

**Lenovo TruScale™ Terms and Conditions for the TruScale End User
("TruScale Terms & Conditions")**

By executing the Transaction Document (defined below), End User agrees that: (a) these TruScale Terms & Conditions create a binding agreement between End User and Lenovo, in respect of the TruScale Services supplied by Lenovo as specified in a Transaction Document, either purchased direct from Lenovo or through an authorized Lenovo partner ("Reseller"), which terms may be enforced directly by Lenovo; and (b) Lenovo shall not be responsible for: (i) the actions of any Reseller; (ii) any obligation that Reseller may have to End User; or (iii) any Third Party product or service that Reseller may supply to End User. These TruScale Terms & Conditions are effective from the earlier of the date (i) End User executes the Transaction Document; and (ii) Lenovo commenced supply of TruScale Services.

1. Definitions

1.1 "*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.

1.2 "*Business Day*" means a day other than a day at the weekend or a bank holiday or public holiday in the country or territory where the End User is located.

1.3 "*Confidential Information*" means any non-public information which is received under these TruScale Terms & Conditions by one Party from the other and which is clearly marked as "confidential" or in the circumstances would reasonably be deemed to be of a confidential nature, but excludes circumstances where the information was: (i) already in the recipient's possession without obligation of confidentiality at the time of its receipt from the receiving Party; (ii) independently developed by the receiving Party without use of the Confidential Information of the disclosing Party; (iii) 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 these TruScale Terms & Conditions 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.

1.4 "*End User*" means the recipient of the TruScale Services delivered and performed by Lenovo as identified in the Transaction Document.

1.5 "*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.

1.6 "*Insolvency Event*" means any one of the following occurrences: a voluntary or involuntary proceeding by or against a party are instituted in bankruptcy under any insolvency law, a receiver or custodian is appointed for a party, proceedings are instituted by or against a party for corporate reorganization or the dissolution of a party, a party makes an assignment for the benefit of creditors, or substantially all of the assets of a party are seized or attached and not released.

1.7 "*Lenovo*" means Lenovo Global Technology HK Ltd or its applicable Affiliate(s) providing the Products and Services.

1.8 "*Machine Code*" means all code provided for a Product (including, without limitation, a Product's firmware and microcode), excluding code that is licensed under a license agreement other than the terms of these TruScale Terms & Conditions 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.

1.9 "*Party*" means either Lenovo or End User, as applicable.

1.10 "*Product*" means any Lenovo-branded or Third Party hardware or other equipment, including any related Program, which Lenovo provides to End User and as more fully set forth in a Transaction Document.

1.11 "*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.

1.12 "*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 End User, as described in an applicable Transaction Document.

1.13 "*Termination Fee*" means the termination amount specified in the relevant Transaction Document or, where no such amount is specified, the present value amount which is calculated as payments (net of VAT/GST) which, but for the termination, would have been payable by End User under the relevant Transaction Document or accompanying payment schedule as from the date of early termination to the end of the Transaction Term, reduced to a present value as at the date of termination by applying the discount rate to such payments.

1.13 "*Third Party*" means any legal entity or individual person which or who is not subject to the terms and conditions of these TruScale Terms & Conditions, and hence neither a Party nor an Affiliate of a Party.

1.14 "*Transaction Document*" means the statement of work, or equivalent document, between End User and Lenovo or End User and Reseller (as applicable), to which these TruScale Terms & Conditions are attached or are incorporated by reference, and which specify the TruScale Services.

1.15 "*Term*" / "*Transaction Term*" means the term set forth in the Transaction Document.

1.16 "*TruScale Services*" or "*TruScale Program*" is the set of Products, Services and Programs offered to TruScale End Users either through Lenovo or Reseller pursuant to a Transaction Document.

2. TruScale Services - Overview.

2.1 **Service Terms.** Lenovo and/or its subcontractors or Affiliates will provide End User with the Services described in the relevant Transaction Document.

2.2 Product Terms.

(a) During the Transaction Term, Lenovo will furnish the Products to End User listed in the applicable Transaction Document.

(b) End User shall carefully examine each delivered Product (together with any and all instructions provided by Lenovo or Reseller) immediately upon taking delivery of each Product. End User 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, End User shall immediately notify Lenovo in writing. If End User fails to notify Lenovo in writing of any defaults, defects or delays within five (5) Business Days following delivery of such Product, End User will be deemed to have accepted such Product.

(c) End User shall use all Products in a commercially reasonable manner in connection with the Services provided to End User and solely during the Transaction Term. End User 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 End User has to repair or replace any Product, End User shall promptly notify Lenovo. End User shall not otherwise physically modify any Product or permanently affix or combine the Product with any other item without Lenovo's prior approval.

(d) End User 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, End User may not change the location to a different country from the country specified in the Transaction Document.

(e) Lenovo may, without prior notice to End User 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.

(f) **Limitation on Product Locations** The Products may only be used at locations owned or controlled by End User (e.g. End User data centers or co-location facilities) unless otherwise approved by Lenovo. In the event that End User has obtained Lenovo's preapproval to act as a system integrator or

comparable service provider, End User may place the Products in facilities owned or controlled by End User's clients. In all such instances: (a) End User shall remain responsible for ensuring compliance with all terms of the Agreement applicable to the Products; (b) End User shall not make any commitments, representations or warranties on behalf of Lenovo with respect to the Products or Services; and (c) all acts and omissions of End User's personnel, clients and service providers shall be deemed the acts and omissions of End User in connection with the Products and Services hereunder.

2.3 Program Terms. Products provided by Lenovo may include installed or pre-loaded Programs, and End User may also receive separately provided Programs for use with Products. 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 End User. In case, but to the extent only, of any conflict between any of the terms and conditions of these TruScale Terms & Conditions and those of the license agreement for any such Program, the latter will prevail solely as regards the Program. End User shall use any such Programs in accordance with the terms of the applicable Program license agreement. Where required by the Third Party supplier of the Program, End User shall execute a separate license agreement with the Third Party supplier or owner of the Program. End User 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.

2.4 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 End User or other end users. The Compiling Software will compile device status, health, and performance data and transmit that to Lenovo in order for Lenovo to perform under these TruScale Terms & Conditions, including but not limited to the calculation of billing charges. End User shall not interfere with the Compiling Software. Lenovo shall have the right, on reasonable notice, to inspect the locations containing the Products.

3 Payment Terms.

3.1 Direct Purchase: The terms set out in this Section 3.1 apply where End User purchases TruScale Services direct from Lenovo. End User shall pay the fees specified in the applicable Transaction Document in accordance with the payment terms set forth therein. End User acknowledges and agrees that time shall be of the essence in respect of any payment of fees due under the applicable Transaction Document and End User acknowledges and agrees that its obligation to pay in accordance with the relevant Transaction Document and the rights of Lenovo in and to such payments, are absolute and unconditional and (notwithstanding any provision of the Transaction Document or any rule of law or course of conduct to the contrary) and shall not be subject to any abatement, reduction, set-off, defence, counter-claim or recoupment of any kind whatsoever. Failure to make such payments shall be a breach of these TruScale Terms & Conditions. The fees for the TruScale Services are exclusive of any and all taxes, customs, duties or other levies which shall be added to the applicable invoice for TruScale Services. End User acknowledges and agrees that Lenovo may, at its option, appoint a fiscal agent acting on its behalf for the purposes of billing and collecting payments due from End User for TruScale Services and generally in administering the Transaction Document. Where End User purchases TruScale Services through a Reseller under a Transaction Document whose terms are later novated or otherwise transferred to Lenovo, then upon such novation or transfer, Lenovo's standard payment terms will apply in lieu of the payment terms of the Transaction Document.

3.2 Purchase via Reseller: Where End User purchases TruScale Services via a Reseller then payment of any fees and any payment terms shall be made in accordance with the agreement entered into between Reseller and End User.

4 Licenses for Machine Code. End User acknowledges that each Product contains Machine Code. Regardless of the source from which End User acquires a Product, the Machine Code shall be subject to the terms of the license agreement included with the relevant Product. End User's use of Machine Code on a 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. Termination of a separate license agreement for Programs shall have no impact on any payments due to Reseller or Lenovo, as applicable, in respect of the Products or Services.

5 Confidentiality. End User shall maintain the confidentiality of the terms of these TruScale Terms & Conditions as well as all materials in the Products marked as "confidential."

6 Personal Information.

6.1 End User 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 End User or related Third Parties. In the event that End User learns that such information has been sent to Lenovo or made accessible to Lenovo, End User shall immediately notify Lenovo. Any failure by End User to so notify Lenovo within 24 hours shall be deemed a material breach of these TruScale Terms & Conditions.

6.2 However, Lenovo may collect, access, retain and, as appropriate, share (collectively "Process") the names and contact information of End User, as well as machine types and serial numbers of the Products sold to End User (collectively "Contact Information"). This Contact Information will be Processed by Lenovo in order to perform the obligations of these TruScale Terms & Conditions, including contractual warranties. Lenovo will Process Contact Information of End User 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 these TruScale Terms & Conditions 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 these TruScale Terms & Conditions 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 these TruScale Terms & Conditions.

7 Title to Products. Except where otherwise specified in the Transaction Document, Lenovo (and/or its Third Party funder as applicable) shall remain the owner of all right, title and interest in the Products and Programs except the right to access and use the Products and Programs as part of the Services during the applicable Transaction Term. Neither these TruScale Terms & Conditions nor any individual Transaction Document will constitute a sale to End User of, or the retention by End User 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, End User 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. End User 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. End User 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.

8 Warranties

8.1 *Warranty for Services:* Lenovo warrants that it will perform each Service using reasonable care and skill and according to its current description. End User 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 (or the Reseller where purchase is made through a Reseller) for the defective portion of the Services. Such corrective action shall be End User's sole remedy for a breach of this Section 8.1.

8.2 *Warranty for Third Party Products:* Lenovo offers no warranty in respect of Third Party Products included within the Products and Services delivered by Lenovo under these TruScale Terms & Conditions. 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 End User, subject always to the applicable Third Party's terms and conditions. Where End User purchases TruScale Services through a Reseller, Lenovo is not responsible for Third Party Products delivered by Reseller to End User.

8.3 Warranty for Programs: With respect to any Programs delivered under these TruScale Terms & Conditions, the applicable warranty terms, if any, are set forth in the specific Program license terms.

8.4 Specific Exclusions: The warranties in this Section 8 (Warranties) are made to and for the benefit solely of the specific buyer (whether End User or the applicable End User Affiliate) under these TruScale Terms & Conditions and are non-transferable. Lenovo shall have no responsibility for 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 End User'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. The warranties stated in these TruScale Terms & Conditions 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 separate agreement between Lenovo and End User, in no event shall the warranties stated in these TruScale Terms & Conditions 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.

8.5 General Exclusions: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH UNDER THIS SECTION 8 (WARRANTIES) 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 END USER.

9 Termination & Suspension.

9.1 Termination. Either Party may terminate these TruScale Terms & Conditions and provision of the TruScale Services 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 these TruScale Terms & Conditions, 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. Lenovo may immediately terminate these TruScale Terms & Conditions and provision of the TruScale Services upon written notice if: (i) End User fails to pay the fees in accordance with the Transaction Document; (ii) End User fails at any time to procure or maintain any insurance coverage required under these TruScale Terms & Conditions; and /or (iii) where End User purchases TruScale Services directly from Lenovo, End User 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.

9.2 Suspension. Without prejudice to its other rights and remedies, Lenovo may suspend provision of the TruScale Services to End User in the event that any of the following apply: (i) End User has failed to comply with its obligations set out in these TruScale Terms & Conditions, including where

End User fails to pay the fees in accordance with the Transaction Document; or (ii) continued provision of the TruScale Services would be a breach of applicable law.

10 Effect of Termination.

10.1 General. Upon termination of these TruScale Terms & Conditions and the applicable TruScale Services specified in the Transaction Document, or upon removal of any part of the TruScale Services (in which case the provisions below apply only with respect to the removed part of the TruScale Services):

(a) all licenses and rights granted hereunder to End User shall immediately cease and Lenovo shall have no further obligations to provide the applicable Products, Services or Programs;

(b) End User 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, End User agrees to pay Lenovo the diminution in value or, at Lenovo's option, the cost of repair. In the event that End User fails to return any Product, End User also agrees to pay the then-fair market value of that Product, as determined at the time in the absolute discretion of Lenovo;

(c) Unless the End User has separately procured asset recovery Services from Lenovo for the applicable Product(s), End User is responsible for permanently removing all End User data (including but not limited to confidential information, password protection, encryption, data backup, etc.) as well as any End User installed software prior to any Product return. End User 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 End User returns any Product – or Lenovo retrieves any Product pursuant to the next clause – with any End User data or software installed or stored on it, End User 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;

(d) Lenovo, or its nominated agent, 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 End User does not return the applicable Products to Lenovo's designated location within ten (10) Business Days of termination of the TruScale Services (or part thereof); and

(e) Where End User purchases TruScale Services through a Reseller, then in the event that the agreement between Reseller and Lenovo terminates such that Reseller is no longer authorized to distribute and support the TruScale Program specifically for End User, Lenovo shall have no obligation to provide the TruScale Program under the applicable Transaction Documents unless End User and Lenovo separately agree to operate such Transaction Documents directly between Lenovo and End User.

10.2 Termination Fee. End User agrees and acknowledges that Lenovo and Reseller (as applicable) have incurred or will incur certain non-refundable fees and expenses associated with the delivery of Products and initialization of Services hereunder. In the event of termination of the TruScale Services, or the applicable Transaction Document, in connection with these TruScale Terms & Conditions for any reason, except where End User validly exercises its right to terminate for material breach pursuant to Section 9.1, End User shall pay the "Termination Fee" specified in the Transaction Document to Lenovo or the Reseller (where End User has purchased the TruScale Services via a Reseller).

11 End User Responsibilities.

11.1 As may be reasonably required to deliver the Products and Services under the Transaction Document, End User shall provide Lenovo and its representatives and agents with sufficient and safe access (including remote access authorized by End User) to End User'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 End User's delay in providing such access or performing other End User responsibilities under these TruScale Terms & Conditions.

11.2 If End User is making any facilities, software, hardware or other resources available to Lenovo in connection with these TruScale Terms & Conditions: (i) End User 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 End User's failure promptly to obtain any of the foregoing; and (iii) End User shall reimburse Lenovo for any costs and other amounts that Lenovo may incur related to End User's failure to obtain any of the foregoing.

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

11.4 End User 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 these TruScale Terms & Conditions; 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 14 (Limitation of Liability).

11.5 As between the Parties, End User is responsible for the performance of all software and applications implemented on, or system changes to, the Products by or on behalf of End User. End User acknowledges and agrees that Lenovo shall not be responsible for failures of the Products or Services, and shall have no liability to End User or any Third Party, to the extent caused by such software, applications or actions by or on behalf of End User.

11.6 End User 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 End User of these TruScale Terms & Conditions, 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. End User agrees that its obligations under this Section 11.6 include the responsibility to indemnify each Indemnitee against all Claims, whether based in contract, tort (including negligence), strict liability or otherwise. Nothing contained in these TruScale Terms & Conditions shall authorize End User 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.

11.7 End User 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. End User 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 End User herein, or End User shall be required to obtain its own coverage to insure such agents. The End User agrees that all amounts due to the End User 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, End User 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.

11.8 End User represents, warrants and covenants that: (a) the execution, delivery and performance of these TruScale Terms & Conditions: (i) have been authorized by all necessary corporate actions; (ii) do not violate the terms of any law, regulation, or court order to which End User is subject or the terms of any material agreement to which End User or any of its assets

may be subject; and (iii) are not subject to the consent or approval of any Third Party; (b) these TruScale Terms & Conditions constitutes the valid and binding obligation of End User, enforceable against End User in accordance with its terms; (c) End User is not subject to any pending or threatened litigation or governmental action which could interfere with End User's performance of its obligations hereunder; and (d) End User is and will remain in full compliance with all applicable laws, regulations and ordinances.

12 Export Regulations.

12.1 Any use, export, re-export, or transfer in-country, either directly or indirectly, of Products, Programs and technical data supplied by Lenovo under these TruScale Terms & Conditions is subject to applicable export laws and regulations, including without limitation those of the United States and the European Union. End User 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. End User 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 12.1.

12.2 These TruScale Terms & Conditions shall immediately terminate in the event End User 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 these TruScale Terms & Conditions until End User is no longer designated a restricted party.

13 Intellectual Property Rights.

13.1 Lenovo and its suppliers retain ownership of all their pre-existing intellectual property as well as intellectual property rights that were developed independent with or in connection with these TruScale Terms & Conditions and any modifications or enhancements of such intellectual property that may be made under these TruScale Terms & Conditions. 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 End User.

13.2 Each Party grants the other only the licenses and rights expressly specified in these TruScale Terms & Conditions. 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.

13.3 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.

14 Limitation of Liability

14.1 EXCEPT AS EXPRESSLY STATED IN THESE TRUSCALE TERMS & CONDITIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY 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.

14.2 THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ALL ACTIONS ARISING OUT OF OR RELATED TO THESE TRUSCALE TERMS & CONDITIONS AND ANY TRANSACTION DOCUMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES NOT TO EXCEED THE GREATER OF: (I) USD \$25,000 (OR THE EQUIVALENT AMOUNT IN THE CURRENCY SET OUT IN THE TRANSACTION DOCUMENT); OR (II) THE TOTAL AMOUNT PAID OR PAYABLE BY END USER (AND THE ENTERPRISE OF WHICH IT IS A PART) TO LENOVO OR THE RESELLER PURSUANT TO THE APPLICABLE TRANSACTION DOCUMENT GIVING RISE TO THE LIABILITY DURING THE 12 MONTH PERIOD PRIOR TO THE DATE THE FIRST CLAIM OR CAUSE

OF ACTION AROSE.

14.3 THE PROVISIONS OF SECTIONS 14.1 AND 14.2 SHALL ALSO LIMIT THE LIABILITY OF LENOVO, ITS SUBCONTRACTORS, SUPPLIERS AND PROGRAM DEVELOPERS, COLLECTIVELY, TO END USER AND THE ENTERPRISE OF WHICH IT IS A PART.

14.4 THE PROVISIONS OF SECTION 14.1 THROUGH 14.3 SHALL NOT APPLY TO (I) ANY INDEMNIFICATION OBLIGATIONS SET OUT IN THESE TRUSCALE TERMS & CONDITIONS; AND (II) 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.

15 Assignment & Subcontracting.

15.1 *General* Except as otherwise set forth in these TruScale Terms & Conditions, neither Party may assign these TruScale Terms & Conditions, 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 these TruScale Terms & Conditions, 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 End User is a competitor of Lenovo, or in Lenovo's opinion (acting reasonably) the proposed assignee would not be of materially equivalent financial standing or able to materially comply with its obligations set out in the Transaction Document.

15.2 *Lenovo assignment & subcontracting.* Notwithstanding the provisions of this Section 15 Lenovo is permitted to (i) assign or otherwise transfer to an assignee (an "Assignee") part or all of Lenovo's rights in or under a Transaction Document (where applicable) and these TruScale Terms & Conditions. Such assigned rights are for the benefit of the Assignee and the Assignee may enforce the terms directly against End User as relates to such assigned rights; and (ii) use Affiliates or other nominated subcontractors to fulfil its obligations to the End User as specified in the Transaction Document provided that Lenovo shall be responsible for their performance of the TruScale Services in accordance with these TruScale Terms & Conditions.

16 Force Majeure. 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.

17 Governing Law

17.1 These TruScale Terms & Conditions and any Transaction Document to which these terms are attached or otherwise incorporated by reference shall be governed under the laws of the country in which Lenovo (or the applicable Lenovo Affiliate) that provided Products and/or Services (as applicable) to the End User is located, without regard to its conflict of law principles, and any dispute relating to these TruScale Terms & Conditions shall be brought before the competent courts where Lenovo's main offices are located in such country. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

18 Miscellaneous.

18.1 Where End User purchases TruScale Services through a Reseller, then in the event, but only to the extent, of any conflict between the provisions of these TruScale Terms & Conditions and the agreement between End User and or Reseller, these TruScale Terms & Conditions shall control as between End User and Lenovo.

18.2 End User may not bring an action arising out of or related to these TruScale Terms & Conditions 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 these TruScale Terms & Conditions affects any statutory rights of consumers that cannot be waived or limited by contract.

18.3 The Parties are independent contractors. Neither these TruScale Terms & Conditions nor any transaction hereunder shall create the relationships of principal and agent, joint venturers, partners, or employer or employee as between End User and Lenovo or their respective Affiliates.

18.4 Either Party may enter into similar agreements with others to develop,

acquire, or provide competitive products and services.

18.5 Except as expressly set forth in these TruScale Terms & Conditions, no Third Party beneficiaries are intended to these TruScale Terms & Conditions 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 these TruScale Terms & Conditions or any transaction hereunder; and (ii) no Third Party shall have any right to enforce any of the terms and conditions of these TruScale Terms & Conditions or of any agreement associated with any transaction hereunder, except that Lenovo's suppliers may avail themselves of Section 14 (Limitation of Liability). Where End User purchases TruScale Services through a Reseller, Reseller shall have no liability to End User under these TruScale Terms & Conditions, which shall be governed in accordance with the terms of the agreement entered into between End User and Reseller.

18.6 End User 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 End User's decision to implement any recommendation concerning End User's business practices and operations. End User may not and shall not rely on Lenovo for any of the foregoing.

18.7 Where approval, acceptance, consent or similar action by End User is required under these TruScale Terms & Conditions, such action will not be unreasonably delayed, conditioned or withheld.

18.8 The English versions of these TruScale Terms & Conditions 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 these TruScale Terms & Conditions 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 these TruScale Terms & Conditions or a Transaction Document, including any amendments thereto, shall govern.

18.9 These TruScale Terms & Conditions may be amended solely by a written amendment signed by Lenovo and End User