELLECTUAL PROPERTY

The Supplier shall indemnify, defend and save harmless MHEC and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whatsoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of MHEC.

The Supplier shall indemnify, defend and save harmless Eligible Organization and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death

of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of Eligible Organization.

With respect to anything provided to MHEC or Procuring Eligible Organization by the Supplier pursuant to this Master Agreement, the Supplier shall indemnify and defend MHEC and Eligible Organization and their respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and authorized use of such by Procuring Eligible Organization.

## 22. INFRINGEMENT PROTECTION

If a third party claims that a Supplier branded Hardware Product provided to MHEC or Eligible Organization by Supplier under this Agreement infringes that party's patent or copyright, Supplier will defend MHEC or an Eligible Organization against that claim at its expense, and pay all costs, damages, and attorneys' fees that a court finally awards against MHEC or an Eligible Organization or that are included in a settlement approved by Supplier, provided that MHEC or an Eligible Organization: (i) promptly notifies Supplier in writing of the claim; (ii) subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law, allows Supplier to control, and cooperates with Supplier in the defense and any related settlement negotiations; and (iii) is and remains in compliance with MHEC and such Eligible Organization's obligations in this Section 22. The foregoing is Supplier's entire obligation to MHEC and any Eligible Organization and MHEC's and any Eligible Organization's exclusive remedy regarding any third-party claim of infringement. Supplier will have no obligation under this section with respect to any Claim of infringement resulting from (a) Services performed, or Product provided, pursuant to Eligible Organization's specification or design; (b) an Eligible Organization's unauthorized modification of a Product; (c) any combination, operation, or use of the Product with systems other than those provided by Supplier to the extent that such a Claim is caused by such modification, combination, operation, or use of the Product; or (d) infringement by a third party product alone, as opposed to its combination with a Supplier branded Product. Following notice of a Claim or a threat of actual suit, MHEC or an Eligible Organization shall permit Supplier, at its own expense and option, to: (1) resolve the claim in a way that permits continued ownership and use of the affected Product or Service by MHEC or an Eligible Organization; (2) modify the Product; (3) to provide a comparable replacement that is at least functionally equivalent at no cost to MHEC or an Eligible Organization; or (4) if Supplier determines that none of the foregoing options is reasonably available, in the case of a Product accept return of the Product, freight collect, and provide a reasonable depreciated refund and in the case of a Service, provide a refund less a reasonable adjustment for beneficial use.

## 23. LIMITATION OF LIABILITY

In any action arising out of or related to this Agreement or any Order placed hereunder, Supplier, MHEC, or Eligible Organization shall not be liable 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) any special, incidental, indirect, punitive, exemplary, or consequential damages; or (d) loss of profits, business, revenue, goodwill or anticipated savings; and The maximum cumulative liability of Supplier to MHEC or any Eligible Organization for all actions arising out of or relating to this Agreement and all orders placed hereunder, regardless of the form of the action or the theory of recovery, shall be limited to the greater of (i) direct damages up to \$500,000 or (ii) the total amount paid or payable by MHEC and any Eligible Organization to Supplier hereunder. The foregoing limitations under this section 23. Limitation of Liability do not apply to any indemnification obligations under section 21.

Indemnity, General, and Intellectual Property and section 22. Infringement Protection of this Master Agreement.

#### 24. BACKGROUND CHECKS

At the sole discretion of the Eligible Organizations, Supplier may be requested to provide user background checks, depending on the information systems Supplier accesses or types of data Eligible Organization provides. Supplier then must submit the required background check information to Eligible Organization in a timely manner. Supplier will perform background investigations within the scope of the Suppliers current standard policies and practices for any Supplier employees or subcontractors entering upon an Eligible Organization premise, where legally acceptable and culturally permissible.

#### 25. INSURANCE

Supplier, at its own expense, shall maintain appropriate levels of insurance as required by the Procuring Eligible Organization and if requested, certificates of insurance shall be delivered to Procuring Eligible Organization prior to commencement of any work. The insurance company shall be authorized in the applicable state in which work is being conducted or as otherwise required by Procuring Eligible Organization. Suppliers shall give the Procuring Eligible Organization a minimum of thirty (30) days' notice prior to any reduction in coverage or cancellation of policies. Unless otherwise agreed to between Eligible Organization and Supplier, Supplier will maintain the following insurance limits while performing any services under this Master Agreement: (a) Workers' Compensation Insurance for Contractor employees, including coverage required under the Eligible Organization's State and Federal Laws; (b) Employer's Liability Insurance with limits of a minimum of: (i) \$1,000,000 for each accident for bodily injury by accident, (ii) \$1,000,000 for bodily injury by disease, and (iii) \$1,000,000 for each employee for bodily injury by disease; (c) General Liability Insurance with limits of: (i) \$1,000,000 per occurrence for bodily injury and property damage.

Procuring Eligible Organization is responsible for managing compliance with the requirements of this section 25. Insurance and/or their institutional requirements, and may require additional coverage consistent with applicable law, regulation, or policy. Supplier shall require all subcontractors performing any work to maintain coverage as specified

#### 26. CONFIDENTIALITY

As an instrumentality of state government, MHEC is subject to Public Record laws. As such, any provision that requires the terms of the contract, or specific information obtained during the term of the contract, to be kept confidential must be removed or modified to include "to the extent permitted by the law of relevant state." At a minimum, similar modifications may be required for public Eligible Organizations.

- A. While Supplier is providing Services hereunder, Eligible Organization or Supplier may disclose to the other certain business information identified as confidential ("Confidential Information"). All such information shall be marked or otherwise designated as "Confidential" or "Proprietary". In order for such information to be considered Confidential Information pursuant to this section 26 of this Master Agreement, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient within ten (10) days after oral disclosure. Both Eligible Organization and Supplier agree that, with respect to Confidential Information it receives (as "Recipient") from the other (as a "Discloser") in connection with this

Master Agreement or an Order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by this Master Agreement or an Order placed under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.

- B. Each Party will make reasonable efforts not to disclose the other Party's Confidential Information to any third party, except as may be required by law or court order, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidential Information shall remain the property of and be returned to the Discloser (along with all copies or other embodiments thereof) within fifteen (15) days of (a) the termination or completion of the Order under this Master Agreement, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Participant or Supplier of this Master Agreement or an Order under this Master Agreement directing that Confidential Information described generally or specifically in such demand be returned to the Discloser.
- C. Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, both Eligible Participant and Supplier agree to comply with any applicable data practices or similar type laws of the State in which Eligible Participant is located or founded.

## 27. USE OF FEDERAL CONTRACTS OR GRANTS

Where Federal Contracts or Grants provide funding to Eligible Organizations, it is the responsibility of the Supplier and the Eligible Organization to comply with all Federal Acquisition Regulations (FAR) applicable laws and regulations by completing any certifications and disclosures and any other requirements. When Federal Contract or Grant funds are used by Procuring Eligible Organization purchases under this Agreement, which exceed \$25,000, certification must be provided in writing that the Supplier is not debarred, suspended, or proposed for debarment by the Federal Government.

## 28. COMPLIANCE WITH APPLICABLE LAWS

(a) Supplier warrants that both in submission of its proposal and performance of any resultant contract that Supplier shall comply with federal laws, rules and regulations applicable to Subcontractors of government contracts including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706 and Executive Order 11758), and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Contract clauses required by the Government in such circumstances are incorporated into any resulting agreement by reference. (b) Supplier warrants and agrees to abide by all applicable Federal and state laws, regulations and Executive Orders pertaining to equal opportunity. In accordance with such laws, regulations, and executive orders, Supplier agrees that it does not discriminate on the grounds of race, color, religion, national origin, sex, age, veteran status, or handicap. If Supplier is found to be not in compliance with applicable Federal or state requirements during the life of this Master Agreement, Supplier agrees to take appropriate steps to correct these deficiencies. (c) Supplier warrants that both in submission of its proposal and performance of any resultant contract that Supplier will comply with all applicable Federal, state, and local laws, regulations, rules, and/or ordinances.

#### 29. NON-DISCRIMINATION

Supplier agrees to abide by all applicable Federal and state laws, regulations, and executive orders pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders pertaining to equal employment opportunity, Supplier and all its Subcontractors shall agree that it does not discriminate on the grounds of race, color, religion, national origin, sex, age, disability, genetic information, or veteran status. Supplier shall comply with federal and state laws, rules, and regulations applicable to Subcontractors of government contracts including those relating to equal employment of minorities, women, persons with disabilities, and certain veterans. Contract clauses required by the United States Government in such circumstances are incorporated herein by reference.

#### 30. FERPA AND OTHER PRIVACY LAWS

Where applicable to the scope of Services Supplier is providing, and only to the extent directly applicable to Supplier and its Services, Supplier agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA) and all other applicable state and federal privacy laws to the extent applicable to any product or service provided to Eligible Organizations. To the extent an Eligible Organization discloses any information to Supplier subject to the aforementioned privacy laws, Eligible Organization agrees to advise Supplier of the disclosure of such information; and Eligible Organization represents and warrants to Supplier that it has obtained any required consents to disclose such information. In addition, to the extent that Supplier becomes a Business Associate as defined in HIPAA, both Supplier and Eligible Organization acknowledge that a separate mutually agreeable Business Associate Agreement may be required and will govern according to its terms.

#### 31. ACCESSIBILITY

Supplier agrees to comply with all applicable requirements of the Rehabilitation Act of 1973, as amended, 29 USC 794, including Sections 504 and 508, which prohibits discrimination on the basis of disabilities, and with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by Supplier shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by the state in which the Eligible Organization resides and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>).

#### 32. DATA OWNERSHIP

Eligible Organization's data shall remain the exclusive property of Eligible Organization and Eligible Organization shall retain all rights, including intellectual property rights in and to such data. Supplier will use Eligible Organization's data only for the purpose of fulfilling its duties under this Master Agreement or an Order under this Master Agreement, and for Eligible Organization's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Eligible Organization or as otherwise required by law.

#### 33. ARBITRATION

MHEC shall reject arbitration clauses in any Master Agreement or license.

#### 34. DEBARMENT AND SUSPENSION

Supplier represents and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction

(contract), by any government department or agency. Furthermore, Supplier shall provide notice to MHEC if it becomes debarred or suspended at any point during the duration of any resulting agreement.

#### 35. RECORDS AND AUDIT

Supplier shall retain and maintain all records and documents relating to this Master Agreement for six (6) years after final payment under an Order made by the Procuring Eligible Organization, or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of MHEC, Eligible Organization, (including the procurement officer or designee), and appropriate governmental authorities with Eligible Organization's state at all reasonable times.

#### 36. FORCE MAJEURE

Neither Supplier nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; pandemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party unable to perform shall undertake reasonable action to notify the other Parties of the same.

#### 37. EXPORT LAW

Supplier and Eligible Organization acknowledges that any software, technical information, Products, or other deliverables provided to Eligible Organization via this Master Agreement may be subject to the U.S. Export Administration Regulations. Supplier and Eligible Organization agrees to comply with all applicable United States export control laws, and regulations, as from time to time amended, including without limitation, the laws and regulations administered by the United States Department of Commerce and the United States Department of State.

#### 38. CONFLICT OF INTEREST

Supplier warrants to the best of its knowledge and belief that it presently has no interest direct or indirect, which would give rise to organizational conflicts of interest. Supplier agrees that if an organizational conflict of interest is discovered during the term of this Master Agreement, it will provide disclosure to MHEC that shall include a description of the action Supplier has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and is not timely resolved by Supplier, MHEC may, at its sole discretion, cancel this Master Agreement.

#### 39. SUBCONTRACTORS

Supplier shall have the right to use Subcontractors to provide the Services described in this Master Agreement. If Supplier elects to use Subcontractors in the performance of custom professional Services under this Master Agreement, upon request, Supplier will provide a list of such Subcontractors in the associated Statement of Work (SOW). Notwithstanding the foregoing, the use of such Subcontractors shall not release Supplier from performing its obligations under this Master Agreement.

Supplier shall be liable for any damage or loss resulting from personal injury or damage to tangible property arising from the acts or omissions of its subcontractor while performing services pursuant to this Master Agreement.

**40. ASSIGNMENT**

Neither party will assign its rights or delegate its obligations under this Master Agreement, in whole or in part, without the other party's prior written consent, and, absent such consent, any purported assignment or delegation by that party will be null, void and of no effect; provided, however, that either party may upon written notice assign this Master Agreement to another successor company pursuant to a corporate merger or reorganization or the sale or transfer of all or substantially all of its stock or assets. This Master Agreement will be binding upon and inure to the benefit of Supplier and MHEC and their successors and permitted assigns. Nothing in this section 40 shall preclude Supplier from employing a Subcontractor in carrying out its obligations under this Master Agreement. Supplier use of such Subcontractors will not release Supplier from its obligations under this Master Agreement.

**41. MHEC NOT LIABLE FOR ELIGIBLE ORGANIZATION**

MHEC is not liable to Supplier for the failure of any Procuring Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order and/or this Master Agreement. Supplier, in its sole discretion, may discontinue selling products or services to any Eligible Organization who fails to make payments or otherwise fully performs pursuant to the terms and conditions of this Master Agreement. MHEC does not guarantee that any Eligible Organization will utilize or make any purchase under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

**42. INDEPENDENT CONTRACTORS**

MHEC and Supplier acknowledge and agree that the relationship arising from this Master Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the parties are acting as independent contractors in making and performing this Master Agreement. Supplier and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Supplier has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein.

**43. SUPPLIER REPRESENTATIVE**

Supplier shall assign a senior level representative who shall be the primary MHEC contact for all matters related to all sales and marketing efforts of this Master Agreement.

**44. NOTIFICATION**

- A. Between the Parties:** Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile, email, or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

<b>To MHEC:</b>	<b>To Supplier:</b>
105 Fifth Avenue South	Lenovo (United States) inc.
Suite 450	8001 Development Drive
Minneapolis, Minnesota 55401	Morrisville, NC 27560
Attn: Nathan Sorensen, Director of government contracts Tel: (612) 677-2767	Lance Couch Contract Manager Tel: ( 281) 712-2155 Email <a href="mailto:lcouch@lenovo.com">lcouch@lenovo.com</a>

Email: <a href="mailto:nathans@mhec.org">nathans@mhec.org</a>	
Fax: 612-767-3353	Fax: Unavailable

Changes in the above information will be given to the other Party in a timely fashion.

- B. Between Eligible Organization:** Notices shall be sent to Eligible Organization's business address. The term "business address" shall mean the "Bill to" address set forth in an invoice to Eligible Organization.

#### 45. MARKETING

Supplier must assist MHEC in the development and implementation of appropriate marketing strategies including seminars, printed material, and a full service, online MHEC-specific website to receive information on Products, supplies, Services, and prices, and to place orders. Mutual review and evaluation of the marketing plans will be done, at a minimum, during annual reviews. The Supplier should exhibit the willingness to develop marketing materials and participate in opportunities that are available.

#### 46. ANNOUNCEMENTS AND PUBLICITY

No Supplier providing services to MHEC, or to the Eligible Organizations, shall appropriate or make use of the name or other identifying marks or property in its advertising or marketing without the prior written consent of MHEC or Eligible Organization.

#### 47. OVERSIGHT COMMITTEE

An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Supplier in developing and refining the implementation of this Master Agreement in the Compact member states. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise the Supplier on the effectiveness of its implementation progression. There will be an annual meeting between Supplier and MHEC (and perhaps members of the oversight committee) to perform a business review. In addition, Supplier must attend on-site meetings on an ad hoc basis if requested by the contract manager to address contract performance issues.

#### 48. CONTRACT ADMINISTRATION FEE (CAF)

MHEC has incurred, and will continue to incur, costs and expenses in the development, implementation, administration, and marketing of this program. Supplier shall include a Contract Administrative Fee (CAF) of one-and-one half percent (1.5%). The CAF shall not reduce the discount or rebates offered to the Eligible Organizations. The Supplier will be responsible for submitting the CAF with the Quarterly Report.

#### 49. QUARTERLY REPORT

Supplier must submit business activity reports each quarter. The Quarterly Report must include, at the minimum, the following information:

- Quarter number and year
- MHEC contract number
- Supplier name
- Name, phone number and email address of person who may be contacted for questions about the report
- Customer Name
- Customer Type (Higher Education, K-12, state agencies, cities, counties, local subdivisions)
- Address

- City
- State
- Zip Code
- Purchase Order Number
- Product Description
- Date Shipped or Delivered to End User
- Quantity
- List Price
- Sale Price
- Administration Fee
- % Discount
- \$ Savings
- Reseller (if applicable)

Quarterly Reports and Contract Administration Fees shall be submitted by end of the preceding month after the end of March, June, September, and December of each calendar year.

Calendar Quarter 1	(January 1 March 31)	Due April 30
Calendar Quarter 2	(April 1 to June 30)	Due July 31
Calendar Quarter 3	(July 1 to September 30)	Due October 31
Calendar Quarter 4	(October 1 to December 31)	Due January 31

#### 50. ENFORCEMENT OF AGREEMENT

A Party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver under this Master Agreement will be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

#### 51. SEVERABILITY

If any provision of this Master Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Master Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance, or jurisdiction, or of rendering any other provisions of this Master Agreement invalid or unenforceable whatsoever.

#### 52. GOVERNING LAW

**As between MHEC and Supplier**, this Master Agreement shall be construed in accordance with, and its performance governed by, the laws of the State of Minnesota; and venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.

**As between Eligible Organization and Supplier**, this Master Agreement or any Order placed under this Master Agreement shall be construed in accordance with, and its performance governed by, the laws of the state in which Eligible Organization resides. Venue for all legal proceedings arising out of this Master

Agreement or any Order placed under this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

**As between Eligible Organization, MHEC, and Supplier**, this Master Agreement or any Order placed under this Master Agreement shall be construed in accordance with, and its performance governed by, the laws of the state in which Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement or any Order placed under this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

#### 53. SOVEREIGN IMMUNITY

Notwithstanding anything to the contrary in this Master Agreement or Order under this Master Agreement, this Master Agreement shall not be construed to deprive an Eligible Organization of its applicable Sovereign Immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this Master Agreement or afforded by Eligible Organizations' state laws applicable to Eligible Organization.

#### 54. SURVIVAL

Certain paragraphs of this Master Agreement including but not limited to indemnification; and limitation of liability shall survive the expiration of this Master Agreement. Software license, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

#### 55. AMENDMENTS

Except as provided in section 6. Order of Precedent; this Master Agreement shall only be amended by written instrument executed by the parties.

#### 56. SCOPE OF AGREEMENT

This Master Agreement incorporates all of the agreements of the parties concerning the subject matter of this Master Agreement, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.

#### 57. INVALID TERM OR CONDITION

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

#### 58. MISCELLANEOUS

All Parties to this Master Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Master Agreement that shall be considered an original and shall be admissible in any action to enforce this Master Agreement. Supplier may accept this Master Agreement either by its authorized signature or a signed Order. Except as provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties; accordingly, any additional terms on the Procuring Eligible Organization's ordering documents shall be of no force or effect.

The Parties, by their representatives signing below, agree with the terms of this Master Agreement and further certify that their respective signatories are duly authorized to execute this Master Agreement.

	<b><u>Midwestern Higher Education</u></b>	<b><u>Lenovo Global Technology (United States)</u></b>
	<small>DocuSigned by:</small> <b><u>Commission</u></b>	<small>DocuSigned by:</small> <b><u>Inc.</u></b>
Signature:	 <small>F12C8485BF0B4B5...</small>	 <small>CA01952FF73548C...</small>
Name:	<b>Susan Heegaard</b>	<b>Paul D Battle</b>
Title:	<b>President</b>	<b>Exec Dir. US Public Sector and Corp.</b>
Address:	<b>105 Fifth Avenue South Suite 450</b>	<b>8001 Development Drive</b>
	<b>Minneapolis, Minnesota, 55401</b>	<b>Morrisville, NC 27560</b>
Date:	<b>September 28, 2022   8:50 PM PDT</b>	<b>September 28, 2022   12:20 PM CDT</b>

**Exhibit A**  
**LENOVO Global Technology (United States) Inc.**  
**Product Categories & Discounts**

Category	Classification	Description	Discount off Lenovo Retail Price List
1	Servers and Storage	Most configurable commercial servers including but not limited to standard Rack, Tower, Edge, Blade, High-Density, High Performance Computing, and Mission Critical. Most configurable commercial storage devices including but not limited to SAN (Storage Area Network), Unified, High Density, Direct Attached Storage, Backup and Recovery, and Tape. The following non-exhaustive list of Lenovo brands represents Category 1 and is offered for illustrative purposes only: ThinkSystem, Lenovo Direct Attached Storage	24%
2	Enhanced Services	Most Services that enhance Lenovo's enterprise offerings which include server, storage, networking and software to include but not limited to Premier Support, Warranty Extensions, Warranty Upgrades, Post Warranties, YourDrive YourData, Installation, Deployment, Migration, Asset Recovery	14%
3	Peripherals and Accessories	Lenovo branded Peripherals and Accessories	14%
4	Networking and Switches	Most commercial Lenovo branded networking and switches including but not limited to standard IP SAN switches, IP Switches, Ethernet Switches, and Converged Switches	14%
5	Software	Lenovo branded Software	9%
6	Software Defined Infrastructure and Services	Lenovo branded Software Defined Infrastructure including but not limited to Hyperconverged Solutions, Virtual Storage Solutions, Appliances, and Capacity on Demand	14%
7	3rd Party Products and Software	Third Party Products, Software and Offerings	4%
8	Non-Discountable Products & Services	Topsellers which are defined as specific, non-configurable, stocked commercial devices. Selected Products and Services including, Gaming Solutions; Virtual Reality Solutions; Smart Solutions, and all products and/or services not otherwise categorized, classified, or described herein.	0%

*The Discounts herein are from Lenovo's Retail Price List. The Effective Date for both the Discounts and the Categories, Classifications, and Descriptions (together the Categories) shall be: (1) the date of Lenovo's proposal, bid, quote or offer to Customer incorporating Categories and Discounts ("Proposal") (2) the date of a contract awarded to Lenovo by a Customer because of a Proposal, incorporating Categories and Discounts ("Contract") or (3) the date of a written agreement entered into by Lenovo and a Customer incorporating Categories ("Agreement"). Notwithstanding any contrary language in a Proposal, Contract, or Agreement, Lenovo may, in its sole discretion and without notice, modify the Categories. All Category modifications are effective immediately. Unless expressly prohibited by Contract or Agreement, Lenovo may increase its list price at any time, for any reason, and without notice. Retail Price List changes are effective immediately. The term Customer, as used herein, means (1) the party to whom Lenovo presented a Proposal or (2) the counter party to a Contract or Agreement.*

Rev. 3-18-2021

**EXHIBIT B****SERVICES LIST**

<b>Professional &amp; Managed Services [1]</b>	
Asset Recovery Services	Asset Recovery Services (ARS) helps customers recover the maximum value from their end-of-life equipment in a cost-effective and secure way. On top of simplifying the transition from old to new equipment, ARS mitigates environmental and data security risks associated with data center equipment disposal. Lenovo ARS is a cash-back solution for equipment based on its remaining market value, yielding maximum value from aging assets and lowering total cost of ownership for the customer. For more information, see Lenovo's ARS website: <a href="https://lenovopress.com/lp1266-reduce-e-waste-and-grow-your-bottom-line-with-lenovo-ars">https://lenovopress.com/lp1266-reduce-e-waste-and-grow-your-bottom-line-with-lenovo-ars</a> .
Assessment Services	An assessment helps solve IT challenges through an on-site, multi-day session with a Lenovo technology expert. We perform a tools-based assessment which provides a comprehensive and thorough review of a customer's environment and technology systems. In addition to the technology-based functional requirements, the consultant also discusses and records the non-functional business requirements, challenges, and constraints. Assessments help organizations, no matter how large or small, get a better return on their IT investment and overcome challenges in the ever-changing technology landscape.
Design Services	Professional services consultants perform infrastructure design and implementation planning to support a customer's strategy. The high-level architectures provided by the assessment service are turned into low level designs and wiring diagrams, which are reviewed and approved prior to implementation. The implementation plan will demonstrate an outcome-based proposal to provide business capabilities through infrastructure with a risk-mitigated project plan.
Basic Hardware Installation	Lenovo experts can seamlessly manage the physical installation of a customer's server, storage, or networking hardware. Working at a time convenient for the customer (business hours or off shift), the technician will unpack and inspect the systems on-site, install options, mount in a rack cabinet, connect to power and network, check and update firmware to the latest levels, verify operation, and dispose of the packaging, allowing the customer's team to focus on other priorities.
Deployment Services	When investing in new IT infrastructures, customers need to ensure their business will see quick time to value with little to no disruption. Lenovo deployments are designed by development and engineering teams who know our products and solutions better than anyone else, and our technicians own the process from delivery to completion. Lenovo will conduct remote preparation and planning, configure and integrate systems, validate systems, verify and update appliance firmware, train on administrative tasks, and provide post-deployment documentation. Customer's IT teams leverage our skills to enable IT staff to transform with higher level roles and tasks.
Integration, Migration, and Expansion Services	Move existing physical and virtual workloads easily, or determine technical requirements to support increased workloads while maximizing performance. These services include tuning, validating, and documenting ongoing run processes. Customers leverage migration assessment planning documents to perform necessary migrations.

[1] For any professional or managed services not included on the Commercial Price List or require a Statement of Work, the prices for such services purchased under this Master Agreement will be as mutually agreed upon by both Vendor and Procuring Eligible Organization and as set forth in a Vendor quote or an applicable Statement of Work or negotiated agreement.

Exhibit C
MASTER LEASE AGREEMENT



Master Lease Number: \_\_\_\_\_
Master State & Local Government Lease Agreement

This Master State & Local Government Lease Agreement # \_\_\_ (the "Master Lease") contains the terms of your agreement with us. Please read it carefully and ask us any questions you may have. The words you, your and lessee mean you, our customer. The words we, us, our and the lessor, mean Lenovo Financial Services

1. LEASE, DELIVERY AND ACCEPTANCE. You agree to lease the equipment ("Equipment"), and finance any software and/or services described in any schedule (collectively the "Products") that incorporates this Master Lease by reference. A schedule to this Master Lease ("Schedule") shall incorporate this Master Lease by reference by listing the Master Lease Number set forth above on the Schedule. Each Schedule that incorporates this Master Lease shall be governed by the terms and conditions of this Master Lease, as well as the terms and conditions set forth in such individual Schedule. Each Schedule shall constitute an agreement separate and distinct from this Master Lease and any other Schedule. In the event of a conflict between the provisions of this Master Lease and a Schedule, the provisions of the Schedule shall govern but only with respect to that Schedule. The termination of this Master Lease will not affect any Schedules executed before the effective date of such termination. If you have entered into any purchase agreement or purchase order ("Purchase Contract") with any Vendor (as set forth on the applicable Schedule), you assign to us your rights under such Purchase Contract, but none of your obligations (other than the obligation to pay for the Equipment if it is accepted by you as stated below and you timely deliver to us such documents and assurances as we request). If you have not entered into a Purchase Contract, you authorize us to enter into a Purchase Contract on your behalf. You will arrange for the delivery of the Products to you. When you receive the Equipment, you agree to inspect it to determine if it is in good working order. Each Schedule, upon the delivery to us of a signed Delivery and Acceptance Certificate, will be deemed irrevocably accepted by you and will continue for the number of months specified in the Schedule, unless earlier terminated in accordance with Section 18 of this Master Lease. The first Lease Payment (as specified in the applicable Schedule) is due on or after the date the Equipment is delivered to you. The remaining Lease Payments (as specified in the applicable Schedule) will be due on the day of each subsequent month (or such other time period specified in each Schedule) designated by us. You will make all payments required under such Schedule to us at such address as we may specify in writing. If any Lease Payment or other amount payable under any Schedule is not paid within 10 days of its due date, you will pay us a late charge equal to the greater of (i) 5% of each late payment, or (ii) \$6.00 for each late payment (or such lesser amount as to the maximum amount allowable under applicable law.)
2. NO WARRANTIES. We are leasing the Equipment to you "AS-IS". YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND YOU HAVE SELECTED THE EQUIPMENT VENDOR BASED UPON YOUR OWN JUDGMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT. YOU AGREE THAT NEITHER SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY. We transfer to you for the term of each Schedule any warranties made by the manufacturer or Supplier with respect to the Equipment leased pursuant to such Schedule.
3. EQUIPMENT LOCATION; USE AND REPAIR; RETURN. You may move the Products within the continental United States provided you give us written notification of the move within 30 days of the move, and you agree that you will be liable for any increase in any personal property taxes as a result of that relocation. For laptop computers, PDAs, and other mobile devices, the location listed on the Schedule is its base location ("Base Location") but these mobile devices may be temporarily located at other locations and you will notify us and be responsible for any tax increases should the Base Location change. At your own cost and expense, you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws, and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions or replacements will become part of the Equipment and our property at no cost or expense to us. We may inspect the Equipment at any reasonable time after advance notice to you. Unless you purchase the Equipment in accordance with the terms of the applicable Schedule, at the end of or upon termination of each Schedule you will immediately return the Equipment subject to each expired or terminated Schedule to us, in good condition and repair, subject to ordinary wear and tear, to any place in the United States that we tell you. You will pay all remaining unpaid lease payments, late charges, insurance charges, and our estimated property taxes on the Products (based upon the prior year's actual property tax), shipping and other expenses, and you will insure the

Products for its full replacement value during shipping. Unless we request return to us, you must retain physical possession of the Products through the end of the initial or any renewal lease term of any Schedule. You may, at the time of providing your end of lease notice to us, elect to substitute and return a similar piece of equipment at end of a Schedule in the event the specific piece of Equipment that has reached end of lease is not immediately available for return. In order to elect a like for like return, you must identify the Equipment being retained by serial number and the Equipment being returned shall be the same model, configured similarly, as the Equipment being retained. If the substituted Equipment was also leased by us, the Equipment retained past its original end of lease date must then be returned to us at or before the end of lease date for the substituted Equipment that was previously returned. If the substituted Equipment is not under a lease with us, then you shall at the time of return, provide us with a bill of sale for the substituted Equipment providing us with free and clear title to the substituted Equipment.
4. DATA SECURITY: Some or all of the items of Equipment returned to us at any time may contain sensitive information or data belonging to your organization, or your customers/clients/patients, that is stored, recorded, or in any way contained within or on the Equipment. You specifically agree that before the Products are shipped to or received by us or our agents, or removed by a supplier, you will, at your sole cost and expense, permanently destroy, delete and remove all such information and data that is stored, recorded or in any way contained within or on the Products, to the extent that further recovery of any of such data and information is not possible. You have the sole responsibility to so destroy, delete, and remove all data and information stored in or on the Equipment. We have absolutely no liability for any data or information that you fail to so destroy, delete, and remove. All hard drives and other data retention components must function as originally installed after data removal.
5. TAXES AND FEES. You are responsible for all sales and use (unless you provide us with an acceptable Sales/Use Tax exemption form), personal property or other taxes relating to the use or ownership of the Products, now or hereafter imposed, or assessed by any state, federal, or local government or agency. You agree to pay when due, or reimburse us for, all taxes, fines or penalties imposed upon the Equipment and, if we elect, you agree to pay us estimated property taxes either with each lease payment or annually as invoiced by us. We will file all sales, use and personal property tax returns (unless we notify you otherwise in writing). We do not have to contest any taxes, fines or penalties; however, you may do so provided (a) you do so in your own name and at your own expense, (b) the contest will not result in any sort of lien being placed on the Products or otherwise jeopardize our rights in any of the Products, (c) you pay us for any taxes we remitted to the taxing authorities even though you are contesting the taxes and indemnify and hold us harmless for any expenses, including legal expenses, we incur as a result of such contest. If we file such personal property tax reports, you will pay property taxes as invoiced by us.
6. LOSS OR DAMAGE. As between you and us, you are responsible for any loss, theft, destruction of, or damage to, the Equipment (collectively, "Loss") from any cause at all, whether or not insured, until delivered to us at the end of the applicable Schedule. You are required to make all Lease Payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amounts specified in Section 10(b) of this Master Lease.
7. INSURANCE. You will provide and maintain at your expense property insurance against the loss, theft or destruction of, or damage to, the Equipment for its full replacement value, naming us as loss payee; and (2) public liability and third party property insurance naming us as an additional insured. If you so request and if we give our prior written consent, in lieu of maintaining the insurance described in the preceding sentence, you may self-insure against such risks, provided that our interests are protected to the same extent as if the insurance required in clauses (1) and (2) above had been obtained by third party insurance carriers and provided further that such self insurance program is consistent with prudent business with respect to insuring such risk. You will give us certificates or other evidence of such insurance on the commencement date of this lease and at such times as we request. All insurance obtained from a third party insurer will be in a form, amount and with coverages acceptable to us, and will provide that we be given 30 days advance notice of any cancellation or material change of such insurance.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What that means for you: When you open an account, we will ask for (i) if you are a legal entity, your name, address, and other information that will allow us to identify you; (ii) if you are an individual, your name, address and date of birth. We may also ask to see your driver's license or other identifying documents.

LESSOR: Lenovo Financial Services
10201 Centurion Parkway N. #100
Jacksonville, FL 32256

LESSEE: \_\_\_\_\_
Lessee Legal Name
Lessee "Doing Business As" Name
Street Address
City, State, Zip

X
Authorized Signature Date Signed
Printed Name
Print Title

X
Authorized Signature Date Signed
Print Signer's Name and Title
Federal Tax ID

**8. PURCHASE OPTION; AUTOMATIC RENEWAL.** If no Default has occurred and is continuing under this Master Lease or the relevant Schedule, you will have the option (other than \$1 purchase option leases) at the end of the initial or any renewal term of a Schedule to: (a) purchase all or a portion of the Products covered by such Schedule at the Purchase Option price shown on such Schedule, plus any applicable taxes; (b) return all of the Products or any portion of the Products not purchased or renewed by such Schedule by the Schedule termination date; or (c) elect a fixed term renewal of all or a portion of the Products at the fair market rental value of the Products. We will use our reasonable judgment to determine the Products' fair market rental value as configured, in place and installed ("Fair Market Rental Value"). You agree that the Fair Market Rental Value is the amount that may reasonably be expected for the Installed Products in an exchange between a willing lessor and a willing Lessee, including costs to make the Products fully operational. If you do not agree with the determination of the fair market rental value, the fair market rental value (in use and in place) will be determined at your expense by an independent appraiser mutually acceptable to the Parties. To exercise any of these options you must provide written notice to us at least 90 days but not more than 180 days before the end of the initial term of a Schedule that you will either return, purchase or renew the Schedule as set forth above. If you elect a partial return, purchase, or renewal of Products, you will identify the impacted Products by serial number in your end of lease notice. If you fail to provide this notice or if, having given such notice, you do not purchase, deliver the Products in accordance with the terms and conditions of this Lease and the applicable Schedule, or renew, the Schedule will automatically renew for successive month to month renewals until the end of the Schedule notice has been provided and acted upon. If you elect to exercise a return, purchase or renewal of some but not all Products, your notice must identify which Products are going to be returned, purchased or renewed. During any renewal term this notice period is reduced to 30 days prior to the end of the renewal term. We may cancel an automatic renewal term by sending you written notice 10 days prior to such renewal term.

If the Fair Market Value Purchase Option has been selected under any Schedule, we will use our reasonable judgment to determine the Products' fair market value as configured, in place and installed ("Fair Market Value"). You agree that the Fair Market Value is the amount that may reasonably be expected for the Installed Products in an exchange between a willing buyer and a willing seller, including costs to make the Products fully operational. If you do not agree with our determination of the Products' Fair Market Value, the fair market value (in use and in place) will be determined at your expense by an independent appraiser mutually acceptable to both parties. Upon payment of the Purchase Option price, we will transfer our interest in the Products to you "AS-IS, WHERE IS" without any representation or warranty whatsoever and the applicable Schedule will terminate. To secure payment of all amounts due to us, to the extent permitted by law, you grant us a security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). You will keep the Equipment free of all liens and encumbrances. You authorize us to file financing statement(s) to protect our interest in the Equipment.

**9. DEFAULT.** Each of the following to a "Default" under this Master Lease and any Schedule: (a) you fail to pay any Lease Payment or any other payment within 30 days of its due date; (b) you do not perform any of your other obligations under this Master Lease or any Schedule or in any other agreement with us or with any of our affiliates and this failure continues for 30 days after we have notified you of it; (c) you become insolvent, you dissolve, you assign your assets for the benefit of your creditors, you sell, transfer or otherwise dispose of all or substantially all of your assets, or you enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; or (d) any representation or warranty made by you under this Master Lease or in any instrument you have provided us proves to be incorrect in any material respect.

**10. REMEDIES.** If a Default occurs, we may do one or more of the following: (a) we may cancel or terminate this Master Lease and/or any or all Schedules and any or all other agreements that we have entered into with you or withdraw any offer of credit; (b) subject to Section 16, we may require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) the present value of all unpaid Lease Payments for the remainder of the term plus, the present value of our anticipated residual value in the Products each discounted at 4% per year, plus (c) we may require you to deliver the Equipment to us as set forth in Section 3; (d) we or our agent may peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) we may exercise any other right or remedy available at law or in equity. In the event of a dispute arising out of this Master Lease or any Schedules, the prevailing party shall be entitled to its reasonable collection costs and attorney fees and costs incurred in enforcing or defending this Master Lease or any Schedules (including those collection costs and attorney fees incurred post-judgment). If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You will remain responsible for any amounts that are due after we have applied such net proceeds. You agree that if notice of sale is required by law to be given, 10 days notice shall constitute reasonable notice.

**11. FINANCE LEASE STATUS.** You agree that if Article 2A-Leases of the Uniform Commercial Code applies to a Schedule, such Schedules will be considered a "finance lease" as that term is defined in Article 2A. By signing each Schedule, you agree that either (a) you have reviewed, approved, and received a copy of the purchase contract or (b) that we have informed you of the identity of the Supplier, that you may have rights under the purchase contract, and that you may contact the supplier for a description of those rights. TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.

**12. ASSIGNMENT. YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS MASTER LEASE OR ANY SCHEDULE WITHOUT OUR PRIOR WRITTEN CONSENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD WITH US ACTING IN A COMMERCIALLY REASONABLE MANNER.** We may, without notifying you, sell, assign, or transfer this Master Lease or any Schedule and our rights to the Equipment. You agree that the new owner will have the same rights and benefits that we have now under this Master Lease and any Schedule but not our obligations, which obligations we will remain responsible for. The rights of the new owner will not be subject to any claims, defenses or set-off that you may have against us or the supplier.

**13. INDEMNIFICATION.** To the extent not prohibited by applicable law, you are responsible for and agree to indemnify and hold us harmless from any (a) losses, damages, penalties claims, suits and actions (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to the manufacture, installation, ownership, use, lease, possession or delivery of the Products or any defects in the Products and (b) all reasonable costs and attorneys' fees incurred by us relating to any Claim. You agree to reimburse us for and if we request, to defend us against, any Claims, except Claims caused by our willful misconduct. You agree that your obligations under this section and the Taxes and Fees section of this Master Lease shall survive the termination of this Master Lease for Claims arising during the term of this Master Lease or any Schedule.

**14. MISCELLANEOUS.** You agree that the terms and conditions contained in this Master Lease and any Schedule make up the entire agreement between you and us regarding the lease of the Equipment. This Master Lease is not binding on us until we sign it. Any change in any of the terms and conditions of this Master Lease or any Schedule must be in writing and signed by us, either manually or by electronic transmission. You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Master Lease. If we delay or fail to enforce any of our rights under this Master Lease or any Schedule, we will still be entitled to enforce those rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail, addressed to the party receiving the notice at its address shown on the front of this Master Lease (or to any other address specified by that party in writing) with postage prepaid. All of our rights and indemnities will survive the termination of this Master Lease or any Schedule. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Master Lease or any Schedule, we have the right, but not the obligation to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay.

IF A SIGNED COPY OF THIS MASTER LEASE OR A SCHEDULE IS DELIVERED TO US BY FACSIMILE TRANSMISSION, IT WILL BE BINDING ON YOU. HOWEVER, WE WILL NOT BE BOUND BY THIS MASTER LEASE OR A SCHEDULE UNTIL WE ACCEPT IT BY MANUALLY SIGNING IT OR BY PURCHASING THE EQUIPMENT SUBJECT TO THE APPLICABLE SCHEDULE, WHICHEVER OCCURS FIRST. YOU WAIVE NOTICE OF OUR ACCEPTANCE AND WAIVE YOUR RIGHT TO RECEIVE A COPY OF THE ACCEPTED MASTER LEASE. YOU AGREE THAT, NOTWITHSTANDING ANY RULE OF EVIDENCE TO THE CONTRARY, IN ANY HEARING, TRIAL OR PROCEEDING OF ANY KIND WITH RESPECT TO THIS MASTER LEASE, WE MAY PRODUCE A COPY OF THE MASTER LEASE TRANSMITTED TO US BY FACSIMILE TRANSMISSION THAT HAS BEEN MANUALLY SIGNED BY US AND SUCH COPY SHALL BE DEEMED TO BE THE ORIGINAL OF THIS MASTER LEASE. TO THE EXTENT (IF ANY) THAT ANY SCHEDULE TO THIS MASTER LEASE CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, NO SECURITY INTEREST IN THE SCHEDULE MAY BE CREATED THROUGH THE TRANSFER AND POSSESSION OF ANY COPY OR COUNTERPART HEREOF EXCEPT THE COPY WITH OUR ORIGINAL SIGNATURE. IF YOU DELIVER THIS MASTER LEASE TO US BY FACSIMILE TRANSMISSION, YOU ACKNOWLEDGE THAT WE ARE RELYING ON YOUR REPRESENTATION THAT THIS MASTER LEASE HAS NOT BEEN CHANGED. If more than one Lessee has signed this Master Lease, each of you agrees that your liability is joint and several.

**15. FUNDING INTENT.** You reasonably believe that funds can be obtained to make all Lease Payments during the Term of any Schedule and hereby covenant that you, your chief executive or administrative officer or the administrative officer of yours charged with preparing the budget submitted to your governing body, as applicable, will provide for funding for such payments in your annual budget request submitted to your governing body. If your governing body elects not to appropriate funds for such payments, it shall evidence such nonappropriation by omitting funds for such payments due during the applicable fiscal period from the budget it adopts. You and we agree that your obligation to make Lease Payments under any Schedule will be your current expense and will not be interpreted to be a debt in violation of applicable law or constitutional limitations or requirements. It is your intent to make Lease Payments for the full Term of any Schedule if funds are legally available therefore you represent, warrant and covenant to us that the use of the Equipment is essential to its proper, efficient and economic operation. You will provide us with an essential use covenant to us that, among other things, you shall use the Equipment only for its governmental purposes.

**16. NONAPPROPRIATION OF FUNDS.** In the event sufficient funds are not appropriated and budgeted by your governing body or are not otherwise available in any fiscal period for Lease Payments (or any other amount due hereunder) under a Schedule, and provided that you have exhausted all funds legally available for payment of the Lease Payments, then you shall immediately notify us of such occurrence and provide us with evidence of such non-appropriation acceptable to us (e.g., written certification by your legal counsel) and the Schedule shall terminate on the last day of the fiscal period for which funds for Lease Payments are available without penalty or expense to you of any kind whatsoever, except as to the portions of Lease Payments and those expenses associated with your surrender of the Equipment pursuant to Section 3 for which funds shall have been appropriated and budgeted or are otherwise available. Upon such termination, title to the Equipment shall vest with us. This Section 16 will not be construed so as to permit you to terminate any Schedule in order to acquire any other equipment or services or to allocate funds directly or indirectly to perform essentially the same application for which the Equipment is intended.

**17. AUTHORITY AND AUTHORIZATION.** You represent, warrant and covenant to us that: (a) You are a State or political subdivision thereof, as those terms are used in §103 of the Code; (b) You have the power and authority to enter into this Master Lease and Schedules; (c) this Master Lease and any Schedule have been duly authorized, executed and delivered by you and constitutes a valid, legal and binding agreement enforceable against you in accordance with its terms; (d) no further approval, consent or withholding of objections is required from any governmental authority with respect to this Master Lease or Schedules; (e) the entering into and performance of this Master Lease and Schedules will not violate any judgment, order, law or regulation applicable to you or result in the creation of any lien, charge, security interest or other encumbrance upon the Equipment or your assets; (f) there are no actions, suits or proceedings pending or threatened against or affecting you in any court or before any governmental commission, board or authority, that, if adversely determined, would have a material adverse effect on your ability to perform your obligations under this Master Lease or any Schedule; (g) the Equipment is tangible personal property and shall not become a fixture or real property under your use thereof; (h) you have complied with all bidding requirements and, where necessary, by due notification have presented the Master Lease, the Schedule and any ancillary documents for approval and adoption as a valid obligation on your part; (i) you will do or cause to be done all things necessary to preserve and keep the Master Lease and Schedules in full force and effect; and (j) it has sufficient appropriations or other funds available to pay all amounts due under the Schedules for the then current fiscal period. You shall be deemed to have reaffirmed the representations and warranties set forth in this Section 17 each time you execute a Schedule to this Master Lease. Contemporaneously with your execution of a Schedule to this Master Lease, you will complete, execute and provide us with an incumbency certificate (in form satisfactory to us) and an opinion of counsel (in form satisfactory to us) as to the matters set forth in clauses (a) through (h) of this Section 17.

**18. GOVERNMENT USE. YOU REPRESENT, WARRANT AND COVENANT AS FOLLOWS: (A) YOU SHALL COMPLY WITH THE INFORMATION REPORTING REQUIREMENTS OF §149(e) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (CODE), INCLUDING BUT NOT LIMITED TO, THE EXECUTION (AND DELIVERY TO US) OF INFORMATION STATEMENTS REQUESTED BY US; (B) YOU SHALL NOT DO, CAUSE TO BE DONE OR FAIL TO DO ANY ACT IF SUCH ACT OR FAILURE TO ACT WILL CAUSE THIS MASTER LEASE, OR ANY SCHEDULE HEREUNDER, TO BE AN ARBITRAGE BOND WITHIN THE MEANING OF §148 OF THE CODE; (C) YOU SHALL NOT DO, CAUSE TO BE DONE OR FAIL TO DO ANY ACT IF SUCH ACT OR FAILURE TO ACT WILL CAUSE THIS MASTER LEASE, OR ANY SCHEDULE HEREUNDER, TO BE A PRIVATE ACTIVITY BOND WITHIN THE MEANING OF §141 OF THE CODE; (D) YOU SHALL NOT DO, CAUSE TO BE DONE OR FAIL TO DO ANY ACT IF SUCH ACT OR FAILURE TO ACT WILL CAUSE THE INTEREST PORTION OF THE LEASE PAYMENTS TO BE OR BECOME SUBJECT TO FEDERAL INCOME TAXATION UNDER THE CODE, EXCEPT AS SUCH INTEREST PORTION MAY BE TAKEN INTO ACCOUNT AS AN ADJUSTMENT IN DETERMINING THE ALTERNATIVE MINIMUM TAX AND ENVIRONMENTAL TAX IMPOSED ON CORPORATIONS; AND (E) YOU SHALL BE THE ONLY ENTITY TO OWN, USE OR OPERATE THE EQUIPMENT DURING THE TERM. YOU SHALL BE DEEMED TO HAVE REAFFIRMED THE REPRESENTATIONS, WARRANTIES AND COVENANTS SET FORTH IN THIS SECTION 18 EACH TIME IT EXECUTES ANY SCHEDULE. IF YOU BREACH ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS MASTER LEASE AND, AS A RESULT OF SUCH BREACH, THE INTEREST PORTION OF ANY LEASE PAYMENT BECOMES INCLUDABLE IN GROSS INCOME OF ANY OWNER THEREOF FOR FEDERAL INCOME TAX PURPOSES, YOU SHALL PAY US PROMPTLY AFTER SUCH DETERMINATION OF TAXABILITY AND ON EACH LEASE PAYMENT DUE DATE THEREAFTER, AN ADDITIONAL AMOUNT DETERMINED BY US TO COMPENSATE US FOR THE LOSS OF SUCH EXCLUDABILITY (INCLUDING, BUT NOT LIMITED TO, COMPENSATION RELATING TO INTEREST EXPENSE, PENALTIES OR ADDITIONS TO TAX), WHICH DETERMINATION SHALL BE CONCLUSIVE ASSENT MANIFEST ERROR.**

**19. CHOICE OF LAW.** This Master Lease shall be governed by the Internal law (as opposed to conflicts of law provisions) of the State where the Equipment is located. If any provision of this Master Lease or any Equipment or Payment Schedule shall be prohibited by or invalid under that law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Master Lease or any Equipment or Payment Schedule. This Master Lease inures to the benefit of and is binding upon the permitted successors or assigns of yours and ours.



Schedule to Master State & Local Government Lease Agreement (for transactions in excess of \$500,000)

This Schedule No. \_\_\_\_\_ (the "Schedule") to Master State & Local Government Lease Agreement No. \_\_\_\_\_ (the "Master Agreement") contains the terms of your agreement with us. Please read it carefully and ask us any questions you may have. The words you, your and lessee mean you, our customer. The words we, us, our and the lessor, mean Lenovo Financial Services.

Product/Equipment Description

Table with 3 columns: Quantity, Description, Product/Equipment Address

For additional equipment and accessories, attach addendum.

Purchase Option

If no box is checked or if both boxes are checked, the Fair Market Value purchase option will apply:

- Checkboxes for Fair Market Value, \$1.00 Purchase Option, and Other

Term and Lease

Lease Payment \$ \_\_\_\_\_ (plus taxes, if applicable)
Term (Months) \_\_\_\_\_
Payment Frequency Monthly

Variable Payment Schedule if applicable:
(Attach "Payment Schedule Addendum" if necessary)

\_\_\_\_\_ payments @ \_\_\_\_\_; followed by \_\_\_\_\_ payments @ \_\_\_\_\_
followed by \_\_\_\_\_ payments @ \_\_\_\_\_; followed by \_\_\_\_\_ payments @ \_\_\_\_\_

Payments are due in Advance

Documentation Fee: \$ \_\_\_\_\_ (due with first invoice)

Additional Provisions:

PLEASE NOTE: The underlying month ICE Swap Rate is \_\_\_\_\_ %... If the month ICE Swap Rate, (published by ICE Benchmark Administration at https://www.theice.com/marketdata/reports/180) between the date of the proposal and the Commencement Date increases by more than 15bps, Lessor may, in its sole discretion, adjust the all-in rate upward in an amount equal to the difference in the two swap yields, and the Payment Factor will be adjusted accordingly. Further, CIT reserves the right to re-price this transaction in the event of a major dislocation in the financial markets or after 90 days past the quote date at its sole discretion.

Certain state and local government lessees must sign an additional addendum document.

LESSOR: Lenovo Financial Services
10201 Centurion Parkway N. #100
Jacksonville, FL 32256

Authorized Signature Date Signed

Printed Name

Print Title

Lessee

Lessee Legal Name

Lessee "Doing Business As" Name

Billing Street Address

Billing City, State, Zip

Billing Contact Name & Phone No.

Lessee Phone Number (if different from above)

TERMS AND CONDITIONS

BY SIGNING THIS SCHEDULE: (i) YOU UNDERSTAND THAT THIS SCHEDULE WILL COMMENCE ON THE DATE THAT ANY OF THE PRODUCTS ARE DELIVERED TO YOU; (ii) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON THIS SCHEDULE AND THE MASTER AGREEMENT; (iii) YOU AGREE THAT IF A COPY OF THIS SCHEDULE IS SIGNED BY YOU AND IS DELIVERED TO US BY FACSIMILE TRANSMISSION OR OTHERWISE, TO THE EXTENT ANY PROVISIONS ARE MISSING OR ILLEGIBLE OR CHANGED (AND NOT INITIALED BY BOTH YOU AND US), THE TERMS AND CONDITIONS OF THIS SCHEDULE AND THE MASTER AGREEMENT IN USE ON THE DATE WE RECEIVE THE COPY SIGNED BY YOU WILL BE THE TERMS AND CONDITIONS OF THE SCHEDULE, (iv) YOU AGREE THAT THIS SCHEDULE IS A NET LEASE THAT YOU CANNOT TERMINATE OR CANCEL EXCEPT AS SPECIFICALLY PROVIDED IN THE MASTER AGREEMENT, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER THIS SCHEDULE, AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON; (v) YOU AGREE THAT YOU WILL USE THE EQUIPMENT ONLY FOR BUSINESS PURPOSES; (vi) YOU WARRANT THAT THE PERSON SIGNING THIS LEASE FOR YOU HAS THE AUTHORITY TO DO SO; (vii) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS SCHEDULE RATHER THAN PURCHASE THE EQUIPMENT FOR THE TOTAL CASH PRICE; AND (viii) YOU AGREE THAT THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE EQUIPMENT IS LOCATED. YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THAT STATE. BOTH PARTIES EXPRESSLY WAIVE TRIAL BY JURY AS TO ALL ISSUES ARISING OUT OF OR RELATED TO THIS SCHEDULE.

LESSEE SIGNATURE

Lessee Legal Name

X Authorized Signature X Date Signed

X Print Signer's Name

Print Signer's Title

Federal Tax ID Number







**CERTIFICATION OF ESSENTIAL USE**

RE: Schedule to Master State & Local Government Lease Agreement # \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ (each individually, hereinafter the "Agreement") by and between Lenovo Financial Services ("Lessor") and \_\_\_\_\_ ("Lessee")

Ladies and Gentlemen:

This letter confirms and affirms that the Equipment described in the Agreement identified above is/are essential to the function of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all such Equipment, which need is not temporary or expected to diminish in the foreseeable future. Such Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, such Equipment was selected by us to be used as follows (please include any specific department that may be its primary user):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is the Equipment additional or new technology to the department, or does it constitute a continuation of your existing technology?

\_\_\_\_\_

Our source of funds for payments due under the Agreement for the current fiscal year is \_\_\_\_\_

\_\_\_\_\_

We expect and anticipate adequate funds to be available for all future payments of rent due after the current fiscal year for the following reasons: \_\_\_\_\_

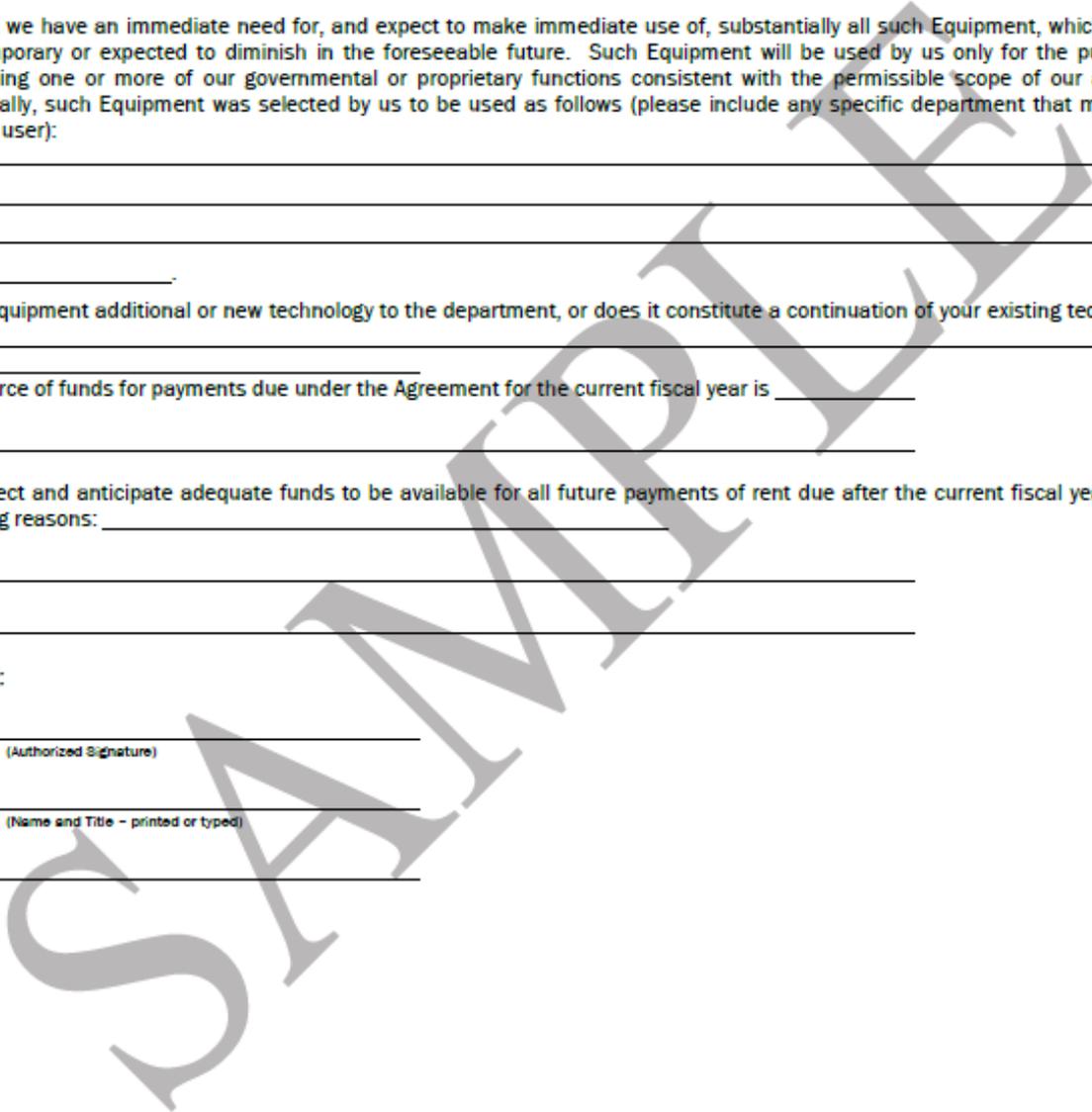
\_\_\_\_\_  
\_\_\_\_\_

**LESSEE:**

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name and Title - printed or typed)

Date: \_\_\_\_\_



**CERTIFICATION OF ESSENTIAL USE**

RE: Schedule to Master State & Local Government Lease Agreement # \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ (each individually, hereinafter the "Agreement") by and between Lenovo Financial Services ("Lessor") and \_\_\_\_\_ ("Lessee")

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is the Equipment additional or new technology to the department, or does it constitute a continuation of your existing technology?

\_\_\_\_\_

Our source of funds for payments due under the Agreement for the current fiscal year is \_\_\_\_\_

\_\_\_\_\_

We expect and anticipate adequate funds to be available for all future payments of rent due after the current fiscal year for the following reasons: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**LESSEE:**

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name and Title - printed or typed)

Date: \_\_\_\_\_

**CERTIFICATION OF ESSENTIAL USE**

RE: Schedule to Master State & Local Government Lease Agreement # \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ (each individually, hereinafter the "Agreement") by and between Lenovo Financial Services ("Lessor") and \_\_\_\_\_ ("Lessee")

Ladies and Gentlemen:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is the Equipment additional or new technology to the department, or does it constitute a continuation of your existing technology?

\_\_\_\_\_

Our source of funds for payments due under the Agreement for the current fiscal year is \_\_\_\_\_

\_\_\_\_\_

We expect and anticipate adequate funds to be available for all future payments of rent due after the current fiscal year for the following reasons: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**LESSEE:**

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name and Title - printed or typed)

Date: \_\_\_\_\_

## EXHIBIT D Lenovo TruScale™ Infrastructure Services Agreement

THIS **LENOVO TRUSCALE™ INFRASTRUCTURE SERVICES AGREEMENT** (together with the Attachments, the “**Agreement**”) effective as of \_\_\_\_\_ (the “**Effective Date**”) [(Lenovo Agreement # [\_\_\_\_\_])] is made by and between [Customer Entity] on behalf of itself and its Affiliates (“**Customer**”) with an office at [Customer Address], and [Lenovo Entity] on behalf of itself and its Affiliates (“**Lenovo**”) with an office at [Lenovo Entity Address]. Customer and Lenovo may be referred to collectively as the “**Parties**” and each individually as a “**Party**”.

1. **Agreement Structure.** The following attachments (“Attachment”) are incorporated into and form part of this Agreement:

- Attachment A:** Definitions
- Attachment B:** General Terms
- Attachment C:** TruScale Program Terms

2. **Transaction Documents.** Each Transaction Document agreed by the Parties is governed by the terms of this Agreement, including all Attachments hereto. Customer may place one or more orders, subject to acceptance by Lenovo, for any of the Products and Services agreed between the Parties under this Agreement, in particular as agreed in a Transaction Document. Lenovo’s acceptance of orders may be conditioned upon Customer’s creditworthiness satisfactory to Lenovo or Lenovo’s receipt of an acceptable guaranty of payment. Customer accepts the terms of the Transaction Document by (i) signing the relevant Transaction Document, by hand, or electronically or otherwise manifesting assent thereto; (ii) using the Product or Service or allowing others to do so; or (iii) making any payment for a Product or Service on the applicable Transaction Document.

3. **Term.** The “**Term**” of this Agreement commences on the Effective Date and shall continue until terminated upon thirty (30) days’ prior written notice to the other Party; provided, however, that the terms of this Agreement shall survive and apply to all previously executed Transaction Documents unless and until each such Transaction Document expires or is terminated pursuant to the terms of this Agreement. Each Transaction Document is subject to the applicable Transaction Term set forth therein.

Each Party accepts the terms of this Agreement by signing either by hand or, where permitted by law, electronically. Any reproduction of this Agreement, an Attachment or a Transaction Document made by reliable means, such as PDF using email, shall be considered an original. The Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date. After signing, please return a copy of this Agreement to the Lenovo address shown above. This Agreement, including the Attachments and all Transaction Documents and Affiliate Agreements, and any other referenced terms and conditions incorporated herein form the entire Agreement of the Parties with respect to the subject-matter of this Agreement, and together replace any prior or contemporaneous agreements, understandings, communications, representations, undertakings, warranties, promises, covenants, and commitments, whether oral or written, between the Parties regarding the subject matter of this Agreement.

**Accepted and agreed for and on behalf of:**

[INSERT CUSTOMER ENTITY NAME]

[INSERT LENOVO ENTITY NAME]

by: \_\_\_\_\_  
Authorized signature

by: \_\_\_\_\_  
Authorized signature

Signatory Name:  
(type or print)

Signatory Name:  
(type or print)

Signatory Title:

Signatory Title:

Signature Date:

Signature Date:



## ATTACHMENT A Definitions

In this Agreement, in addition to the various terms defined elsewhere in this Agreement, the following terms shall be interpreted as follows:

1. **“Affiliate”** means, with respect to any party, any entity that, during the Term, directly or indirectly controls, is controlled by, or is under common control with such party. For purposes of this definition, “controls” “controlled by,” and “under common control with” mean (i) the ownership, direct or indirect, of (a) more than fifty percent (>50%) of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or (b) more than fifty percent (>50%) or such other controlling interest (as determined by applicable law) in the equity interests of any other type of legal entity (whether in the form of stock or otherwise), or (ii) status as a general partner in any partnership, or any other arrangement whereby a party controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity.
2. **“Affiliate Agreement”** has the meaning set forth in Attachment D (Affiliates).
3. **“Enterprise”** means a Party, 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.
4. **“Fees”** means the fees due in connection with Products and Services ordered hereunder.
5. **“Insolvency Event”** means any one of the following occurrences: a voluntary or involuntary proceedings by or against Customer are instituted in bankruptcy under any insolvency law, a receiver or custodian is appointed for Customer, proceedings are instituted by or against Customer for corporate reorganization or the dissolution of Customer (which proceedings, if involuntary, are not have been dismissed within sixty (60) days after the date of filing), Customer makes an assignment for the benefit of creditors, or substantially all of the assets of Customer are seized or attached and not released within sixty (60) days thereafter.
6. **“Machine Code”** means all code provided for a hardware Product (including, without limitation, a Product’s firmware and microcode), excluding code that is licensed under a license agreement other than the terms of this Agreement governing the 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.
7. **“Materials”** means literary works or other works of authorship, such as code, documentation, reports, and similar works that Lenovo may deliver to Customer as part of the Services, but excluding Program and other items available under their own license terms or agreements.
8. **“Product”** means any Lenovo-branded or third-party hardware or other equipment, including any related Program, which Lenovo provides to Customer and as more fully set forth in a Transaction Document.
9. **“Program”** means any Lenovo-branded or Third Party software, whether pre-loaded or provided separately, whether licensed by Lenovo or provided by Lenovo under a Third-Party license. The term “Program” also includes related licensed materials, such as documentation, but excludes Machine Code.
10. **“Service”** means the performance of a task, the provision of advice or assistance, access to a resource such as an information database or software application, or maintenance support services that Lenovo makes available to Customer as described in an applicable Transaction Document.
11. **“Third Party”** means any legal entity or individual person which or who is not subject to the terms and conditions of this Agreement, and hence neither a Party nor an Affiliate of a Party.
12. **“Transaction Document”** means a separate subsequent document accepted by the Parties referencing this Agreement and which contains specific details and terms related to an individual transaction, such as a purchase order, service transaction, statement of work, supplement, product catalog, schedule, invoice, exhibit, change authorization, amendment or addendum and any applicable annex. One or more Transaction Documents may be associated with a single “Transaction.” Each Transaction under this Agreement constitutes a separate transaction agreement or transaction under this Agreement, and is independent from other such Transactions.
13. **“Transaction Term”** means the term set forth in a Transaction Document.
14. **“TruScale Program”** is the set of Products, Services and Programs offered to Customer pursuant to a Transaction Document under the terms and conditions of this Agreement.



## ATTACHMENT B General Terms

**1 Generally.** By executing this Agreement, Customer agrees to the following General Terms, which shall apply to all Transaction Documents placed under this Agreement for Products and Services. Unless otherwise agreed to by the Parties in writing, all terms and conditions for any other Program, whether Lenovo or Third-Party branded, will be governed by its own specific Lenovo or Third Party license terms, as separately provided to or agreed by Customer. In case, but to the extent only, of any conflict between any of the terms and conditions of this Agreement and those of the license agreement for any such Program, the latter will prevail solely as regards the Program.

### **2 Prices, Payment and Taxes**

2.1 Prices and related costs for Products and Services shall be as set forth in Attachment C or the applicable Transaction Document. No other discounts, quantity entitlements, or promotions apply unless expressly agreed in writing by Lenovo.

2.2 If not paid in advance of shipment or performance, all amounts due to Lenovo on Services and Products are due upon receipt and not later than thirty (30) days of Lenovo's invoice issuance date. Any amounts not received by Lenovo within thirty (30) days of the invoice's issuance date shall be overdue. In the event payment is not received by Lenovo on or before the 30th day after the date of the invoice, then Lenovo may, in addition to any other remedies available at equity or in law, at its option, elect to do any one or more of the following: (i) charge interest on the outstanding sum from the due date (both before and after any judgment) at 1% per month until paid in full (or, if less, the maximum amount permitted by applicable laws); (ii) suspend any further performance hereunder until such invoice is paid in full; or (iii) terminate this Agreement. If Customer fails to take delivery of any Product on any scheduled delivery date, Lenovo shall store such Product as Customer's agent, and Customer shall be invoiced on the 1st day of each month following such scheduled delivery for reasonable administration and storage costs. Customer shall not have any right to offset any obligation of Lenovo to Customer against any obligation of Customer to Lenovo.

2.3 Prices do not include local taxes, value added tax, goods and services tax or similar taxes or tariffs. Customer shall pay any applicable sales, use or similar taxes, fees or duties on Services and Products, unless Customer provides exemption documentation to Lenovo. Customer becomes responsible for taxes on (i) hardware Products and Programs pre-loaded on such hardware Products from the date Lenovo has delivered them to the Lenovo-designated carrier for shipment to Customer, (ii) Programs from the date Lenovo has made such Program available or accessible to Customer, and (iii) Services from the date on which such Services are provided by Lenovo. Lenovo shall be solely responsible for paying all taxes on Lenovo's net or gross income.

### **3 Licenses for Machine Code**

Customer acknowledges that each hardware Product contains Machine Code. Regardless of the source from which Customer acquires a hardware Product, the Machine Code shall be subject to the terms of the license agreement included with the relevant Product. Customer's use of Machine Code on a hardware Product is governed by the terms of the applicable Lenovo License Agreement, which is available on or through Lenovo's support website at <https://support.lenovo.com/>, or otherwise will be provided upon request.

### **4 Confidentiality.**

4.1 Any non-public information which is received under this Agreement by one Party from the other and which is clearly marked as "confidential" ("**Confidential Information**") shall be (i) maintained in confidence during the term of this Agreement and for two (2) years following termination or expiration of this Agreement (or, if it is Confidential Information additionally marked as and comprising a "trade secret," for so long as it remains a trade secret under applicable law), (ii) used only for the purpose of fulfillment of the receiving Party's obligations under this Agreement, and (iii) protected during such periods against unauthorized disclosure by the receiving Party, except for the following permitted disclosures: (a) disclosure to the receiving Party's Affiliates, employees and contractors with a business "need to know" for the exercise of the receiving Party's rights or fulfillment of its obligations under this Agreement, provided that such further recipients are also obligated by the receiving Party to protect the Confidential Information to the same extent as the receiving Party under this Section 4 and (b) disclosure with the prior written consent of the disclosing Party. Further, the receiving Party is permitted to disclose any protected



Confidential Information of the disclosing Party, to the extent required by law, on condition that in any such case the receiving Party promptly notifies the discloser (to the extent not prohibited by applicable law), to allow the disclosing Party a reasonable opportunity to seek a protective order. Confidential Information is provided with no warranty, and without liability as to its accuracy or completeness. Confidential Information disclosed to a Third Party, notwithstanding a valid consent provided under this Agreement or in the event of an unauthorized disclosure, remains Confidential Information under this Section 4. The terms of this Agreement are the Confidential Information of Lenovo.

- 4.2 Information shall not be considered "**Confidential Information**" under this Section 4, and the receiving Party is free to disclose it, if: (i) the information was already in the recipient's possession without obligation of confidentiality at the time of its receipt from the receiving Party; (ii) the information was independently developed by the receiving Party without use of the Confidential Information of the disclosing Party; (iii) the information was obtained from a third party without obligation of confidentiality to the disclosing Party; (iv) the information was or becomes publicly available through no breach of this Agreement by the receiving Party or its Affiliates, employees and contractors; or (v) the disclosing Party reveals the information to a third party without imposing an obligation of confidentiality on the third party.
- 4.3 The terms of this Section 4 supersede and replace the terms of any confidentiality or non-disclosure agreement entered into by and between the Parties prior to the Effective Date (an "**NDA**"), provided however that any such NDA shall remain effective in accordance with its terms with respect to any confidential information disclosed under it by the Parties prior to the Effective Date.

## 5 Personal Information.

- 5.1 Customer represents and warrants that, it shall not transmit to Lenovo or otherwise provide Lenovo with access to personal information or any other Confidential Information that (a) is stored on any of the Products and (b) relates to Customer or related third parties. In the event that Customer learns that such information has been sent to Lenovo or made accessible to Lenovo, Customer shall immediately notify Lenovo. Any failure by Customer to so notify Lenovo within 24 hours shall be deemed a material breach of the Agreement.
- 5.2 However, Lenovo may collect, access, retain and, as appropriate, share (collectively "**Process**") the names and contact information of Customer, as well as machine types and serial numbers of the Products sold to Customer (collectively "**Contact Information**"). This Contact Information will be Processed by Lenovo in order to perform the obligations of this Agreement, including contractual warranties. Lenovo will Process Contact Information of Customer consistent with its general website and product privacy statements available at <https://www.lenovo.com/us/en/privacy/> and/or, as applicable, privacy statements designed for a specific Lenovo Product or Service. To perform its obligations pursuant to this Agreement in relation to the Products and Services, Lenovo may transfer Contact Information (i) from any country to any other country in the world where Lenovo and its Enterprise operate, and (ii) to Lenovo's Enterprise and Lenovo service providers acting on Lenovo's behalf in relation to this Agreement and/or the Products or Services. Lenovo will comply with all data privacy or data protection laws applicable to their Processing of Contact Information pursuant to this Agreement.

## 6 Warranties

- 6.1 **Warranty for Services:** Lenovo warrants that it will perform each Service using reasonable care and skill and according to its current description, including any completion criteria, contained in this Agreement or a relevant Attachment or Transaction Document. Customer shall provide timely written notice to Lenovo of any failure to comply with this warranty not later than thirty (30) days after completion of the Service at issue identifying the failure with reasonable particularity, in order that Lenovo may take corrective action as specified in the following sentence. Lenovo will either correct the failure or provide a credit of the charges paid to Lenovo for the defective portion of the Services. Such corrective action shall be Customer's sole remedy for a breach of this Section 6.1.
- 6.2 **Warranty for Third Party Products:** Lenovo offers no warranty in respect of Third Party Products under this Agreement. Where the supplier or producer of any Third Party Product offers its own warranty, and to the extent that Lenovo is free to do so, Lenovo will upon request endeavor to transfer associated warranty service and other rights to Customer, subject always to the applicable Third Party's terms and conditions.
- 6.3 **Warranty for Programs:** With respect to any Programs delivered under this Agreement, the applicable warranty terms, if any, are set forth in the specific Program License terms.



**6.4 Specific Exclusions:** Except as otherwise agreed to in a Transaction Document, the warranties in this Section 6 (Warranties) and any Attachment hereto are made to and for the benefit solely of the specific buyer (whether Customer or the applicable Customer Affiliate) under this Agreement and are non-transferable. The warranties stated in this Agreement shall not apply to any Product or Service: (i) that: (a) has been subjected to misuse, accident, unauthorized modification, improper installation, damage or mishandling, or rendered inoperable due to willful or negligent acts or omissions; (b) has been operated in an unsuitable physical or operating environment or contrary to the applicable documentation published by Lenovo; (c) has been subjected to natural disasters, power surges or discharge, or unauthorized maintenance; or (d) is incapable of being tested by Lenovo under its normal test conditions; or (ii) that is sold for beta, evaluation, testing or demonstration purposes. Lenovo shall not be liable for claims arising from Customer's, its Affiliates' or their subcontractors', or any unauthorized Third Party's misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use of the Products or Services. Except as expressly provided in an Attachment or Transaction Document, the warranties stated in this Agreement also: (x) do not include any technical support, such as assistance with "how-to" questions and those regarding Product set-up and installation; and (y) shall be voided by the removal or alteration of identification labels on a Product or its parts. Except as stated in a Transaction Document, in no event shall the warranties stated in this Agreement include any Lenovo responsibility for: (A) uninterrupted or error-free operation of any Product; (B) correction of any or all Program code defects; or (C) any loss of, or damage to, data caused by a Product.

**6.5 General Exclusions:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH UNDER THIS SECTION 6 (WARRANTIES) AND ANY ATTACHMENT HERETO ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, WHICH LENOVO HEREBY EXPRESSLY DISCLAIMS. UNLESS OTHERWISE EXPRESSLY SPECIFIED, ALL SOFTWARE, PRODUCTS, SERVICES, SUPPORT AND ALL THIRD PARTY PRODUCTS AND SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, AND LENOVO MAKES NO WARRANTY THAT ANY PRODUCT WILL OPERATE ON AN UNINTERRUPTED OR ERROR-FREE BASIS. THIRD PARTY MANUFACTURERS, SUPPLIERS, DEVELOPERS, SERVICE PROVIDERS, LICENSORS OR PUBLISHERS MAY SEPARATELY PROVIDE THEIR OWN WARRANTIES TO CUSTOMER.

## **7 Customer Responsibilities.**

7.1 As may be reasonably required by Lenovo to deliver the Products and Services under the Transaction Document, Customer shall provide Lenovo with sufficient and safe access (including remote access authorized by Customer) to Customer's facilities, systems, information, personnel, and resources, all at no charge to Lenovo. Lenovo shall not be 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.

7.2 If Customer is making any facilities, software, hardware or other resources available to Lenovo in connection with this Agreement: (i) Customer shall obtain any Third Party approvals, consents, licenses or permissions related to these resources that may be necessary for Lenovo, or its Affiliates, and/or their subcontractors, assignees, relevant service providers, distributors and resellers to perform the Services; (ii) Lenovo shall be relieved of any obligation that is adversely affected by Customer's failure promptly to obtain any of the foregoing; and (iii) Customer shall reimburse Lenovo for any costs and other amounts that Lenovo may incur related to Customer's failure to obtain any of the foregoing.

7.3 Customer will at all times remain responsible for the implementation and management of its own data backup and recovery arrangements for any data stored on Customer's Products.

7.4 Unless otherwise agreed in this Agreement or a Transaction Document, Customer is responsible for: (i) all of its data, and the content of any database stored on the Products or that it makes available to Lenovo in connection with this Agreement; and (ii) the selection and implementation of procedures and controls regarding access to its data, and the security, encryption, protection from unauthorized use, and transmission of data. Lenovo's responsibilities regarding any such data or database, including any obligations related to data subjects' rights or the confidentiality and security of the data, if any, will be set forth in the specific Transaction Document applicable to the particular Service transactions, and are subject to the provisions of Section 12 of this Attachment B (Limitation of Liability).

## **8 Export Regulations.**



- 8.1 Any use, export, re-export, or transfer in-country, either directly or indirectly, of Products, Programs and technical data supplied by Lenovo under this Agreement is subject to applicable export laws and regulations, including without limitation those of the United States and the European Union. Customer is responsible for compliance with all applicable export laws and regulations when using, exporting, re-exporting, or transferring in-country, directly or indirectly, any such Product, Program or technical data. Customer shall defend, indemnify and hold Lenovo and its Affiliates harmless from any claim, damage, liability or expense (including but not limited to reasonable attorneys' fees, costs of investigation, and costs of defense) arising out of or in connection with any violation of this Section 8.
- 8.2 This Agreement shall immediately terminate in the event Customer is listed as a restricted party on any sanctions list including, but not limited to, the United Nations Sanctions List, United States Treasury Department's Office of Foreign Asset Control Specially Designated National List; and the United States Department of Commerce's Denied Parties List, Entity List, or Unverified List. Lenovo shall have no further obligations under this Agreement until Customer is no longer designated a restricted party.
- 9 Force Majeure.** Except for payment obligations, neither Party shall be liable to the other for any failure or delay in the performance of its obligations, to the extent such failure or delay is caused by: fire, flood, earthquakes, or other elements of nature; acts of war; terrorism, riots, strikes, labor stoppages, civil disorders, rebellions or revolutions; epidemics, communication line or power failures; governmental laws, court orders or regulations; or any other cause beyond its reasonable control.
- 10 Intellectual Property Rights.**
- 10.1 Lenovo and its suppliers retain ownership of all their pre-existing intellectual property as well as intellectual property rights that were developed outside of this Agreement and any modifications or enhancements of such intellectual property that may be made under this Agreement. To the extent they are embedded in any Materials, such intellectual property is licensed in accordance with their separate licenses provided to or agreed with Customer.
- 10.2 As between the Parties, Lenovo and its suppliers shall own all intellectual property rights in and to the Materials created as part of a Services transaction and the Programs. Lenovo grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform and distribute copies of these Materials only to Customer's Affiliates.
- 10.3 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 10.
- 10.4 Each Party grants the other only the licenses and rights expressly specified in this Agreement. Unless agreed by the Parties in a separate license agreement, no other licenses or rights to Products (including licenses or rights under any patent, copyright, trademark or any other intellectual property right) are granted either directly, by implication, or otherwise by either Party.
- 10.5 The rights and licenses granted to Customer under this Agreement may be terminated by Lenovo if Customer fails to fulfil its applicable payment obligations.
- 10.6 Unless otherwise agreed, neither Party grants the other the right to use its or any of its Affiliates' trademarks, trade names, logos or other designations in any promotion or publication without prior written consent.
- 11 Intellectual Property Indemnification.**
- 11.1 If a Third Party files a lawsuit against Customer claiming that a Lenovo-branded Product infringes that party's patents or copyrights (hereinafter referred to as a "**Claim**" for the purposes of this Section 11, Lenovo will indemnify Customer against that Claim at Lenovo's expense. At Lenovo's option, Lenovo may also defend Customer against that Claim at Lenovo's expense.
- 11.2 Lenovo's obligations under this Section 11 are conditioned on the following: (1) Customer promptly notifies Lenovo in writing of the Claim; (2) if Lenovo elects to defend, Lenovo will solely control the conduct of the defense and any settlement of the Claim and Customer must fully and timely cooperate with Lenovo and provide Lenovo with all reasonably requested authority, information and assistance in connection with defense of the Claim; and (3) Customer is and remains in compliance with the terms of this Agreement, including Customer's obligations under this Section 11. Lenovo will not be responsible for any costs, expenses or compromise incurred or made by Customer in connection with a Claim without Lenovo's prior written consent.



- 11.3 If such a Claim is made or appears likely to be made, and Customer maintains an inventory of Products, Customer shall permit Lenovo, in Lenovo's sole discretion, to: (1) enable Customer to continue to use and sell the Products; (2) modify the Products so that they are non-infringing; (3) replace the Products with non-infringing, functionally-equivalent products; or (4) provide a credit to Customer equal to the net book value of any Products that Customer promptly returns to Lenovo at its written request.
- 11.4 Lenovo shall have no obligation regarding any Claim based on: (1) anything Customer or a Third Party on Customer's behalf provides which is incorporated into, or combined with a Product; (2) modification of a Product by Customer or a Third Party on Customer's behalf; (3) the combination, operation, or use of a Product with any products not provided by Lenovo as a system, or the combination, operation, or use of a Product with any product, data, apparatus or business method that Lenovo did not provide; (4) Lenovo's compliance with Customer's specifications or requirements; or (5) infringement by a Third Party product alone and used by Customer, as opposed to its combination with Products; or (6) any standard essential patent ((1) through (6) are collectively the "**Customer Obligations**"). Customer will defend and indemnify Lenovo for all costs and damages arising from infringement claims against Lenovo based upon the Customer Obligations provided that (a) Lenovo promptly notifies Customer in writing of such claim; (b) Customer will solely control the conduct of the defense and any settlement of such claim and Lenovo must fully and timely cooperate with Customer and provide Customer with all reasonably requested authority, information and assistance in connection with defense of the claim; and (c) no settlement of such claim shall be made without Lenovo's prior written consent if the settlement would result in a payment from Lenovo or in any ongoing obligation or restriction on Lenovo or a Product.
- 11.5 The foregoing is Lenovo's entire obligation to Customer, and Customer's exclusive remedy, regarding any Claim.

## 12 Limitation of Liability

- 12.1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER ENTERPRISE SHALL BE LIABLE TO THE OTHER ENTERPRISE FOR ANY OF THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY OR FORESEEABLE AND WHETHER THE CLAIM ARISES IN CONTRACT, TORT, (INCLUDING GROSS NEGLIGENCE WHERE LEGALLY PERMISSIBLE) OR OTHERWISE: (1) THIRD-PARTY CLAIMS FOR DAMAGES; (2) LOSS OF, OR DAMAGE TO, DATA; (3) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES; (4) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS; (5) LOSS OF USE; OR (6) WASTED MANAGEMENT TIME.
- 12.2 THE MAXIMUM CUMULATIVE LIABILITY OF EITHER ENTERPRISE TO THE OTHER ENTERPRISE FOR ALL ACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ALL TRANSACTION DOCUMENTS ISSUED HEREUNDER, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES, NOT TO EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER AND THE ENTERPRISE OF WHICH IT IS A PART TO LENOVO AND THE ENTERPRISE OF WHICH IT IS A PART FOR THE APPLICABLE TRANSACTION DOCUMENT GIVING RISE TO THE LIABILITY.
- 12.3 THE PROVISIONS OF SECTIONS 12.1 AND 12.2 OF THIS ATTACHMENT B SHALL ALSO LIMIT THE LIABILITY OF LENOVO, ITS SUBCONTRACTORS, SUPPLIERS AND PROGRAM DEVELOPERS, COLLECTIVELY, TO CUSTOMER AND THE ENTERPRISE OF WHICH IT IS A PART.
- 12.4 THE PROVISIONS OF SECTIONS 12.1 AND 12.2 OF THIS ATTACHMENT B SHALL NOT APPLY TO EITHER PARTY'S OBLIGATIONS UNDER SECTION 11 OF THIS ATTACHMENT B (INTELLECTUAL PROPERTY INDEMNIFICATION).
- 12.5 THE PROVISIONS OF THIS SECTION 12 SHALL NOT APPLY TO THE EXTENT PREVENTED OR RESTRICTED BY MANDATORY APPLICABLE LAW (INCLUDING WITHOUT LIMITATION IN RELATION TO FRAUD) THAT CANNOT BE AMENDED OR EXCLUDED BY CONTRACTUAL WAIVER.
- 13 **Assignment.** Except as otherwise set forth in this Agreement, neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party. Neither Party shall unreasonably withhold, condition or delay such consent. The assignment of this Agreement, in whole or in part by either Party to any of its Affiliates, or to a successor organization by merger or acquisition, does not require the consent of the other Party unless the proposed assignee of Customer is a competitor of Lenovo. Lenovo may assign its rights to receive payments under this Agreement without Customer's consent.



- 14 Governing Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, U.S.A., without regard to its or any other jurisdiction's conflict of laws principles. All claims or disputes arising out of or in connection with this Agreement shall be brought exclusively in a court located in New York, NY, U.S.A. Each party hereby expressly waives (on behalf of itself and on behalf of any person or entity claiming through such party) any right to a trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or in any manner connected with this Agreement or the subject matter hereof.
- 15 Miscellaneous.**
- 15.1 Unless otherwise agreed herein or otherwise, additional or different terms, Product descriptions, statements of work or similar documents shall only become part of this Agreement if agreed in a signed written document executed by the Parties, in particular where the provisions of this Agreement are incorporated or referenced. Additional or different terms in any other written communication without the written consent of Lenovo, such as on a purchase order, are void.
- 15.2 In the event, but only to the extent, of any conflict between the provisions of this Agreement, and those of any of its Attachments or any other document incorporated into this Agreement, the following order of precedence shall apply:
- (1) any subsequent Transaction Document created under, and referring to, this Agreement shall prevail as to the specific Products or Services referenced therein; provided that, to the extent there is any conflict among Transaction Documents, the most recently executed Transaction Document will prevail over any other previously executed Transaction Documents;
  - (2) any Affiliate Agreement created under, and referring to, this Agreement shall prevail solely as to matters of local law or as to the specific Products or Services referenced therein;
  - (3) any Attachment to this Agreement;
  - (4) these General Terms.
- 15.3 The Parties shall endeavor in good faith to amicably resolve any dispute arising out of or in connection with this Agreement and will cooperate to escalate any disputes to their management teams, as appropriate.
- 15.4 Customer may not bring an action arising out of or related to this Agreement more than one (1) year after the cause of action arose. The rights and obligations of each Party are valid only in the jurisdiction in which the transaction is performed or, if Lenovo agrees, where the Product is placed in productive use, except that all licenses are valid as specifically granted. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- 15.5 Notices and other written communications are to be sent to the physical, e-mail or facsimile address specified in an applicable Transaction Document. Electronic mail can be used to send and receive communications in connection with this Agreement. All such communications shall be considered a signed writing. An identification code or "user ID" contained in an electronic document shall be sufficient to verify the sender's identity and the document's authenticity.
- 15.6 The Parties are independent contractors. Neither this Agreement nor any transaction hereunder shall create the relationships of principal and agent, joint venturers, partners, or employer or employee as between Customer and Lenovo or their respective Affiliates.
- 15.7 Either Party may enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- 15.8 Except as expressly set forth in this Agreement, no Third-Party beneficiaries are intended to this Agreement and to the fullest extent permitted by applicable law: (i) no right or cause of action arises or is created, irrespective of whether in contract, tort, under the law or otherwise, in favor of any Third Party under this Agreement or any transaction hereunder; and (ii) no Third Party shall have any right to enforce any of the terms and conditions of this Agreement or of any agreement associated with any transaction hereunder, except that Lenovo's suppliers may avail themselves of Section 12 of this Attachment B (Limitation of Liability).
- 15.9 Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations. Customer may not and shall not rely on Lenovo for any of the foregoing.



- 15.10 Where approval, acceptance, consent or similar action by Customer is required under this Agreement, such action will not be unreasonably delayed, conditioned or withheld.
- 15.11 The English versions of this Agreement and the Transaction Documents, regardless of whether a translation in any other language is or shall be made, shall be the only authentic ones. Any translation of this Agreement or a Transaction Document in another language prepared for any reason shall be a non-binding accommodation of no legal effect, and the English version of this Agreement or a Transaction Document, including any amendments thereto, shall govern.
- 15.12 This Agreement may be amended solely by a writing signed by both Parties.

[End of Attachment B]

**ATTACHMENT C**  
**TruScale Program Terms**

**1 TruScale Program.** Lenovo offers certain Services, Products and Programs as part of the TruScale Program, which are subject to the following terms and will be described further in an applicable Transaction Document.

**1.1 Services Terms.**

- (1) During the applicable Transaction Term, Lenovo and/or its subcontractors or Affiliates will provide Customer with the Services described in the relevant Transaction Document.
- (2) Each Party shall designate a project manager to serve as the Party's primary point of contact for all communications with respect to the applicable Transaction Document.

**1.2 Product Terms.**

- (1) During the Transaction Term, Lenovo will furnish the Products to Customer listed in the applicable Transaction Document.
- (2) Customer shall carefully examine each delivered Product (together with any and all instructions provided by Lenovo) immediately upon taking delivery of each Product. Customer shall also make all necessary checks and controls of the Product's functions, performance and safety standards. If upon examination any delivered Product is found to have defaults or defects, or if the delivery of a Product is delayed, Customer shall immediately notify Lenovo in writing. If Customer fails to notify Lenovo in writing of any defaults, defects or delays within seven (7) days following delivery of such Product, Customer will be deemed to have accepted such Product.
- (3) Customer shall use all Products in a commercially reasonable manner in connection with the Services provided by Lenovo to Customer and solely during the Transaction Term. Customer shall at its own expense keep each Product secure, safe and in good working order, free of defects in appearance and condition, other than normal wear and tear. If Customer has to repair or replace any Product, Customer shall promptly notify Lenovo. Customer shall not otherwise physically modify any Product or permanently affix or combine the Product with any other item without Lenovo's prior approval.
- (4) Customer shall only use the Products in the location(s) specified in the applicable Transaction Document and shall not move the Products to a different location without Lenovo's prior written approval. However, Customer may not change the location to a different country from the country specified in the Transaction Document. Customer agrees that it will be liable for any tax increases resulting from any such agreed relocation or change.
- (5) Lenovo may, without prior notice to Customer and for valid reasons, change any Product, or component or part of any Product, provided that the substituted Product or component or part provides equal or better performance. The "Products" include any repaired or replacement Product provided by Lenovo hereunder.

**1.3 Program Terms.** Hardware Products provided by Lenovo may include installed or pre-loaded Programs, and Customer may also receive separately provided Programs for use with Products. Customer shall use any such Programs in accordance with the terms of the applicable Program license agreement. Where required by the Third-Party Program supplier, Customer shall execute a separate license agreement with the Third-Party supplier or owner of the Program. Customer acknowledges and agrees that Lenovo has no obligation under any such Third-Party license agreement(s). Any such Program license agreement will be terminable according to its own terms.

**1.4 Monitoring.** Lenovo reserves the right to include Compiling Software in the Products. "Compiling Software" means any Program, which Lenovo provides in relation to a transaction for use by Lenovo for the purpose of

compiling and transmitting to Lenovo device-specific performance information from the Product. Lenovo will preload and configure Compiling Software on the Products to enable Lenovo to determine each Product's level of utilization and status. The Compiling Software shall not process any data stored on the Products by Customer or end users. The Compiling Software will compile device status, health, and performance data and transmit that to Lenovo in order to perform this Agreement, including but not limited to the calculation of billing charges. Customer shall not interfere with the Compiling Software. Lenovo shall have the right, on reasonable notice, to inspect the locations containing the Products.

**2 Fees and Payment.** As more fully set forth in the relevant Transaction Document, Customer shall pay: (i) the Fees due for the Product and Services; and (ii) other charges (if any) stated in the Transaction Document. Invoices may be presented in arrears or in advance, which will be set forth in the applicable Transaction Document. No discount, quantity entitlement, or promotion applies, unless expressly agreed in an applicable Transaction Document. Lenovo reserves the right to appoint a third party as fiscal agent for purposes of billing and collecting Fees and payments from Customer.

**3 Term; Termination.**

**3.1 Term.** The Transaction Term for each transaction commences on execution of the initial Transaction Document and shall continue for the term set therein unless otherwise terminated in accordance with this Agreement and/or the applicable Transaction Document. Thereafter, and unless otherwise agreed to in the applicable Transaction Document, the Transaction Term shall automatically renew for an additional twelve (12) months unless either Party notifies the other of non-renewal at least sixty (60) days prior to the expiration of the then current Transaction Term. The rates during each renewal term will be subject to increase, as mutually agreed by the Parties prior to the start of a renewal term. The "**Transaction Term**" shall include any renewals or extensions thereof.

**3.2 Termination by Either Party.** Either Party may terminate the Agreement and/or any Transaction Document with immediate effect or on a specified date by giving written notice of such termination to the other Party if the other Party fails to perform its material obligations arising under the Agreement, and, if capable of being remedied, the other Party fails to remedy the breach within forty-five (45) days of receipt of the other Party's written notice to do so.

**3.3 Termination by Lenovo.** Lenovo may immediately terminate this Agreement and/or any Transaction Document upon written notice if: (1) Customer fails to pay the Fees in accordance with the Agreement; (2) Customer fails at any time to procure or maintain any insurance coverage required under the Agreement; (3) any financial statements or information or any other representation or warranty given to Lenovo proves to have been materially false or misleading as of the date it was provided by Customer; or (4) Customer is subject to an Insolvency Event. Upon such an occurrence, Lenovo may alternatively or also exercise any other right or remedy otherwise available to it at law or in equity.

**3.4 Effect of Termination.** Upon termination of the Agreement or removal of any Products or Services from the scope of the Agreement (or an applicable Transaction Document):

- (1) All licenses and rights granted hereunder to Customer shall immediately cease and Lenovo shall have no further obligations to provide the applicable Products, Services or Programs;
- (2) Customer shall return all applicable Products in at least as good order and condition as when originally delivered, normal wear and tear excepted. If the Products are returned damaged beyond ordinary wear and tear, Customer agrees to pay Lenovo the diminution in value or, at Lenovo's option, the cost of repair. In the event that Customer fails to return any Product, Customer also agrees to pay the then-fair market value of that Product, as determined at the time in the absolute discretion of Lenovo.

- (3) Unless the Customer has separately procured asset recovery Services from Lenovo for the applicable Product(s), Customer is responsible for permanently removing all customer data (including but not limited to confidential information, password protection, encryption, data backup, etc.) as well as any Customer installed software prior to any Product return. Customer will confirm in writing that these obligations have been fulfilled by means of a declaration to be delivered to Lenovo upon any such Product return or as otherwise directed in Lenovo's request notice. If Customer returns any Product – or Lenovo retrieves any Product pursuant to the next clause – with any Customer data or software installed or stored on it, Customer agrees that Lenovo or its representatives may permanently delete such materials without obligation or liability. In no event shall Lenovo or its representatives have any risk or liability for data or software loss hereunder.;
- (4) Lenovo is hereby granted the right, with or without court order, to enter upon any premises where relevant Products are located and to repossess and remove the same, all without liability for damage to such premises or by reason of such entry or repossession; provided, however, that Lenovo may only exercise such right if Customer does not return the applicable Products to Lenovo's designated location within ten (10) business days of termination of the applicable Transaction Document; and
- (5) For each month or partial month that Customer delays in returning the Products to Lenovo, Lenovo may charge the prorated Fees for such period under the applicable Transaction Document, provided such fees shall increase by five percent (5%) over the prior year's fees.

**3.5 Termination Fee.** Customer acknowledges and agrees that the payment of the minimum fees specified in the Transaction Document are non-cancellable, absolute and unconditional under all circumstances for the Transaction Term. Accordingly, in the event of termination of a Transaction Document for any reason, Customer will be obligated to pay Lenovo the "**Termination Fee**" specified in the applicable Transaction Document. Such Termination Fee is not subject to any abatement, deferment, reduction, set-off, counterclaim, recoupment or defense for any reason whatsoever.

#### **4 Additional Customer Obligations.**

- 4.1 Customer shall promptly furnish to Lenovo Customer's annual financial statements, and such other financial statements as Lenovo may reasonably request. Customer will also provide such other information as may be required by Lenovo and its Affiliates to comply with their regulatory obligations (e.g., "Know Your Customer" laws and regulations). Customer represents, warrants and covenants that all applications, statements, financial reports and other information which it has submitted or will submit to Lenovo are true and correct in all material respects as of the date submitted, and that no such information omits any material fact.
- 4.2 Customer represents, warrants and covenants that: (a) the execution, delivery and performance of this Agreement: (i) have been authorized by all necessary corporate actions; (ii) do not violate the terms of any law, regulation, or court order to which Customer is subject or the terms of any material agreement to which Customer or any of its assets may be subject; and (iii) are not subject to the consent or approval of any Third Party; (b) this Agreement constitutes the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms; (c) Customer is not subject to any pending or threatened litigation or governmental action which could interfere with Customer's performance of its obligations hereunder; and (d) Customer is and will remain in full compliance with all applicable laws, regulations and ordinances.
- 4.3 As between the Parties, Customer is responsible for the performance of all software and applications implemented on, or system changes to, the Products by or on behalf of Customer. Customer acknowledges and agrees that Lenovo shall not be responsible for failures of the Products or Services, and shall have no liability to Customer or any Third Party, to the extent caused by such software, applications or actions by or on behalf of Customer.

- 4.4 Customer assumes liability for, and shall (at Lenovo's option) defend, indemnify (on an after-tax basis), and hold harmless Lenovo, Lenovo Affiliates, assignees and their respective officers, directors, employees, agents, representatives and successors (each an "Indemnitee") from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable and documented attorneys' fees (collectively, "Claims"), of whatsoever kind and nature, arising out of any breach by Customer of this Agreement, or arising out of the possession, use, condition, operation, selection, delivery, leasing, ownership or return of any Product, regardless of where, how and by whom operated, but excluding any Claim determined by the final decision of a court of competent jurisdiction to have resulted solely and directly from the gross negligence or willful misconduct of Lenovo or any other Indemnitee. The Indemnitee's prior written approval shall be required for any settlement that reasonably can be expected to require an affirmative obligation of, or result in any ongoing liability for, such Indemnitee. Customer agrees that its obligations under this Section 4.4 include the responsibility to indemnify each Indemnitee against all Claims, whether based in contract, tort (including negligence), strict liability or otherwise. Nothing contained in this Agreement shall authorize Customer or any other person to operate any Product so as to incur or impose any liability or obligation for or on behalf of Lenovo or any of its Affiliates or any Assignee.
- 4.5 Unless Lenovo has agreed in writing that the Customer may self-insure, the Customer shall, from the date the Products are delivered until they are returned to Lenovo, insure the Products (with a licensed insurance carrier rated A+ or better by A.M. Best Company (or its successor)) against risk of all loss or damage including, without limitation, loss by fire, theft and such other risks of loss as are customarily insured against with respect to products the same as, or similar to the Products. Products must be insured for not less than their full replacement value, and shall name Lenovo as loss payee. Customer agrees that it will be solely responsible for ensuring that its agents (including contractors and subcontractors) obtain and maintain the same types and amount of coverages as required of Customer herein, or Customer shall be required to obtain its own coverage to insure such agents. The Customer agrees that all amounts due to the Customer from its insurance policies relating to Products is held in trust for Lenovo and shall be paid to Lenovo on demand. Upon Lenovo's request, Customer will deliver to Lenovo certificates of insurance that: (a) evidence the insurance, including waivers of subrogation, as set forth above; (b) name Lenovo as an additional insured or loss payee, as its interest may appear; (c) provide that Lenovo shall be provided not less than thirty (30) days' notice of any termination, expiration or change in coverage; and (d) include an effective date not later than the relevant Transaction Document effective date.

## 5 Title to Products.

As between the Parties, Lenovo shall remain the owner of all right, title and interest in the Products and Programs under this Agreement except the right to access and use the Products and Programs as part of the Services during the applicable Transaction Term. Neither this Agreement nor any individual Transaction Document will constitute a sale to Customer of, or the retention by Customer of any security interest in, any Product or Program. All Programs are licensed and not sold hereunder. Except as expressly pre-approved by Lenovo in writing, Customer shall not sell, let, dispose of, part with possession of, create a security interest, lien or encumbrance over the Products or Programs, or allow anyone else to do the same. Customer irrevocably authorizes Lenovo and its assigns to file financing statements or other similar filings to secure Lenovo and its assigns' title to the Products and Programs. Customer shall not: (i) remove or obscure any identifying markings on the Products; (ii) permit any Third Party to support the Products without Lenovo approval; or (iii) do anything inconsistent or incompatible with Lenovo's ownership of the Products.

[End of Attachment C]

## ATTACHMENT A Warranty Service Information (Personal Computers)

## 2 General

If a defect in material or workmanship is discovered in a Lenovo branded Hardware Product during the warranty period, warranty Service may be obtained by contacting Lenovo or a Lenovo-approved Service provider (“**Service Provider**”). Repair, correction and replacement in the manner described below shall constitute fulfillment of all of Lenovo’s obligations under the Lenovo Limited Warranty. A list of Service Providers and their telephone numbers is available through [www.lenovo.com/support/phone](http://www.lenovo.com/support/phone).

Warranty service may not be available in all locations and may differ from location to location. Charges may apply outside a Service Provider’s normal Service area. Contact a local Service Provider for information specific to Customer’s location.

## 3 Customer Responsibilities for Warranty Service

Before warranty Service is provided, Customer must take the following steps:

- follow the Service request procedures specified by the Service Provider;
- backup or secure all programs and data contained in the Product;
- authorize the Service Provider to access the systems and system relevant data necessary to provide warranty Services under this Agreement;
- provide the Service Provider with sufficient, free, and safe access to Customer facilities to perform Service;
- remove all data, including confidential information, proprietary information and personal information, from the Hardware Product or, if Customer is unable to remove any such information, modify the information to prevent its access by another party or so that it is not personal data under applicable law. The Service Provider shall not be responsible for the unintentional loss or disclosure of any data, including confidential information, proprietary information, or personal information, on a Hardware Product returned or accessed for warranty service;
- remove all features, parts, options, alterations, and attachments not covered by the warranty;
- ensure that the Hardware Product or part is free of any legal restrictions that prevent its replacement;
- if Customer is not the owner of a Hardware Product or part, obtain authorization from the owner for the Service Provider to provide warranty Service.

## 4 What the Service Provider Will Do to Correct Problems

When Customer contacts a Service Provider, Customer must follow the specified problem determination and resolution procedures.

The Service Provider will attempt to diagnose and resolve the problem by telephone, e-mail or remote assistance. The Service Provider may direct Customer to download and install designated software updates.

Some problems may be resolved with a replacement part to be installed by Customer called a “Customer Replaceable Unit” (“**CRU**”). If so, the Service Provider will ship the CRU to Customer for installation.

If the problem cannot be resolved over the telephone; through the application of software updates or the installation of a CRU, the Service Provider will arrange for service under the Type of Warranty Service designated for the Hardware Product as specified in the table below.

If the Service Provider determines that it is unable to repair the Hardware Product, the Service Provider will replace it with one that is at least functionally equivalent.

If the Service Provider determines that it is unable to either repair or replace the Hardware Product, Customer's sole remedy under this Limited Warranty is to return the Hardware Product to the place of purchase or to Lenovo for a prorated refund of the purchase Price (unless the Customer is entitled to a complete refund under applicable mandatory law).

## 5 Replacement Products and Parts

When warranty Service involves the replacement of a Hardware Product or part, the replaced Hardware Product or part becomes Lenovo's property and the replacement Hardware Product or part becomes Customer's property. Only unaltered Lenovo Hardware Products and parts are eligible for replacement. The replacement Hardware Product or part provided by Lenovo may not be new, but it will be in good working order and at least functionally equivalent to the original Hardware Product or part. The replacement Hardware Product or part shall be warranted for the balance of the warranty period remaining on the original Hardware Product.

## 6 What this Warranty Does not Cover

This warranty does not cover the following:

- uninterrupted or error-free operation of a Hardware Product;
- loss of, or damage to, Customer data by a Hardware Product;
- any software programs, whether provided with the Hardware Product or installed subsequently;
- failure or damage resulting from misuse, abuse, accident, modification, unsuitable physical or operating environment, natural disasters, power surges, improper maintenance, or use not in accordance with the Hardware Product information materials;
- damage caused by a non-authorized Service provider;
- failure of, or damage caused by, any Third Party products, including those that Lenovo may provide or integrate into the Lenovo Hardware Product at Customer's request;
- any technical or other support, such as assistance with "how-to" questions and those regarding a Product set-up and installation; and
- Hardware Products or parts with an altered identification label or from which the identification label has been removed.

If required, the Service Provider will provide repair or exchange Service depending on the type of warranty Service specified for the Hardware Product and the available service. Scheduling of Service will depend upon the time of Customer's call, parts availability, and other factors.

## 7 Types of Warranty Service

### 7.1 Customer Replaceable Unit (CRU) Service

Under "**CRU Service**", a Service Provider will ship CRUs to Customer for installation by Customer. CRU information and replacement instructions are shipped with the Hardware Product and are available from Lenovo at any time upon request. CRUs that are easily installed by Customer are called "Self-Service CRUs". "Optional-Service CRUs" are CRUs that may require some technical skills and tools. Installation of Self-Service CRUs is Customer's responsibility. Customer may request that a Service Provider install Optional-Service CRUs under one of the other types of warranty Service designated for the Hardware Product. An optional Service offering may be available for purchase from a Service Provider or Lenovo under which Self-Service CRUs would be installed for Customer. Customer may find a list of CRUs and their designation in the publication that ships with the Hardware Product or at [www.lenovo.com/CRUs](http://www.lenovo.com/CRUs). The requirement to return a defective CRU, if any, will be specified in the materials shipped with a replacement CRU. When return is required: (1) return instructions, a prepaid return shipping label, and a container will be included with the replacement CRU; and (2) Customer may be charged for the replacement CRU if the Service Provider does not receive the defective CRU within thirty (30) days of Customer's receipt of the replacement CRU.

## 7.2 On-Site Service

Under “**On-Site Service**”, a Service Provider will, at its discretion, either repair or exchange the Hardware Product at Customer’s location. Customer must provide a suitable working area to allow disassembly and reassembly of the Hardware Product. Some repairs may need to be completed at a Service center. If so, the Service Provider will send the Hardware Product to the Service center at its expense.

## 7.3 Courier or Depot Service

Under “**Courier or Depot Service**”, the Hardware Product will be repaired or exchanged at a designated Service center, with shipping at the expense of the Service Provider. Customer is responsible for disconnecting the Hardware Product and packing it in a shipping container provided to Customer for return of the Hardware Product to a designated Service center. A courier will pick up the Hardware Product and deliver it to the designated Service center. The Service center will return the Hardware Product to Customer at its expense.

## 7.4 Customer Carry-In Service

Under “**Customer Carry-In Service**”, the Hardware Product will be repaired or exchanged after Customer delivers it to a designated Service center at Customer’s risk and expense. After the Hardware Product has been repaired or exchanged, it will be made available for collection by Customer. Failure to collect the Hardware Product may result in the Service Provider disposing of the Hardware Product as it sees fit, with no liability to Customer.

## 7.5 Mail-In Service

Under “**Mail-In Service**”, the Hardware Product will be repaired or exchanged at a designated Service center after Customer delivers it at Customer’s risk and expense. After the Hardware Product has been repaired or exchanged, it will be returned to Customer at Lenovo’s risk and expense, unless the Service Provider specifies otherwise.

## 7.6 Customer Two-Way Mail-In Service

Under “**Customer Two-Way Mail-In Service**”, the Hardware Product will be repaired or exchanged after Customer delivers it to a designated Service center at Customer’s risk and expense. After the Hardware Product has been repaired or exchanged, it will be made available to Customer for return shipping at Customer’s risk and expense. If Customer fails to arrange return shipment, the Service Provider may dispose of the Product as it sees fit, with no liability to Customer.

## 7.7 Product Exchange Service

Under “**Product Exchange Service**”, Lenovo will ship a replacement Hardware Product to Customer’s location. Customer shall be responsible for its installation and verification of its operation. The replacement Hardware Product becomes the property of Customer in exchange for the failed Hardware Product, which becomes the property of Lenovo. Customer shall pack the failed Hardware Product in the shipping carton used to ship the replacement Hardware Product and return it to Lenovo. Transportation charges, both ways, shall be at Lenovo’s expense. If Customer fails to use the carton in which the replacement Hardware Product was received, Customer may be responsible for any damage to the failed Hardware Product occurring during shipment. Customer may be charged for the replacement Hardware Product if Lenovo does not receive the failed Hardware Product within thirty (30) days of Customer’s receipt of the replacement Hardware Product.

[End of Attachment A]

## ATTACHMENT B

### Warranty Service Information (Servers and Storage Products)

#### 1 GENERAL

If a defect in material or workmanship is discovered in a Machine during the warranty period, warranty service may be obtained by contacting Lenovo or a Lenovo approved service provider (a “**Service Provider**”). Repair, correction and replacement in the manner described below shall constitute fulfillment of all of Lenovo’s obligations under the Lenovo Limited Warranty. The performance of warranty service is subject to the following: (i) the time Customer’s request for service is received; (ii) Machine technology and redundancy; and (iii) availability of parts. Customer should contact their local Lenovo representative, or the Service Provider performing services on behalf of Lenovo, for country and location specific information.

#### 2 TYPES OF WARRANTY SERVICE

#### 3 Customer Replaceable Unit (“CRU”) Service

Under “CRU Service”, the Service Provider will provide replacement CRUs to Customer for installation by Customer. CRU information and replacement instructions are shipped with each Machine and are available from Lenovo at any time upon request. Each CRU is designated either as “Tier 1” (mandatory) or “Tier 2” (optional). Customer is responsible for the installation of all Tier 1 CRUs. If Service Provider installs a Tier 1 CRU at Customer’s request, Customer will be charged for the installation. Customer may install a Tier 2 CRU or request Service Provider to install it, at no additional charge, under the type of warranty service designated for Customer’s Machine. Customer may find a list of CRUs and their designation in the publication that ships with the Machine or at [www.lenovo.com/CRUs](http://www.lenovo.com/CRUs). Any requirement to return a defective CRU to Service Provider will be specified in the materials shipped with the replacement CRU. When such return is required by Service Provider: (1) return instructions and a container will be shipped with the replacement CRU; and (2) Customer may be charged for the replacement CRU if Service Provider does not receive the defective CRU within fifteen (15) days of Customer’s receipt of the replacement CRU.

#### 4 CRU and On-site Service

At Lenovo’s discretion, Customer will receive CRU Service or Service Provider, will repair the defective Machine at Customer’s location and verify its operation. Customer must provide suitable working area to allow disassembly and reassembly of the Machine. The area must be clean, well lit and suitable for the purposes of repair. Some repairs may need to be completed at a Service center. If so, the Service Provider will send the Machine to the Service center at its expense.

#### 5 CRU and Courier or Depot Service

At Service Provider’s discretion, Customer will receive CRU Service or Customer will disconnect the defective Machine and make it available for collection arranged by Service Provider. Service Provider will provide Customer with a shipping container for return of Customer’s Machine to a designated Service center. A courier will pick up Customer’s Machine and deliver it to the designated Service center. After repair or exchange, Service Provider will arrange the return delivery of the Machine to Customer’s location. Customer is responsible for installation of the Machine and verification of its operation.

#### 6 CRU and Customer Carry-In or Mail-In Service

At Service Provider’s discretion, Customer will receive CRU Service or Customer will ship (prepaid unless Service Provider specifies otherwise) the defective Machine suitably packaged to a location designated by Service Provider. After Service Provider has repaired or exchanged the Machine, Service Provider will make it available for collection by Customer. In the case of Mail-in Service, Service Provider will return the Machine to Customer at Service Provider’s expense, unless Service Provider specifies otherwise. Customer is responsible for installation of the Machine and verification of its operation.

## 7 CRU and Machine Exchange Service

At Service Provider's discretion, Customer will receive specified CRU Service or Service Provider will initiate shipment of a replacement Machine to Customer's location. Customer must pack the defective Machine into the shipping container that contained the replacement Machine and return the defective Machine to Service Provider. Transportation charges, both ways, shall be paid by Service Provider. Customer may be charged for the replacement Machine if Service Provider does not receive the defective Machine within fifteen (15) days of Customer's receipt of the replacement Machine. Customer is responsible for installation of the Machine and verification of its operation.

## 8 SERVICE LEVELS

The Service levels specified below are only objectives for response time and not to be construed as guarantees. The specified Service level may not be available in all locations worldwide. Charges may apply outside Service Provider's normal Service area. Response times are based on local standard business days and working hours. Unless otherwise specified, all responses are measured from the time the customer contacts Service Provider for problem determination until Service Provider has resolved the problem remotely or scheduled a date for service. Same Business Day Warranty Service (SBD) is based on local standard business days and working hours. Next Business Day Warranty Service (NBD) is on commercially reasonable efforts basis.

Customer is encouraged to use available remote support technologies. Failure to install and use available remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution may result in an increased Service level response time due to resource requirements.

1. Next Business Day (NBD), 9X5
2. Same Business Day (SBD), 9X5
3. Same Day (SD), 24X7

## 9 SERVICE PROVIDER CONTACT INFORMATION

In Canada or the United States: call 1-800-426-7378

In Europe, Middle East, Africa, Asia Pacific, and Latin America countries: contact Lenovo in that country or visit the Lenovo Internet website: <https://support.lenovo.com/us/en>.

[End of Attachment B]