

Lenovo Cloud Deploy Terms of Service

BY A) CLICKING THE BOX INDICATING YOUR AGREEMENT TO THE LENOVO TERMS OF SERVICE ("AGREEMENT" OR "TERMS OF SERVICE"); OR B) PLACING AN ORDER FOR LENOVO CLOUD DEPLOY ACCESS WITH LENOVO, INCLUDING THROUGH A DEDICATED LENOVO PORTAL OR E-COMMERCE SITE ("PORTAL"), YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND AGREE TO (AND ARE AUTHORIZED TO AGREE TO) THE TERMS OF SERVICE FOR THE LEGAL ENTITY ON WHOSE BEHALF YOU ARE ACCEPTING ITS TERMS AND CONDITIONS AND THAT ANY REGISTRATION INFORMATION YOU PROVIDED IS TRUE AND CORRECT.

ACCESS TO LENOVO CLOUD DEPLOY IS SUBJECT TO THE FOLLOWING LICENSE TERMS:

[Lenovo License Agreement \(COE-30002-01\) - Lenovo Support GB](#)

YOU ALSO AGREE TO COMPLY THE TERMS OF USE IN RELATION TO SUCH PORTAL:

[Lenovo Terms of use - United States](#) | [Lenovo US](#) | [Lenovo US](#)

This Agreement states the terms of service and expected conduct when accessing Lenovo Cloud Deploy software as a business Customer of Lenovo or its Resellers. Lenovo Cloud Deploy ("LCD") or "the Software" is accessed through a Windows desktop client application that provides an interface to LCD, Lenovo's cloud imaging platform. This enables Customer's IT organisation to securely develop and deliver an image to Lenovo for factory imaging and deployment and recovery options for Customers chosen users. For more information on Windows or Microsoft terms, please see the Microsoft [terms and conditions and support site](#).

Access to LCD may be connected to purchase of Product or additional Services from Lenovo – such purchases will be governed by their own purchase terms or Service Agreements.

Third Party Support. In addition to Microsoft, LCD is supported by third party vendors including Amazon Web Services, whose terms of service can be found at [AWS Service Terms \(amazon.com\)](#).

Customer acknowledges that the LCD tool is not mission or operationally critical. If a third party vendor's services or infrastructure is experiencing outages, is delayed or slowed, this is out of Lenovo's control, and we are not responsible for damage or loss as a result.

1 Specified Image

- 1.1 The Parties may agree that as part of access to LCD, Lenovo will install a specific "system image" consisting of a specified set of Customer-selected Programs and modules (a "**Specified Image**") requested and provided by Customer onto a Machine supplied under this Agreement.
- 1.2 Unless specifically agreed otherwise in writing: (a) Lenovo will act as Customer's agent when installing Specified Images; (b) Any faults or errors should be reported to Lenovo in writing by Customer not later than ninety (90) days following delivery of the Machine to Lenovo's designated carrier, or the faults will be considered waived.

2 Confidentiality

- 2.1 Any non-public information which is received under this Agreement or in the performance of the Services by one Party from the other and which is clearly marked as "confidential" ("**Confidential Information**") shall be (i) maintained in confidence for two (2) years following disclosure (ii) used only for the purpose of fulfilment of the receiving Party's obligations under this Agreement. 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 2. The terms of this Agreement are the Confidential Information of Lenovo.

- 2.2 Information shall not be considered "**Confidential Information**" under this Section, 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.

3 Personal Information

- 3.1 Lenovo will Process Personal 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.
- 3.2 **Warranty for Services:** Lenovo warrants that it will perform each Service using reasonable care and skill. 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.
- 3.3 **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.
- 3.4 **Specific Exclusions:** Except as otherwise agreed to in a Transaction Document, the warranties in this Section 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 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.
- 3.5 **General Exclusions:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH UNDER THIS SECTION (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.

4 Customer Responsibilities

- 4.1 As may be reasonably required by Lenovo to deliver the Products and Services 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.

- 4.2 If Customer is making any information 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.
- 4.3 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.
- 4.4 Customer is responsible for: (i) the backup of all data that it makes available to Lenovo in connection with this Agreement; (ii) Customer Content and Materials. "**Customer Content and Materials**" means all content created or owned by Customer and provided to Lenovo or submitted via LCD, including scripts, logos and branding content, or other information requested by Lenovo as part of configuration; (iii) the accuracy of any information and/or specifications it provide; (iv) the fidelity and ownership of any scripts or contents submitted to Lenovo and agrees that Lenovo may rely on such information and/or specifications without independent verification for the limited purpose of performing the Services and delivering to the Customer. Lenovo will have no liability (v) to the extent any deficiencies in the Services or LCD are the result of acts or omissions or legal infringements (including delay) of Customer, or where Customer has instructed Lenovo to perform any Services in a particular manner or in accordance with a particular schedule notwithstanding Lenovo's contrary advice (vi) any deficiencies as a result of Customer failing to implement or give permission for implementation of security or other updates related to LCD; (vii) ensuring it has all appropriate rights and licenses in all scripts or other materials uploaded to LCD; (viii) accurate instructions as to their desired solution and other requirements, which are crucial for the design and implementation of configuration and deployment services. Such instructions must be provided by a Customer engineer or representative with appropriate technical qualification and authority to do so.
- 4.5 The Customer acknowledges that there may be emergency situations where, acting in the best interests of the Customer and in good faith, Lenovo must interrupt or suspend the Services at short notice. In such situations Lenovo shall give the Customer as much notice as is reasonably possible of any such suspension or interruption and shall use its best endeavors to keep the time the System is not operating to a minimum and outside of core business hours and at a time agreed with the customer. Lenovo shall not be liable for any such emergency interruptions or suspensions and any service levels shall be suspended.

5 Export Regulations

- 5.1 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 5.
- 5.2 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.

6 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.

7 Intellectual Property Rights

- 7.1 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.
- 7.2 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.
- 7.3 The rights and licenses granted to Customer under this Agreement may be terminated by Lenovo if Customer fails to fulfil its applicable payment obligations.

8 Intellectual Property Indemnification

- 8.1 Customer agrees to indemnify Lenovo for all losses and damages resulting from any claim or infringement related to third party rights including intellectual property rights in any Customer Content and Materials.

9 Limitation of Liability

- 9.1 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 negligence) or otherwise: (1) third-party claims for damages; (2) loss of, or damage to, data; (3) special, incidental, indirect, punitive, exemplary or consequential damages; or (4) loss of profits, business, revenue, goodwill or anticipated savings; (5) loss of use; or (6) wasted management time.
- 9.2 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 under this Agreement in the twelve (12) months preceding the date the first claim arose.
- 9.3 The provisions of this Section shall not apply to the extent prevented or restricted by mandatory applicable law (including without limitation in relation to fraud, death and personal injury caused by negligence or fraudulent misrepresentation).

10 Governing Law and Venue

- 10.1 The Agreement and all orders issued hereunder shall be governed under the laws of the country in which the Lenovo Affiliate that provided Products and Services to the Customer Affiliate is located, without regard to its conflict of law principles.
- 10.2 Any dispute relating to this Agreement shall be brought before the competent courts where Lenovo's main offices are located in such country and the Parties submit exclusively to such jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply
- 10.3 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.
- 10.4 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.

- 10.5 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.
- 10.6 Either Party may enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- 10.7 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 9 of this Attachment B (Limitation of Liability).
- 10.8 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.
- 10.9 Where approval, acceptance, consent or similar action by Customer is required under this Agreement, such action will not be unreasonably delayed, conditioned or withheld.
- 10.10 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.
- 10.11 This Agreement may be amended solely by an amendment in writing signed by both Parties or through any change control process described in a Transaction Document.

11 Lenovo Reseller

Lenovo provides different ways to purchase Products and Services, depending on the region and/or choice of Customer: "Direct" purchase means that the Product or Service is available for purchase directly from Lenovo or one of its Affiliates and subject to this Agreement; and "Indirect" purchase means that the Product or Service is available for purchase from a Lenovo reseller. Indirect purchase of Products or Services from a reseller shall be subject to such terms and conditions, as well as prices, as Customer and reseller may agree. Lenovo shall not be responsible for: (i) the actions of any such reseller; (ii) any obligation that such reseller may have to Customer; or (iii) any Third Party product or service that such reseller may supply to Customer. Resellers are not authorized to modify these Terms or make any promises or commitments on our behalf, and we are not bound by any obligations to you other than as set forth in these Terms.

By using this Service and/or Software you agree to be bound by the Agreement.