

## Lenovo Software as a Service Cloud Agreement

This Lenovo Software as a Service Cloud Agreement including all attachments and transactional documents (the “Agreement”) is entered into between Lenovo and you (“you” or “Customer”) of Lenovo cloud network service (“Services” as defined below), and set forth the terms and conditions under which the Lenovo Services will be provided to you.

BY CLICKING THE “I ACCEPT”/“I AGREE” BUTTON/BOX OR OTHERWISE ACCEPTING THIS AGREEMENT THROUGH A TRANSACTION DOCUMENT (“TD” AS DEFINED BELOW), OR BY UTILIZING THE LENOVO SERVICES OR ASSOCIATED SERVICE OFFERINGS, YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND IN SUCH EVENT, “YOU” OR “CUSTOMER” AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, CLICK THE “CANCEL”/ “BACK” BUTTON AND DO NOT USE THE LENOVO SERVICES.

“Lenovo” means **Lenovo (Canada) Inc.**, a *Delaware* corporation with offices at **8000 Development Drive, Morrisville, North Carolina 27560**, (“We”, “Us”, “Our”, or “Lenovo”), on behalf of itself and its affiliates, suppliers and licensors, or the Lenovo entity identified on a TD entered into by you at the time you purchased the Lenovo Services under this Agreement. Lenovo Services purchased under this Agreement shall be solely for Customer’s own internal use and not for resale or service bureau purposes.

Customer and Lenovo may be referred to collectively in this Agreement as “Parties” and individually as “Party.”

### 1.0. DEFINITIONS

Throughout this Agreement, unless the context otherwise requires, the following terms with the initial letters capitalized, in addition to the terms defined elsewhere in this Agreement, bear the following meanings:

1.1. “**Affiliate/s**” shall mean any entity, which, directly or indirectly, is controlled by, in control of, or under common control with a Party. Throughout this Agreement, the term “control” shall mean the power to influence, directly or indirectly, the management of a Party whether through ownership, voting shares, contract, or otherwise.

1.2. “**Authorized Use Limitation**” means the limitation on usage of Services measured by billing metric specified on the Transaction Documents, as defined in Section 2.1.

1.3. “**Customer Data**” means all electronic data and information submitted, entered, or otherwise provided by or for Customer or any User to the Services or collected and processed by or for Customer or any User using the Services, excluding Content.

1.4. “**Deliverables**” means all items delivered by each Party to the other under this Agreement, as set forth in Attachment or relevant TDs, including but may not be limited to, Documentations, Equipment, and results of Services.

1.5. “**Documentation**” means the User documentation and associated materials, or files related to the Services and provided in written, “online,” or electronic form, including any updates thereto.

1.6. “**Effective Date**” means the date stated in the TDs, or if applicable during sign-up, or in any other form.

1.7. “**Equipment**” means the hardware products, its options, features, conversions, upgrades, or peripheral product, or any combination of them. The term “Equipment” includes Lenovo Equipment and any third-party Equipment that Lenovo may provide to Customer under this Agreement for use in connection with the Services but excluding those acquired by Customer with separate agreement from either Lenovo or a third party.

1.8. “**Feedback**” means all suggested improvements to the Service Offerings that Customer provide to Lenovo.

1.9. “**Force Majeure Event**” means an event that arises out of causes beyond a Party’s reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal), and/or delays or outages caused by an internet service provider or independent (not a Party’s subcontractor) hosting facility.

1.10. “**Lenovo**” means the local Lenovo entity with which Customer is entering into this Agreement and/or relevant TDs.

1.11. “**Services**” means at all times the current version of the web services, associated Software and Equipment, and other services related thereto provided to the Customer by Lenovo or its affiliates in accordance with this Agreement. In addition, the Services may include additional services and add-ons, including third-party software and devices, as agreed between the Customer and Lenovo in Attachment or relevant TDs. Services do not include Third-Party Components, as defined in Section 6.3.

1.12. “**Service Level Availability**” or “**SLA**” means a contract between a service provider and its internal or external customers that documents what services the provider will furnish and defines the service standards the provider is obligated to meet.

1.13. “**Service Offerings**” means the Services (including associated APIs), associated Software and Equipment, and any other product or service provided by Lenovo or its affiliates under this Agreement as specifically detailed in its relevant Attachment. Service Offerings do not include Third-Party Components.

1.14. **“Renewal Term(s)”** means successive renewal periods during which the Customer subscribes to the Services.

1.15. **“Software”** means a software program, whether pre-loaded on an Equipment, contained on or available through the Services, or provided or made available separately, including related licensed materials such as Documentation.

1.16. **“Terms of Use”** means the terms and conditions, available at the Lenovo Website [https://www.\\*\\*\\*\\*\\*](https://www.*****), to which all Customers and/or Users agree by completing the user registration form (creating a user account).

1.17. **“Trial Use”** means a Service, which is provided free of charge or which is under development or evaluation and is marked “free”, “demo”, “trial”, “beta”, or “evaluation” (or a similar designation).

1.18. **“Use”** or **“Usage”** means accessing and using the Services, downloading any products, or uploading any material associated software, and other services related thereto.

1.19. **“Users”** or **“Authorized Users”** means Customer’s employees, consultants, agents, and independent contractors and/or its Affiliates or as otherwise defined in the Documentation, that are authorized by Customer to access and use the Services, provided they agree to be bound by terms and conditions no less restrictive than those contained in the Agreement and solely to the extent that they are acting on behalf of Customer or its Affiliates.

1.20. **“Website”** means Lenovo web site at [www.lenovo.com/itsolutions](http://www.lenovo.com/itsolutions).

## **2.0. STRUCTURE OF AGREEMENT**

2.1. This Agreement, including these terms (“Base Agreement” or “BA”), Attachments, and applicable Transaction Documents (“TD”), either attached hereto or agreed by the parties from time to time during the Term, as defined in Section 12.1, are the complete agreement regarding transactions under this Agreement (together, the “Agreement”) under which Customer may order Lenovo Service Offerings. TDs detail the specifics of transactions, such as charges and a description of and information about the Service Offerings. Examples of TDs include statements of work, service descriptions, ordering documents, and invoices. Attachments provide supplement terms that detail specifics of individual Service Offering.

2.2. Any conflicting terms in a TD that override other parts of this Agreement will be identified in the TD accepted by the Customer and only apply to the specific transaction. Any additional or different terms not in a writing signed by both parties and any contrary terms on a Customer ordering document, purchase order, etc., shall not be a part of this Agreement. Confirmation of Lenovo’s receipt of a Customer ordering document does not constitute Lenovo’s acceptance of the order.

## **3.0. SERVICE ACTIVATION**

3.1. Customer accepts a TD by ordering, enrolling, using, or making a payment for the Service Offerings. After receipt and acceptance of a TD by Lenovo, Customer will be provided or made available by Lenovo the Service Offerings via a network or otherwise. When Lenovo accepts Customer’s order, Lenovo provides Customer the authorizations specified in the TD.

## **4.0. GRANT OF RIGHT AND RESTRICTIONS**

4.1. Right to Use the Lenovo Service Offerings. Lenovo grants to Customer a non-exclusive, non-transferable right for Customer and its Authorized Users to access and use the Lenovo Service Offerings in accordance with this Agreement, applicable TDs, and the Documentation. Upon the start of the subscription term, Lenovo will send an e-mail to Customer’s technical contact identified on the applicable TD providing information to connect and access the Service Offerings.

4.2. Trial Use. Subject to the terms and conditions offered to Customer for trial use and the terms of this Agreement, Customer may access and use the Service Offerings on a trial basis, for the period stated in the applicable TD, or if no time stated, for thirty (30) days from the date access is granted. ANY ACCESS AND USE FOR TRIAL PURPOSES IS PROVIDED “AS IS” AND LENOVO PROVIDES NO SERVICE LEVEL AVAILABILITIES (SLAs), WARRANTIES, OR INDEMNIFICATION FOR SUCH TRIALS. ANY CUSTOMER DATA ENTERED OR CONFIGURATIONS OF THE SERVICE OFFERINGS DURING THE TRIAL PERIOD WILL NOT BE STORED OR AVAILABLE AFTER THE TRIAL PERIOD.

4.3. Service Level Availability. Services are designed to be available 24/7, subject to maintenance. Customer will be notified of scheduled maintenance. Technical Support and SLA commitments, if applicable, are specified in a TD. The following events shall be excluded from the calculation of SLA: (i) Force Majeure Event; (ii) outages due to Scheduled Downtime, as defined in Documentations; (iii) outages based on Customer networks, domain name server issues, or use not in accordance with the Documentation; and (iv) outages to remedy a security vulnerability or as required by law.

4.4. Authorized Users. Customer is responsible for use of the Services by Authorized Users. Customer will ensure that all Authorized Users use the Services in full compliance with this Agreement and all applicable laws and regulations, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer.

4.5. Unauthorized Use or Access. Customer will prevent unauthorized use of the Services and terminate any unauthorized use of or access to the Services

## **5.0. FEES, DURATION, AND PAYMENT**

5.1. **Service Fees.** The fees payable by Customer to Lenovo for Service Offerings are stated in the applicable TD. Lenovo reserves the right to invoice Customer for any use of the Services in excess of the Authorized Use Limitation. Customer agrees that the purchase of any Service Offerings is not contingent on Lenovo providing any future features or functionality.

5.2. **Maintenance and Supports Fees.** Lenovo will provide the maintenance and technical support including training (“Technical Supports”) as agreed in a TD. Lenovo will invoice expenses that are approved by Customer in accordance with the Lenovo expense policy, which may be provided to Customer upon request. The Technical Supports are to implement the pre-existing features and functions of the Service Offerings and do not include any customization or development activities. Payment of Technical Supports fees is not contingent upon Customer receiving the Technical Supports. Any fees pre-paid for training must be used within one (1) year from the effective date of the applicable TD, or shall expire thereafter and not be subject to any refund or credit.

5.3. **Payment.** Unless otherwise stated, payment is due within thirty (30) days from receipt of Lenovo’s invoice. Receipt is deemed to have occurred three (3) business days from posting. Any late payments will accrue charges at the rate of one percent (1%) of the outstanding balance per month, or the amount prescribed by law, whichever is lower as well as a 40 € lump sum for recovery fees. All fees listed in the order form are exclusive of any taxes. Customer agrees to pay any applicable VAT, GST, sales tax, and any other applicable taxes in addition to the fees when such payments are due, excluding taxes on Lenovo’s net income. Lenovo may suspend or terminate Services if payments are past due.

5.4. **Invoice Disputes.** Any invoice disputes must be submitted prior to the payment due date.

5.5. **Partners.** In the event Customer orders a Service Offering through an authorized Lenovo partner or reseller, this Agreement, excluding this Section 5 and SLA credits, shall apply to Customer’s use of the Service Offerings.

## 6.0. INTELLECTUAL PROPERTY

6.1. Copyright, trademark, and all other proprietary rights in the Service Offerings (including but not limited to software, services, audio, video, text, photographs, specific content, products, materials, services, or information contained on or available through the Services) and feedback provided by Customer, including any modification or derivatives thereof, rest with Lenovo or its licensors. All rights in the Service Offerings not expressly granted herein are reserved. Customer agrees not to copy, republish, frame, download, transmit, modify, rent, lease, loan, sell, assign, distribute, license, sublicense, reverse engineer, or create derivative works based on the Service Offerings except as expressly authorized herein. Except as otherwise provided, the Customer Data (if any) published through the Services may be reproduced or distributed in unmodified form for personal non-commercial use only. Any other use of the content available through the Services, including without limitation distribution, reproduction, modification, display, or transmission without the prior written consent of Lenovo is strictly prohibited. All copyright and other proprietary notices shall be retained on all reproductions.

6.2. **Third-Party Rights.** Lenovo hereby disclaims any rights to trademarks, service marks, trade names, logos, copyright, patents, domain names, or other intellectual property interests of third parties. All intellectual property interests of third parties listed above are the properties of their respective owners. Lenovo disclaims any proprietary interests in the intellectual property rights other than their own.

6.3. **Third-Party Components.** Lenovo Website and Services may operate in conjunction with or using certain third-party tools, formats, software, or products (“Third-Party Components”), and Lenovo expressly disclaims any liability relating to such functionality. Any Third-Party Components incorporated into or accompanying Lenovo Website and Services are third parties’ intellectual property and are protected by applicable local laws, international copyright laws, and applicable treaties. Lenovo has obtained such rights, permissions, and consents as are necessary for Lenovo to use the Third-Party Components in conjunction with the Lenovo Website and Services as licensed by this Agreement. However, all such Third-Party Components incorporated into or accompanying Lenovo Website and Services are or may be subject to a separate software licensing agreement containing separate and discrete terms, conditions, and restrictions governing Customer’s right to use the Third-Party Components. Customer hereby acknowledges that under this Agreement Lenovo provides Customer only with a right of limited use under the terms and conditions of this Agreement. And Customer hereby agrees and confirms to use the Third-Party Components only in conjunction with Lenovo Website and Services, as permitted by this Agreement, and as permitted by the more restrictive of any Third-Party Components license agreement applicable to Customer’s and/or Lenovo’s use of the Third-Party Components. Customer acknowledges the foregoing and agrees to obtain, at Customer’s own expense, all necessary licenses, waivers, or consents for use and operation of such Third-Party Components from their respective owners and/or license holders.

6.4. **Feedback.** If Customer provides any Feedbacks to Lenovo or Lenovo affiliates, we and our affiliates will be entitled to use the Feedbacks without restriction. Customer hereby irrevocably assigns to us all right, title, and interest in and to the Feedbacks and agrees to provide Lenovo any assistance Lenovo requires to document, perfect, and maintain Lenovo rights in the Feedbacks.

## 7.0. CONFIDENTIALITY

7.1. “Confidential Information” means all information disclosed by a Party (“Disclosing Party”) to the other Party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information includes Customer Data; Lenovo Confidential Information includes the Services and content available through the Services; and Confidential Information of each Party includes the terms and conditions of this Agreement and all TDs (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party

without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. The Parties undertake not to disclose to any third party, or otherwise make available, the Confidential Information received by the other Party within the scope of the Agreement. The duty of confidentiality shall remain in force notwithstanding the termination of the Agreement. Notwithstanding the foregoing, the Parties may disclose Confidential Information to the extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order uses commercially reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. However, subsections (i) and (ii) will not apply if the recipient determines that complying with (i) and (ii) could: (a) result in a violation of Legal Process; (b) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual.

7.3. Lenovo shall be entitled to review Customer Data which is publicly posted through the Services' web publication features. Lenovo also reserves the right to analyze usage patterns in an aggregated form.

7.4. Except for Customer Data mentioned above and other than pursuant to the Customer's instructions, legal provisions, public authority regulations, or court orders, Lenovo shall not be entitled to review Customer Data processed by the Customer via the Services.

## **8.0. UPDATES, UPGRADES, AND SUPPORT**

8.1. Updates and Upgrades. Lenovo may make changes or updates to the Service Offerings or the Service infrastructure (such as compute infrastructure, storage technology, security, technical configurations, hosting facilities within the data center region, etc.). Lenovo will provide Customer with at least seventy-two (72) hours advanced notice of any downtime required for such updates and upgrades to the Service and Service infrastructure ("Scheduled Downtime").

8.2. Technical Support. Technical Support will be provided in a timely and professional manner by qualified support engineers in accordance with Lenovo's applicable support policy located on the Lenovo support website. Technical Support shall consist of:

(a) Access to Lenovo support website (currently: <http://support.lenovo.com>) for 24x7x365 online support and access to Lenovo Documentation, incident severity description with response and resolution objectives listed, global user communities and regional user groups, Frequently Asked Questions, samples, webcast recordings and demos, usage tips, technical updates, and HYPER notifications, as such are made available by Lenovo.

(b) Access to Lenovo help desk and the ability to open and manage support incidents via Lenovo support online or by telephone.

(c) Production environment support: 24x7 for severity 1 incidents; normal business hours for severities 2-4.

(d) If applicable to the Services, Non-Production environment support: Normal business hours for incidents of all severities.

(e) Interactive remote diagnostic support allowing Lenovo support engineers to troubleshoot an incident securely through a real-time browser-based remote-control feature for support issues which may be resident in Customer's software or systems.

## **9.0. CUSTOMER DATA PROTECTION**

9.1. Customer Data consists of all data, software, and information that Customer or its Authorized Users provides, authorizes access to, or inputs to the Services. Use of the Service Offerings will not affect Customer's existing ownership or license rights in such Customer Data. Lenovo and its contractors and sub-processors may access and use the Customer Data solely for the purpose of providing and managing the Services, unless otherwise described in a TD. Lenovo will treat all Customer Data as confidential by not disclosing the Customer Data except to Lenovo employees and contractors and only to the extent necessary to deliver the Services, unless otherwise specified in a TD.

9.2. Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, Lenovo and its contractors and sub-processors to use, provide, store, and process Customer Data in the Services. This includes Customer making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Customer Data. If any Customer Data could be subject to governmental regulation or may require security measures beyond those specified by Lenovo for an offering, Customer will not input, provide, or allow such Customer Data unless specifically permitted in the terms of the relevant TD or unless Lenovo has otherwise first agreed in writing to implement additional security and other measures.

9.3. Upon request by either Party, Lenovo, Customer, or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Customer Data. The Parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

9.4. Lenovo will return or remove Customer Data from Lenovo computing resources upon the expiration or cancellation of the Services, or earlier upon Customer's request. Lenovo may charge for certain activities performed at Customer's request (such as

delivering Customer Data in a specific format). Lenovo does not archive Customer Data; however, some Customer Data may remain in Services backup files until expiration of such files as governed by Lenovo's backup retention practices.

9.5. Lenovo Privacy and Data Security Policies ("Lenovo Privacy Policies"), at [www.lenovo.com/privacy](http://www.lenovo.com/privacy), apply for generally available Service Offerings. Specific security features and functions of a Service Offering may be provided in an applicable TD. Customer is responsible to assess the suitability of each Service Offerings for Customer's intended use and Customer Data and to take necessary actions to order, enable, or use available data protection features appropriate for the Customer Data being used with Service Offerings. By using the Service Offerings, Customer accepts responsibility for use of the Service Offerings, and acknowledges that it meets Customer's requirements and processing instructions to enable compliance with applicable laws.

9.6. Customer acknowledges that (i) Lenovo may modify the Lenovo Privacy Policies from time to time at Lenovo's sole discretion and (ii) such modifications will supersede prior versions. The intent of any modification to the Lenovo Privacy Policies will be to (a) improve or clarify existing commitments, (b) maintain alignment to current adopted standards and applicable laws, or (c) provide additional commitments. No modification to the Lenovo Privacy Policies will materially degrade the security of a Service Offerings.

## **10.0. USAGE POLICIES**

10.1. Customer and Authorized Users shall not: (i) make Service Offerings available to any third party not authorized or as otherwise contemplated by this Agreement; (ii) send or store code that can harm or result in damage to the Services (including but not limited to malicious code and malware); (iii) willfully interfere with or disrupt the integrity of the Services or the data contained therein; (iv) attempt to gain unauthorized access to the Services or its related systems or networks; (v) use the Services to provide services to third parties except as expressly permitted by the Agreement; (vi) use the Services in order to cause harm, such as overload or create multiple agents for the purpose of disrupting operations of a third party; (vii) remove or modify any program markings or any notice of Lenovo's or its licensors' proprietary rights; (viii) perform or disclose any benchmark or performance tests on the Services; or (ix) perform or disclose any of the following security testing of the Services environments or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing, or any other test or procedure not authorized in the Documentation.

10.2. Customer and Authorized Users shall comply with all applicable laws and regulations in connection with its use of the Service Offerings.

10.3. A breach by Customer or Authorized Users of the obligations under this section may be considered grounds for suspension of Services by Lenovo or a material breach of the Agreement and grounds for termination.

## **11.0. PROTECTION OF EQUIPMENT; RETURN UPON EXPIRATION**

11.1. Lenovo will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Services and generally available user guides and other Documentations to support Customer's use of the Services. A Service may require the use of enabling software only in connection with use of the Services and according to any licensing terms if specified in a TD. Enabling software is provided AS-IS, without warranties of any kind.

11.2. The Equipment consigned by Lenovo on Customer's premise for support of Customer's use of the Services shall remain Lenovo property. Customer may not sell, lease, abandon, or give away the Equipment; allow anyone other than Lenovo or its agents to service the Equipment; or permit any other person to use the Equipment, other than on Customer's behalf in connection with Customer's use of the Services. Customer will be directly responsible for loss of the Equipment. Upon expiration or termination of this Agreement, and if so required by Lenovo, Customer will return the Equipment to Lenovo, at Customer's cost, in the same condition as when delivered to Customer, reasonable wear and tear excepted; and if Lenovo has not received the Equipment in such condition within ten (10) days thereafter, Customer will be deemed to have purchased the Equipment at Lenovo's list price and will pay Lenovo upon invoice as provided in Section 5 above.

11.3. Customer will provide hardware, software, and connectivity to access and use the Services, including any required Customer-specific URL address and associated certificates.

11.4. Lenovo may offer non-Lenovo third-party services, or the Services may enable access to third-party services, that may require acceptable of third-party terms identified in the TD. Linking to or use of third-party services constitutes Customer's agreement with such terms. Lenovo is not a party to such third-party agreements and is not responsible for such third-party services.

## **12.0. TERM AND TERMINATION**

12.1. Term. This Agreement will continue in effect unless otherwise terminated in accordance with this section. A Party may terminate the Agreement (i) for material breach by the other Party, provided that in each instance of a claimed breach: (a) the non-breaching Party notifies the breaching Party in writing of such breach within thirty (30) days of its occurrence and (b) the breach is not cured within thirty (30) days of receipt of such notice; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

12.2. Effect of Termination. In the event of an uncured material breach by Lenovo, Customer will be entitled to a refund of any pre-paid unused fees calculated against the remainder of the subscription term as of the effective date of such termination. The termination of the Services under one TD shall not impact the validity of other Service Offerings or TDs. If this Agreement is terminated by Lenovo in accordance with Section 12.1, the due dates of all invoices to be issued will be accelerated so that such invoices become due and payable on the effective date of termination. All rights granted under the Agreement will immediately terminate and each Party will return or destroy all Confidential Information of the other Party in its possession.

12.3. Surviving Provisions. The following provisions will survive and remain in effect after termination of the Agreement: Definitions; Structure of Agreement; Grant of Rights and Restrictions; Intellectual Property; Confidentiality; Fees, Duration and Payment; Customer Data Protection; Usage Policies; Term and Termination; Limited Warranty; Indemnification; Limitation of Liability; and General Provisions.

### **13.0. LIMITED WARRANTY**

13.1. Lenovo warrants that the (i) Services will materially conform to the relevant Documentation and TD during the subscription term; and (ii) any Deliverables will conform to the relevant Documentation and TD for a period of thirty (30) days from the date of delivery. If it is established that Lenovo has breached either of the above warranties, Lenovo will, at its option, (a) use reasonable efforts to cure the defect; (b) replace the Services or Deliverables with Services or Deliverables that materially conform to the specifications in the Documentation or TD (as applicable); (c) in the event Lenovo cannot, after commercially practicable attempts to do so, achieve the remedies in (a) or (b), where the breach relates to the Services, Lenovo may terminate the subscription to the Services and provide a refund of pre-paid, unused fees calculated against the remainder of the subscription term as of the effective date of such termination, or where the breach relates to Technical Support, the Customer will return the Deliverables and Lenovo shall refund the fees paid for the Deliverables. Customer must report the alleged breach of warranty with reasonable specificity in writing within thirty (30) days of its occurrence to benefit from this warranty and the remedies stated herein.

13.2. Lenovo warrants to Customer that the Equipment shall be free from defects in material and workmanship (the "Exclusive Warranty") during Customer's subscription of the Services. With respect to the Equipment, the Exclusive Warranty shall apply only to the extent it has been installed, used and maintained in the conditions specified by Lenovo or, in absence thereof, at least in conditions consistent with generally accepted practices for this type of product; and not been subject to any unauthorized modification or repair or attempts thereto; and not been connected to or used in combination with other incompatible equipment or systems.

13.3. If any Equipment fails to meet the Exclusive Warranty, then upon Customer's written request and pursuant to any warranty procedure published by Lenovo, Lenovo shall, at Lenovo's sole option and expense, promptly either repair or replace the Equipment in question. The remedies specified in this Section 14 shall constitute Customer's sole and exclusive remedy and Lenovo's sole and exclusive liability for the Equipment and Lenovo's breach of the Exclusive Warranty hereunder.

13.4. THE ABOVE WARRANTIES ARE LENOVO'S ONLY WARRANTIES AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF SUCH WARRANTIES. TO THE EXTENT PERMITTED BY LAW, NO OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY LENOVO. LENOVO DOES NOT WARRANT THAT THE CLOUD SERVICE OFFERED WILL MEET CUSTOMER'S REQUIREMENTS OR THAT USE OF THE CLOUD SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

### **14.0. INDEMNIFICATION**

14.1. Indemnification by Lenovo. Lenovo will indemnify, defend, and/or at its option, settle any third-party claims that the Service Offerings as used per the Documentation infringes or misappropriates any third-party valid patent, copyright, or trademark or illegally misappropriates a third-party's trade secret within the jurisdictions in which Customer is authorized to use the Service Offerings. Lenovo may, at its option and expense: (i) procure for Customer the right to continue to use the applicable Service Offerings; (ii) repair, modify or replace the Service Offerings so that it is no longer infringing; or (iii) terminate the Agreement for the applicable Service Offerings upon thirty (30) days' notice and in respect of the Service Offerings, refund any unused prepaid fees calculated against the remainder of the subscription term as of the effective date of such termination and in respect of the Technical Support provide a pro-rata refund of the fees paid for the Technical Support or Deliverable(s) that caused such infringement.

14.2. Indemnification by Customer. Except to the extent prohibited by law, Customer shall indemnify, defend, and/or at its option, settle any third-party claims against Lenovo that Customer Data or Customer's use of the Service Offerings is in breach of this Agreement, infringes or misappropriates any third-party Intellectual Property rights within the jurisdictions in which Customer is using the Service Offerings, or violates applicable law, rules, directives or regulation.

14.3. Indemnity Conditions. Each Party's indemnification rights require: (i) prompt notice of any claim against the Party seeking to be indemnified; (ii) except to the extent prohibited by law, the indemnifying Party's sole control of the defense or settlement, provided that any settlement the indemnifying Party releases the other Party of all liability; and (iii) the Party seeking to be indemnified provides reasonable assistance in the defense or settlement of such claim.

14.4. Exceptions to Indemnification. Supplier will have no obligation to indemnify Indemnitees for claims that Supplier's Deliverables or Services infringe the intellectual property rights of a third party to the extent such claims arise as a result of: (a) Buyer's combination of Deliverables or Services with other products, materials, or services not reasonably foreseeable by Supplier and where such infringement or claim would have been avoided in the absence of such combination or (b) Supplier's implementation of written specifications or requirements from Buyer for specific functionality where (i) such infringement or claim would have been avoided in the absence of such functionality, (ii) such functionality is not present in Supplier's Deliverables provided to others, and (iii) no non-infringing way of implementing such functionality was available.

14.5. THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EITHER PARTY REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY TO EITHER PARTY WITH RESPECT TO

ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

## **15.0. LIMITATION OF LIABILITY**

15.1. EXCEPT FOR BREACHES OF THE GRANTS OF RIGHTS AND RESTRICTIONS AND THE INTELLECTUAL PROPERTY SECTION BY CUSTOMER, CONFIDENTIALITY BY EITHER PARTY OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, (I) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY, WHETHER IN CONTRACT OR TORT, OR OTHERWISE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR UNFORESEEABLE LOSS, DAMAGE OR EXPENSE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, LOSS OR CORRUPTION OF DATA, HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES BEING INCURRED, AND (II) EACH PARTY'S LIABILITY TO THE OTHER UNDER THE AGREEMENT, FOR DAMAGES, LOSSES, OR LIABILITY FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION WHETHER CONTRACTUAL OR NON-CONTRACTUAL, SHALL BE LIMITED TO A MAXIMUM OF THE FEES PAID AND OWED FOR SERVICE OFFERINGS PROVIDED TO CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM OR WHERE THE CLAIM RELATES TO TECHNICAL SUPPORT ONLY THE FEES PAID AND OWED FOR THE TECHNICAL SUPPORT GIVING RISE TO THE CLAIM. THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S OBLIGATION TO PAY IN ANY WAY.

## **16.0. LENOVO AS BENEFICIARY**

If this Agreement is entered into between Customer and Lenovo's authorized reseller, THE TERMS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE LIMITED WARRANTY AND LIMITATIONS OF LIABILITY SET FORTH HEREIN, ARE EXPRESSLY INTENDED TO INURE TO THE BENEFIT OF LENOVO, AND LENOVO SHALL BE A THIRD PARTY BENEFICIARY TO SUCH TERMS.

## **17.0. GENERAL**

17.1. Notices. All notices under the Agreement must be in writing, addressed to the parties on the order form and sent by pre-paid first-class mail/post. Notices will be deemed received by the Party to whom the notice is addressed two (2) working days from posting.

17.2. Assignment. The Agreement may not be assigned by Customer without the prior written consent of Lenovo, such consent not to be unreasonably withheld. Lenovo may freely assign this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void. Lenovo may assign this Agreement without Customer's consent (a) in connection with a merger, acquisition or sale of all or substantially all of our assets, or (b) to any Affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for Lenovo as a party to this Agreement and Lenovo is fully released from all of its obligations and duties to perform under this Agreement. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

17.3. Export Requirements. Customer acknowledges that the Service Offerings are subject to control under U.S. law, including the Export Administration Regulations (15 CFR 730-774) and agrees to comply with all applicable import and export laws and regulations. Customer agrees that the Service Offerings will not be exported, re-exported or transferred in violation of U.S. law or used for any purpose connected with chemical, biological or nuclear weapons or missile applications, nor be transferred or resold, if Customer has knowledge or reason to know that the Service Offerings is intended or likely to be used for such purpose.

17.4. Relationship of the Parties. The relationship between Lenovo and Customer is strictly that of independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither Party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other Party, and (b) to assist third-party developers or systems integrators who may offer products or services which compete with the other Party's products or services.

17.5. Governing Law. The validity, construction, and interpretation of the Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, without giving effect to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. If any provision of the Agreement is held to be contrary to law, then the remaining provisions of the Agreement will remain in full force and effect.

17.6. Venue. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the courts of the country of purchase. The parties agree that any action to enforce any provision of this Agreement or arising out of or based upon this Agreement shall be brought in a state or federal court of competent jurisdiction in the Province of Ontario. The parties hereby submit to the exclusive jurisdiction and venue of these courts, except that nothing will prohibit Lenovo from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights. The parties expressly waive any right to a jury trial regarding disputes related to this Agreement.

17.7. Non-Waiver. No delay or omission by either Party to exercise any right or power it has under the Agreement will be construed as a waiver of such right or power. Any waiver of any provision of this Agreement will be effective only if in writing and signed by

Lenovo. Should either Party consent, waive, or excuse a breach by the other Party, such shall not constitute a consent to, waiver of, or excuse of any other different or subsequent breach whether or not of the same kind as the original breach.

17.8. Order of Precedence. In the event of a conflict among this Agreement, the Attachment, TDs, or applicable Documentation, and the order form, the order of precedence from highest to lowest shall be (i) the TDs/order form, (ii) the Attachment or applicable Documentation, and (iii) this Agreement.

17.9. Complete Agreement. This Agreement, which incorporates Lenovo's Privacy Policy, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No additional term or condition contained in Customer's purchase order or similar document will apply and are expressly rejected by Lenovo.

17.10. Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement, but the rest of the Agreement will remain in full force and effect.

17.11. Force Majeure. Neither Party shall be liable for failure to fulfill its obligations under this Agreement or for delays in delivery due to causes beyond its reasonable control, including but not limited to act of God, acts or omissions of the other Party, man-made or natural disasters, material shortages, war, riot, terrorist acts, strikes, delays in transportation, viruses, utility failures, interruption of telecommunications or the Internet service, or inability to obtain labor or materials through its regular sources. The time for performance of any such obligation shall be extended for the time period lost by reason of the delay.

17.12. No Third-Party Beneficiaries. Except as set forth in Section 9, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

17.13. Choice of Language. The Parties hereby acknowledge and accept that this Agreement is intentionally executed in English. In the event of any dispute or a required translation for any purpose whatsoever, the English language version shall prevail.