

Partner Network Reseller Attachment

This Lenovo Partner Network Reseller Attachment ("Attachment") is incorporated in and made a part of the Lenovo Partner Network Agreement ("Agreement") between Lenovo (United States) Inc. ("Lenovo") and Partner. The terms of this Attachment are in addition to or modify the terms of the Agreement. In the event of a conflict between this Attachment and the Agreement, the terms of this Attachment shall prevail.

1. Authorization and Scope

1.1 Lenovo may approve Partner as a Lenovo Solution Partner-Reseller ("Reseller") based on information provided by Partner in the Lenovo Partner Network Registration form. When Lenovo approves Partner as a Reseller, Reseller is hereby authorized to market and sell Products and Services to End Users within the United States and Puerto Rico ("Territory") subject to the terms of this Attachment. Reseller may not market or sell Products or Services, directly or indirectly, to End Users outside the Territory.

1.2 A Product or Service becomes subject to this Attachment when Reseller places an order with a Distributor; or if approved to acquire Products and Services directly from Lenovo, when Lenovo accepts Reseller's order by sending an acceptance of the order; by shipping the Product; or by making the Product or Service available to Reseller. Confirmation of Lenovo's receipt of an order from Reseller does not constitute Lenovo's acceptance of the order.

1.3 Lenovo may make promotional programs and offerings available to Partners. Such programs and offerings may have eligibility requirements for participation by Partners. Once a Partner is accepted to such a program or offering it shall be subject to the terms of this Agreement. Lenovo may change such programs, offerings and participation requirements on one (1) month's notice to Partner.

2. Definitions

2.1 Distributor means a purchaser of Products and Services only for sale to Resellers.

2.2 End User means a purchaser of Services or Products for its own use and not for resale.

2.3 Product means any Lenovo branded or third party hardware or software that Lenovo makes available to Reseller either directly or through a Distributor. Hardware Products include computers and accessories. Software Products include computer software programs (whether pre-loaded or provided separately) and related licensed materials and documentation.

2.4 Reseller means a purchaser of Products and Services only for sale to End Users.

2.5 Service means the performance of a task; the provision of advice or assistance; or the access to a resource that is provided by Lenovo to Reseller for sale to End Users.

3. Review of Reseller Compliance with this Attachment

3.1 In each twelve (12) month period during the term of this Attachment, Lenovo may review Reseller compliance with this Attachment. Reseller shall make its records relating to this Attachment available to Lenovo or an independent auditor appointed by Lenovo and reasonably acceptable to Reseller. The review shall be conducted at Reseller's facility during normal business hours. Lenovo, or its auditor, may make and retain copies of such records. In addition to the reviews described above, Lenovo may conduct a review of Reseller's records at any time it has reason to believe that there has been or may be a material breach of this Attachment.

3.2 If Reseller has breached the terms of this Attachment, in addition to Lenovo's rights under law and the terms of this Attachment, for transactions that are the subject of the breach, Reseller shall refund the amount equal to the sum of any discount, fee, marketing funds, promotional offerings or special bid advance discounts or rebates as were provided to Reseller by Distributor or Lenovo. Reseller shall pay such amount to Distributor or Lenovo upon demand or Distributor or Lenovo may deduct it from any amounts due to Reseller. Before requiring the refund of any discounts or fees, Lenovo shall provide Reseller with the results of its review and an opportunity to respond to the findings therein.

4. Reseller Responsibilities to Lenovo

Reseller shall:

- a. ensure that the terms in any agreement that Reseller may have with an End User does not conflict with this Attachment;
- b. maintain records of each Product and Service transaction (for example, marketing, sales, special bid discounts, marketing funds, promotional offerings, installation reporting and inventory information, a credit or a warranty claim) for three years after the termination or expiration of this Attachment;
- c. comply with any applicable regulations and laws before disclosing any personally identifiable information to Lenovo;

- d. promptly report any suspected Product defects or safety problems to Lenovo; assist Lenovo in tracing and locating Products; and use reasonable efforts to enable Lenovo to correct defects on Products irrespective of their location;
- e. provide combined hardware Products and software Products to End Users in the same combination as received from a Distributor or Lenovo; and
- f. ensure that the Microsoft Certificate of Authenticity (COA) and Associated Product Material (APM) included with Lenovo Products (not to be priced separately) are included with the Lenovo Product provided to End Users or third parties.

5. Reseller Responsibilities to End Users

Reseller shall:

- a. provide configuration, installation and post-installation support for Products, including serving as End Users' primary contact for Product information, technical advice and operational advice;
- b. refund the amount paid for a Product returned by an End User if such return is permitted under the Lenovo warranty or software Product license;
- c. provide a dated sales receipt or invoice, which includes the End Users business name, the part number or machine type/model and serial number, if applicable. In a retail environment it is acceptable to provide a sales receipt or invoice that identifies the Product purchased but does not include the serial number or customer name; and
- d. inform End Users; a) that the sales receipt or proof of purchase will be necessary to obtain warranty service or software Product upgrades; and b) who the warranty service provider is, if other than Reseller, and warranty information for the Product along with any modifications made to the Product by Reseller or Distributor and advise that such modification may void the Lenovo warranty.

6. Warranty Service

If Lenovo approves Reseller to provide Warranty Service, Reseller shall only provide such service for those Products specified by Lenovo and according to the guidelines provided by Lenovo.

7. Marketing of Services

The terms of sale applicable to any Services provided by Lenovo shall be as set forth by the Distributor or Lenovo and made available to Reseller. Lenovo or a Lenovo designated service provider shall perform the Services under the terms of a separate Service agreement with the End User.

8. Marketing of Withdrawn Products

Reseller may market Products which Lenovo has announced as withdrawn from Lenovo marketing to any third party.

9. Loss of Authorization for Inactive Reseller

In the event that Reseller fails to purchase and resell Lenovo Products during any calendar year, Lenovo may terminate Reseller's rights under this Attachment.

10. Acquisition of Products and Services from Lenovo

If approved to purchase Products and Services directly from Lenovo, Reseller may also purchase such Products and Services from any Distributor.

10.1 Price, Invoicing, Payment and Taxes

10.1.1 Price and Discount

The price or discount applicable to a Product or Service may be made available by Lenovo in either published form or through Lenovo's electronic information system. Lenovo may change prices and increase discounts applicable to Products or Services at any time. Lenovo may decrease discounts on one (1) month's notice to Reseller.

Lenovo may approve additional discounted pricing for a specific End User opportunity Reseller identifies at the time of order. Sale of discounted Products and Services to an End User other than the specified End User, if applicable, or to an End User for other than its own internal use, are ineligible for discounts. Such sales may result in the termination of this Attachment and recovery by Lenovo of the discount amount, in addition to any other remedies available to Lenovo under this Attachment.

10.1.2 Invoicing, Payment and Taxes

If not paid in advance of shipment, all amounts are due upon receipt of invoice. Any payment not received by Lenovo within thirty (30) days of receipt of invoice shall be overdue.

Reseller may use a credit only after issuance by Lenovo.

If any governmental authority requires Lenovo to collect a duty, tax, levy, or fee on a transaction under this Attachment, excluding any tax based on Lenovo's net income, then Reseller shall pay such amount as specified in Lenovo's invoice. Reseller is responsible for any personal property taxes for each Product from the date of shipment by Lenovo.

If Reseller claims to be exempt from any taxes relating to the Products and Services purchased from Lenovo, then Reseller shall provide Lenovo with evidence sufficient to support such claim for each taxing jurisdiction to which Products are shipped from Lenovo. Reseller is liable for any claims or assessments that result from any taxing jurisdiction refusing to recognize its exemption.

Lenovo may offset any amounts due Reseller or designated for Reseller's use, e.g. marketing funds, promotional offerings, incentives or special bid rebates, against amounts due Lenovo from Reseller.

10.1.3 Failure to Pay Any Amounts Due

If Reseller fails to pay any amounts due in the required period of time, or payment of an invoice is overdue, Lenovo may:

- a. impose a finance charge of the lesser of one and one half (1.5%) percent per month or the maximum rate permitted by law on the undisputed overdue balance of the invoice amount;
- b. require payment on or before delivery of Products and Services;
- c. repossess any Products for which Reseller has not paid, at Reseller's expense, including reasonable attorneys' fees;
- d. refuse Reseller's orders until any amounts due are paid;
- e. terminate this Attachment; or
- f. pursue any other remedy available at law.

10.2 Ordering and Delivery

10.2.1 Reseller may only order Products in such minimum quantities as Lenovo may specify from time to time.

10.2.2 Reseller may only order Products and Services through Lenovo's standard electronic ordering system. Any orders received from Reseller by a different method shall be subject to such additional charges as Lenovo may determine.

10.2.3 Products may be shipped from different sources of supply and Reseller may receive more than one shipment and invoice relating to a single order.

10.2.4 All Products and Services ordered by Reseller and the destinations specified for shipments shall be only as approved by Lenovo.

10.2.5 Upon becoming aware of any discrepancy between the shipping manifest and the Products and Services received from Lenovo, Reseller shall immediately notify Lenovo. Lenovo shall work with Reseller to reconcile any discrepancies.

10.2.6 Lenovo shall select the method of shipment and pay the associated charges for the shipment of Products. Reseller may request shipment by another method subject; however, to payment of such additional shipping charges as may be incurred by Lenovo.

10.2.7 In the event that Reseller cancels an order, Reseller shall pay a cancellation charge as determined by Lenovo.

10.3 Title and Risk of Loss

10.3.1 Lenovo shall transfer title to hardware Products to Reseller upon shipment. Title to a hardware Product shall revert to Lenovo when it is accepted by Lenovo as a returned hardware Product. Lenovo does not transfer title to software Products.

10.3.2 Lenovo shall bear the risk of loss for hardware Products until they are delivered to the location specified in Reseller's order.

11. Export and Import

11.1 Reseller warrants to Lenovo that it is, and shall continue to be at all times relevant to this Attachment, in compliance with all applicable export and import laws, regulations, orders and policies, including those of the United States, as well as any clearances, licenses, exemptions and filings associated therewith. If Reseller exports or imports Products, Services or technical data, Reseller shall act as the exporter or importer of record. Lenovo may, in its sole discretion, require Reseller to provide Lenovo with written certification of its compliance with the export and import requirements described above.

11.2 Reseller shall notify End Users of any applicable export laws and regulations, as well as any import requirements of the destination country.

11.3 Products exported by Reseller, or purchased from Reseller by an End User for use outside the Territory, shall not be taken into consideration when determining Reseller's performance of objectives or qualification for promotional offerings or marketing funds.

12. Limitation of Liability

Except for: a) damages for bodily injury (including death); b) damage to real property or tangible personal property; and c) the indemnification obligations of either party under this Agreement, including this Attachment:

12.1 In any action under or related to this Agreement, whether arising in contract, tort, (including negligence) or otherwise, neither party, or its affiliate, shall be liable to the other party or its affiliate for any of the following even if informed of their possibility and whether arising in contract, tort, (including negligence) or otherwise: a) third party claims for damages; b) loss of, or damage to, data; c) special, incidental, indirect, punitive, exemplary or consequential damages; or d) loss of profits, business, revenue, goodwill or anticipated savings; and

12.2 The maximum cumulative liability of either party and its affiliates to the other party and its affiliates for all actions arising out of or related to this Agreement, including this Attachment, regardless of the form of the action or the theory of recovery, shall be limited to the total amount paid or payable by Reseller and its affiliates to Lenovo and its affiliates for all orders issued under this Attachment.

13. Indemnification by Lenovo

13.1 If a third party claims that a Lenovo branded Product sold by Lenovo to Reseller infringes that party's patents or copyrights, Lenovo shall defend Reseller against that claim at Lenovo's expense and pay all costs, damages and attorney's fees that a court finally awards, or that are included in a settlement approved by Lenovo, provided that Reseller promptly notifies Lenovo in writing of the claim, and allows Lenovo to control, and cooperates with Lenovo in, the defense and any related settlement negotiations. The foregoing is Lenovo's entire obligation to Reseller regarding any claim of infringement. Lenovo shall have no obligation regarding any claim based on: 1) anything Reseller provides to Lenovo which is incorporated into a Product; 2) any unauthorized modification of a Product by Reseller; 3) the combination, operation, or use of a Product with any products not provided by Lenovo as a system, or the combination, operation, or use of a Product with any product, data, apparatus or business method that Lenovo did not provide; or 4) infringement by a non-Lenovo branded Product alone, as opposed to its combination with Lenovo Products.

13.2 If a third party claims that a Lenovo branded Product sold by Lenovo to Reseller caused bodily injury (including death); damage to real property; or damage to tangible personal property, Lenovo shall defend Reseller against that claim at Lenovo's expense and pay all costs, damages and attorney's fees that a court finally awards, or that are included in a settlement approved by Lenovo, provided that Reseller promptly notifies Lenovo in writing of the claim, and allows Lenovo to control, and cooperates with Lenovo in, the defense and any related settlement negotiations. This is Lenovo's entire obligation to Reseller regarding any such claim.