

lenovo Partner Network Agreement

This Partner Network Agreement (“Agreement”), between Lenovo (United States) Inc. (“Lenovo”) and the Lenovo Partner Network participant (“Partner”) shall be effective as of the date the Partner is approved by Lenovo, a Delaware corporation having offices at 1009 Think Place, Morrisville, North Carolina 27560 (“Lenovo”). Partner and Lenovo may be referred to herein collectively as “parties” and individually as “party”.

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Partner and Lenovo hereby agree as follows:

1. Purpose

The purpose of the Lenovo Partner Network program is to provide Partners with marketing, education and training and development support offerings related to Lenovo products and services. The Lenovo Partner Network program is designed to support partners that sell or influence the sale of Lenovo products and services. All programs, offerings, benefits and membership levels and their associated terms, conditions and requirements shall be specified on the Lenovo Partner Network web sites or in communications from Lenovo. Partner shall meet and maintain the qualification requirements specified by Lenovo. This Agreement does not include Lenovo’s approval for Partner to sell Lenovo products and services as a reseller. If approved by Lenovo, Partner may sell Lenovo products and services under the terms of the Lenovo Partner Network Reseller Attachment.

2. Partner Responsibilities

Partner shall be responsible for the following:

- a. customer satisfaction with all Partner activities;
- b. providing information to Lenovo as reasonably requested by Lenovo regarding Partner and its performance under this Agreement;
- c. fulfilling any applicable notice or consent requirements prior to disclosing personally identifiable information to Lenovo;
- d. using Lenovo information systems only in support of activities under this Agreement;
- e. refraining from making payments or gifts of any kind to anyone for the purpose of influencing decisions in favor of Lenovo, directly or indirectly; and
- f. notifying Lenovo of any material change in the information provided by Partner as part of its request to participate in the Lenovo Partner Network program.

3. Trademarks

3.1 Partner may use such Lenovo trademarks and service marks as Lenovo may authorize from time to time on a royalty free basis. Partner shall use such trademarks and service marks without modification, only in the United States and in accordance with Lenovo’s guidelines.

3.2 At Partner expense, Partner shall modify any advertising or promotional materials that do not comply with Lenovo guidelines. Partner shall promptly notify Lenovo of any complaints related to its use of a Lenovo trademark or service mark. Upon termination of this Agreement, Partner shall promptly cease any use of Lenovo trademarks or service marks. If Partner fails to cease use, Partner shall reimburse Lenovo for any litigation costs and attorneys’ fees as Lenovo may incur to cause Partner to cease use.

3.3 Partner shall not register or use any mark that is similar to a Lenovo trademark or service mark. Lenovo trademarks and service marks, and any goodwill resulting from Partner’s use of such marks, shall be the sole and exclusive property of Lenovo.

4. Confidential Information

4.1 Confidential Information shall mean information that either party marks or otherwise conspicuously identifies as confidential, or which the receiving party should reasonably understand to be confidential, including but not limited to: non public information about products and services; business plans; market data; financial data; customer data; and sales information.

4.2 Each party shall:

- a) use the same care and discretion to avoid disclosure, publication or dissemination of Confidential Information as it uses with its similar information that it keeps confidential; and
- b) use Confidential Information solely for the purpose for which it was disclosed or otherwise for the benefit of the discloser.

4.3 Either party may disclose Confidential Information to:

- a) its employees and affiliates that have a need to know in order to accomplish the purposes of this Agreement; and
- b) any third party with the discloser's prior written consent.

4.4 Any disclosure of Confidential Information by a party to a third party shall be on terms no less restrictive than those in this Agreement.

4.5 Confidential Information shall not include information that is: a) already in the possession of a party without obligation of confidentiality; b) developed by a party independently of Confidential Information received from the other party; c) obtained from a source other than the other party without obligation of confidentiality; d) publicly available when received or subsequently made publicly available through no fault of the recipient; or e) disclosed to a third party without obligation of confidentiality.

4.6 Either party may use the ideas, concepts and know-how contained in the Confidential Information of the other which is retained in the memories of recipient's employees.

4.7 CONFIDENTIAL INFORMATION OF EITHER PARTY IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND.

4.8 The receipt of Confidential Information by either party shall not preclude, or in any way limit, the recipient from: a) providing products or services to others which may be competitive with products or services of the discloser; b) providing products or services to others who compete with the discloser; or c) assigning its employees in its sole discretion.

4.9 Either party may disclose Confidential Information of the other to the extent required by law; however, either party shall promptly notify the other of any such requirement .

5. Limitation of Liability and Indemnification

5.1 Except for: a) damages for bodily injury (including death); b) damage to real property or tangible personal property; and the indemnification obligations of either party in this Agreement or any Attachment hereto, 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 regardless of whether such damages are foreseeable: a) loss of, or damage to, data; b) special, incidental, indirect, punitive, exemplary or consequential damages; or c) loss of profits, business, revenue, goodwill or anticipated savings.

5.2 Indemnification by Partner

Partner shall defend, indemnify and hold harmless Lenovo, its affiliates, and their officers, directors and employees, from and against any and all claims, demands, suits damages, losses, liabilities, fines, penalties, judgments, or costs of whatsoever nature (including reasonable attorney's fees) arising out of connected with : a) breach of this Agreement; b) violation of any applicable law, regulation or order, including but not limited to those relating to import and export; c) a breach of any representation or warranty; d) actual or alleged infringement of any intellectual property rights by Partner; e) personal injury, death or property damage; f) unlawful, unfair, or deceptive trade practices; or g) any other acts or omissions by Partner or Partner's contractors.

6. Termination

Either party may terminate this Agreement, in whole or in part, without cause, on one month's notice to the other party.

7. Miscellaneous

7.1 Changes. Lenovo may change the terms of this Agreement on one (1) month's written notice to Partner. In such event, Partner may terminate this Agreement effective upon the last day of the notice period.

7.2 Assignment. Partner may not assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of Lenovo. Lenovo may assign this Agreement, in whole or in part, as well as its rights and obligations hereunder, at any time. Any such assignment shall become effective as to Partner upon Partner's receipt of notice thereof.

7.3 Survival. Any terms of this Agreement which by their nature survive the expiration or termination of this Agreement, including Limitation of Liability and Indemnification, shall survive any such expiration or termination.

7.4 Limitation on Actions. Neither party may bring a legal action arising out of this Agreement against the other party more than two years after the cause of action arose.

7.5 Waiver. The failure by either party to insist on the strict performance of the other party, or to exercise a right when entitled to do so, shall not be deemed a waiver of that party's right to insist upon strict performance or to exercise such right on any other occasion.

7.6 Compliance with Laws. Each party shall comply with all applicable laws and regulations, including those governing consumer transactions.

7.7 Severability. In the event that any provision of this Agreement, in whole or in part, is invalid, unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, such provision shall be replaced, to the extent possible, with a provision which accomplishes the original business purposes of the provision in a valid and enforceable manner, and the remainder of this Agreement shall remain in effect.

7.8 Remedies. Partner acknowledges and agrees that Lenovo's remedy at law for breach of Partner's obligations hereunder would be inadequate, and hereby agrees that temporary and permanent injunctive relief and/or specific performance may be granted in any proceeding which may be brought to enforce this Agreement without the necessity of proof of actual damage, in addition to all other remedies provided hereunder or available at law.

7.9 Governing Law, Jurisdiction and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of North Carolina, without regard to its or any other jurisdiction's conflicts of laws principles. All claims or disputes arising out of or in connection with this Agreement shall be heard exclusively by a federal or state court located in Raleigh, North Carolina. To that end, each party irrevocably consents to the exclusive jurisdiction of, and venue in, such courts, and waives any: (i) objection it may have to any proceedings brought in any such court, (ii) claim that the proceedings have been brought in an inconvenient forum, and (iii) right to object (with respect to such proceedings) that such court does not have jurisdiction over such party. Without limiting the generality of the forgoing, each party specifically and irrevocably consents to personal and subject matter jurisdiction for such claims or disputes in a federal or state court sitting in Raleigh, North Carolina, and to the service of process in connection with any such claim or dispute by the mailing thereof by registered or certified mail, postage prepaid to such party, at the address set forth in, or designated pursuant to, this Agreement. To the fullest extent permitted by law, each party hereby expressly waives (on behalf of itself and on behalf of any person or entity claiming through such party) any right to a trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or in any manner connected with this Agreement or the subject matter hereof.

7.10 Independent Contractors. This Agreement does not create, nor should it be construed to create, the relationship of employer-employee, principal and agent, partners or joint venture between the parties. At all times relevant hereto, Partner and Lenovo shall be independent contractors. Neither party may act on behalf of the other; bind the other in any way; or represent to a third party that the other party is in any way responsible for its acts or omissions. Each party shall be solely responsible for its costs and expenses related to this Agreement and its rights and obligations hereunder.

7.11 Preparation of Agreement. Any ambiguities in the language of this Agreement are not to be construed or resolved against either party based on the fact that such party was principally responsible for drafting this Agreement.

7.12 Partner Information. Lenovo and the enterprise of which it is a part, may store, use and process contact information and other information about Partner, including names, phone numbers, addresses, and email addresses obtained in the course of this Agreement. Such information may be processed and used in connection with this Agreement and the Products or Services. It may be transferred by Lenovo to any country where Lenovo does business and it may be provided to entities acting on Lenovo's behalf in relation to this Agreement and the Products or Services.

7.13 Counterparts and Electronics Signature. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile or other electronic signature in a manner agreed upon by the parties hereto.

7.14 Communications. Communications between the parties may be by electronic means, and any such communication shall be valid and binding to the extent permissible under applicable law. In all electronic communications, an identification code ("Lenovo ID") contained in an electronic document shall be sufficient to verify the sender's identity and the document's authenticity.

7.15 Headings. Headings used in this Agreement are for the purposes of convenience only and will not affect the legal interpretation of this Agreement.

7.16 Complete Agreement. This Agreement is the sole and complete understanding of the parties regarding the subject matter hereof, superseding all prior or contemporaneous agreements and understandings, whether written or oral.