

**Amendment #3 TO MASTER PRICE AGREEMENT  
MHEC-07012015  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
LENOVO (United States) Inc.**

Whereas, this Amendment #3 ("Amendment #3") is entered into by and between LENOVO (United States) Inc. and the Midwestern Higher Education Commission ("MHEC"), contract number MHEC-10272015,

Whereas, the parties entered into the Master Price Agreement effective October 27, 2015 (the "Master Agreement") and the parties now desire to amend the terms of the Master Agreement.

Now, therefore:

**Section 5. Master Agreement Term shall be deleted in its entirety and replaced with the following:**

**"5. Master Agreement Term**

This Master Agreement shall be effective on October 27, 2015 and shall remain in effect until December 31, 2022 or unless otherwise terminated pursuant to the terms of the Master Agreement."

Except as set forth above, the Master Price Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Master Agreement and this Amendment #3, this Amendment #3 shall control.

Midwestern Higher Education  
Commission

Signature

Susan Heegaard, President

Name and Title

Date

9/23/19

Lenovo (United States) Inc.

Signature

Darren Estridge, Exec. Dir. (Nov Sales)

Date

9.17.19

**Amendment #2 TO MASTER PRICE AGREEMENT  
MHEC-07012015  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
LENOVO (United States) Inc.**

Whereas, this Amendment #2 ("Amendment #2") is entered into by and between LENOVO (United States) Inc. and the Midwestern Higher Education Commission ("MHEC"), contract number MHEC-10272015,

Whereas, the parties entered into the Master Price Agreement effective October 27, 2015 (the "Master Agreement") and the parties now desire to amend the terms of the Master Agreement.

Now, therefore:

**Section 5. Master Agreement Term shall be deleted in its entirety and replaced with the following:**

**"5. Master Agreement Term**

This Master Agreement shall be effective on October 27, 2015 and shall remain in effect until December 31, 2019 or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for three (3) additional one (1) year terms unless terminated pursuant to the terms of this agreement."

Except as set forth above, the Master Price Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Master Agreement and this Amendment #2, this Amendment #2 shall control.

**Midwestern Higher Education  
Commission**

  
Signature

**Susan Heegaard, President**  
Name and Title

12/10/18  
Date

**Lenovo (United States) Inc.**

  
Signature

**Darren Estridge, Senior Director, Public Sector**  
Name and Title

December 5, 2018  
Date

**Amendment #1 TO MASTER PRICE AGREEMENT  
MHEC-10272015  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
LENOVO (United States) Inc.**

Whereas, this Amendment #1 (“Amendment #1”) is entered into by and between LENOVO (United States) Inc. and the Midwestern Higher Education Commission (MHEC), contract number MHEC-10272015, effective as of February 15, 2018 (the Effective Date”),

Whereas, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, the SREB Member States and the WICHE Member States access to MHEC's Technology Initiative contracts, including this Master Agreement; and

Whereas, the parties entered into the Master Price Agreement dated October 19, 2015 (the “Master Agreement”) and the parties now desire to amend the terms of the Master Agreement.

Now, therefore:

**Section 1. Definitions, Subsection 2. Eligible Organization.** Section 1., Subsection 2. shall be deleted in its entirety and replaced with the following:

**2. Eligible Organizations:** This Master Agreement shall be the framework under which Eligible Organizations can acquire Products as defined in section 1.10 Products and acquire Services as defined in section 1.14 Services from Vendor. Eligible Organizations shall include:

- a. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State, NEBHE Member State, SREB Member State or WICHE Member State;
- b. All K-12 schools and school districts located in a Member State, NEBHE Member State, SREB Member State or a WICHE Member State;
- c. All city, county, and other local governments located in a Member State, NEBHE Member State, SREB Member State or WICHE Member State;
- d. All state governments and their departments of a Member State, NEBHE Member State, SREB Member State or WICHE Member State;
- e. Eligible Organizations located in a Member State, NEBHE Member State, SREB Member State or WICHE Member State that terminates its association with MHEC, NEBHE, SREB or WICHE respectively, will no longer be eligible to acquire Products or Services pursuant to this Master Agreement. Termination by any

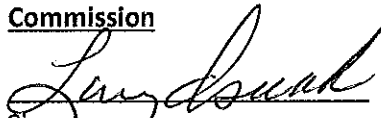
Member State, NEBHE Member State, SREB Member State or WICHE Member State shall not prohibit or restrict Vendor from negotiating or contracting with such Member State, NEBHE Member State, SREB Member State or WICHE Member State or entities within such states outside of MHEC. MHEC shall promptly notify Vendor in writing of the termination of any membership in MHEC, NEBHE, SREB or WICHE. If any Member State, NEBHE Member State, SREB Member State or WICHE Member State so terminates its membership, such termination shall not effect the validity or enforceability of or constitute a default under any Order then in effect with any Eligible Organization. Similarly, MHEC shall promptly notify Vendor if other states join MHEC, NEBHE, SREB or WICHE after which such states shall be deemed to be a Member State, NEBHE Member State, SREB Member State or WICHE Member State for purposes of this Master Agreement.

**Section 1. Definitions, Subsection 19 – NEBHE Member State.** The following Section 1., Subsection 19 is hereby added to the Master Agreement:

**19. NEBHE Member State:** refers to any state that is a member, or an affiliate member, of the New England Board of Higher Education (“NEBHE”). For purposes of this Master Agreement the current NEBHE Member States are Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont.

Except as set forth above, the Master Price Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Master Agreement and this Amendment #1, this Amendment #1 shall control.

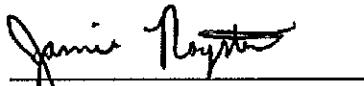
Midwestern Higher Education  
Commission

  
Signature

President, Larry Isaak  
Name and Title

3/6/18  
Date

Lenovo (United States) Inc.

  
Signature

Jamie Royster, Senior Director, Sales  
Name and Title

February 27, 2018  
Date

MASTER PRICE AGREEMENT  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
LENOVO (UNITED STATES) INC.  
EFFECTIVE OCTOBER 27, 2015 through DECEMBER 31, 2018

THIS AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission (hereinafter MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, on behalf of the Eligible Organizations located in the MHEC member states, and Lenovo (United States) Inc. (hereinafter Vendor) 1009 Think Place Morrisville, NC 27560. For purposes of this Master Agreement MHEC and Vendor are referred to collectively as the "Parties" or individually as "Party".

**Whereas**, the Midwestern Higher Education Compact is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

**Whereas**, MHEC has established a Technology Initiative for the purpose of which is to determine, negotiate and make available quality and affordable technology products and services to the not-for-profit and public education related entities in the MHEC Member States; and

**Whereas**, MHEC has entered into separate agreements with the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the SREB Member States and the WICHE Member States access MHEC's Technology Initiative contracts, including this Master Agreement; and

**Whereas**, Vendor offers certain quality technology related products and services; and

**Whereas**, MHEC conducted a competitive sourcing event for Computing Hardware and Related Services in August 2014 and upon completion of the competitive process awarded to Vendor: Category 1: Desktop Hardware; Category 2: Laptop Hardware; Category 3: Tablet Devices; and Category 4: Server and Storage Hardware; and

**Therefore**, in consideration of mutual covenants, conditions, and promises contained herein, MHEC and Vendor agree as follows:

**1. Definitions**

1. **Documentation:** refers to the license made available by Vendor to Procuring Eligible Organization of documentation relating to any Hardware or Software as well as any manuals provided by Vendor with the Hardware or Software and relating to the Hardware or Software.
2. **Eligible Organizations:** This Master Agreement shall be the framework under which Eligible Organizations can acquire Products as defined in section 1.11 Products and acquire Services as defined in section 1.14 Services from Vendor. Eligible Organizations shall include:
  - a. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State, SREB Member State or WICHE Member State;
  - b. All K-12 schools and school districts located in a Member State, SREB Member State or a WICHE Member State;
  - c. All city, county, and other local governments located in a Member State, SREB Member State or WICHE Member State;
  - d. All state governments and their departments of a Member State, SREB Member State or WICHE Member State;
  - e. Eligible Organizations located in a Member State, SREB Member State or WICHE Member State that terminates its association with MHEC, SREB or WICHE respectively, will no longer be eligible to acquire Products or Services pursuant to this Master Agreement. Termination by any Member State, SREB Member State or WICHE Member State shall not prohibit or restrict Vendor from negotiating or contracting with such Member State, SREB Member State or WICHE Member State or entities within such states outside of MHEC. MHEC shall promptly notify Vendor in writing of the termination of any membership in MHEC, SREB or WICHE. If any Member State, SREB Member State or WICHE Member State so terminates its membership, such termination shall not effect the validity or enforceability of or constitute a default under any Order then in effect with any Eligible Organization. Similarly, MHEC shall promptly notify Vendor if other states join MHEC, SREB or WICHE after which such states shall be deemed to be a Member State, SREB Member State or WICHE Member State for purposes of this Master Agreement.
3. **Hardware:** refers to Vendor's full line of new or refurbished Lenovo branded desktops, laptops, tablet devices, and server and storage equipment and components made available for sale by Vendor to Eligible Organizations under this Agreement.

4. **Large Order Negotiated Prices:** refers to the price offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of the Eligible Organization and Vendor. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions negotiated by Vendor and the Eligible Organization.
5. **Machine:** means a server or storage hardware Product identified by a Machine Type as well as its features, conversions or upgrades. The term "Machine" does not include any software, whether pre-loaded with the Machine, installed subsequently, or otherwise.
6. **Member State:** refers to any state that is a member, or an affiliate member, of the Midwestern Higher Education Compact ("MHEC"). For purposes of this Master Agreement the current MHEC Member States are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.
7. **Order:** refers to an Eligible Organization's purchase order or other ordering document evidencing its intent to procure Products or Services from Vendor or Reseller under the terms and conditions of this Master Agreement.
8. **Price Agreement:** refers to an indefinite quantity contract, which requires Vendor, or through Reseller, to furnish Products or Services to a Procuring Eligible Organization that issues a valid Order document.
9. **Procuring Eligible Organization:** refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed an Order.
10. **Products:** means any Lenovo branded or third party hardware or software that Lenovo makes available for purchase by Eligible Organizations under this Agreement. Hardware Products include personal computers (desktops, laptops, and tablet devices), servers, storage devices and accessories and the relevant components of each, including firmware. Software Products include computer software Programs (whether pre-loaded or provided separately) and related licensed materials such as documentation.
11. **Product List:** refers to the complete list of Products and the corresponding prices for those Products made available for purchase by Eligible Organizations under this Master Agreement. The Product List contains an item number, item description and the maximum price for each Product. Price List for all Products will be set forth at <http://www.lenovo.com/mhec> and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.
12. **Promotional Prices:** refers to prices that are offered nationally or regionally to a specific category of customers intended to include Eligible Organizations for defined time periods under defined terms and conditions.

13. **Reseller:** refers to Resellers authorized by Vendor to resell Products and Services to Eligible Organizations in Member States, and which have agreed to the terms and conditions set forth herein, as evidenced by their execution of the form set forth herein as Attachment D. Vendor will certify and register Resellers by ensuring that when reselling to Eligible Organizations, Resellers adhere to terms no less material than those set forth in this Master Agreement. At any time during the term of this Master Agreement should MHEC protest the inclusion of a Reseller on this list for cause, Vendor will require that Reseller to undergo recertification. Vendor must maintain and provide a list of authorized Resellers to MHEC.
14. **Services:** means the performance of a task; the provision of advice or assistance; or access to a resource such as an information database related to Products that Vendor makes available to Eligible Organizations pursuant to a Statement of Work under this Agreement. Eligible Organizations purchasing Services, including professional Services, training and/or on-site consultative Services, shall negotiate the terms and conditions of such purchase with Vendor through a Statement of Work under this Agreement.
15. **Services List:** refers to the complete list of Services made available for purchase by Eligible Organizations under this Master Agreement. The Services List contains the item description for each service. Pricing shall be provided based on unique requirements to each Eligible Organization. Where travel is necessary to perform the Services, additional reasonable costs may be levied. The Service List is set forth as Exhibit B and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.
16. **Software:** refers to Vendor's full offerings of a) desktop related software, b) laptop related software, c) tablet devices related software, d) server and storage related software (including third-party software) licenses made available to Procuring Eligible Organization under this Master Agreement. Software does not include source code.
17. **SREB Member State:** refers to any state that is a member, or an affiliate member, of the Southern Regional Education Board ("SREB"). For purposes of this Master Agreement the current SREB Member States are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.
18. **WICHE Member State:** refers to any state that is a member, or an affiliate member, of the Western Interstate Commission for Higher Education ("WICHE"). For purposes of this Master Agreement the current WICHE Member States are Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and U.S. Pacific Territories and Freely Associated States.



## 2. Scope of Offering

Procuring Eligible Organizations shall purchase from Vendor or Reseller, and Vendor or Reseller shall distribute to Procuring Eligible Organizations Products and Services in accordance with the terms of this Master Agreement. All Eligible Organizations are qualified to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with Vendor or Reseller. This Master Agreement is a Price Agreement. Accordingly, Vendor or Reseller shall provide Products or Services only upon the issuance and acceptance by Vendor or Reseller of a valid Order. Orders may be issued to purchase any Products listed on the Product List or for any Services listed on the Services List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in Vendor's Product List and Services List at the prices stated therein. For Large Order Negotiated Prices, Eligible Organization and Vendor or Reseller may negotiate quantity discounts below the Product and Services List price(s) for a given purchase order. As it sees fit, Vendor or Reseller may offer under this Master Agreement Promotional Price discounts that result in prices below those listed in the Product List and the Services List. Vendor is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Master Agreement. MHEC shall not be liable for any Eligible Organization that executes an Order under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

## 3. Purchasing Under Master Agreement

- A. **Products:** Procuring Eligible Organization shall purchase from Vendor or Reseller the Products listed on the Product List under the terms and conditions of this Master Agreement by delivering to Vendor or Reseller an Order. Vendor will make Products on the Product List available to Resellers at the prices listed therein. Eligible Organizations may place an Order with Resellers on the terms and conditions as agreed between Eligible Organization and such Reseller. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the "ship-to" address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Master Agreement.
- B. **Services:** Procuring Eligible Organization shall purchase Services from Vendor or Reseller under the terms and conditions of this Master Agreement by delivering to Vendor or Reseller an Order pursuant to the relevant Statement of Work. Vendor will make Services on the Services List available to Resellers at the prices listed therein. Eligible Organizations may place an Order with Resellers on the terms and conditions as agreed between Eligible Organization and such Reseller. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service (s) that Procuring Eligible Organization desires Vendor to perform; (iii) the price of the Service in accordance with this

Master Agreement; (iv) the "bill-to" address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement. Eligible Organizations purchasing Services, including training and/or on-site consultative services, shall negotiate the terms and conditions of such purchases with the Vendor.

- C. Each Order that is accepted by Vendor or Reseller will become a part of the Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Vendor or Reseller constitutes a binding contract.
- D. All Products furnished will be subject to acceptance pursuant to the terms and conditions of Section 7.A ("Acceptance") by Procuring Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Procuring Eligible Organization. Nothing in this Section precludes any agreements for the use of electronic purchase orders.
- E. Procuring Eligible Organization may request in writing changes to an Order ("Change Request") that Vendor or Reseller has previously accepted. In response to a Change Request, Vendor or Reseller will provide written quotations to Procuring Eligible Organization, including any changes to prices, license fees, shipment or completion dates. A Change Request is a separate Order subject to the terms and conditions of this Master Agreement and Vendor's change order process.
- F. Vendor or Reseller will accept a purchasing card for order placement in addition to accepting a purchase order.

#### **4. Quantity Guarantee**

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. This Master Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain Products and Services from other sources during the term of the Master Agreement.

#### **5. Master Agreement Term**

This Master Agreement shall be effective on October 27, 2015 and shall remain in effect until December 31, 2018 or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for four (4) additional one (1) year terms unless terminated pursuant to the terms of this agreement.

#### **6. Order of Precedence**

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and Vendor may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional

laws or regulations. Likewise, a Procuring Eligible Organization and Vendor may enter into an addendum to supplement or modify this Agreement for specific Products or Services. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and Vendor. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed addendum between Eligible Organization and Vendor, including any Statement of Work
- B. The terms and conditions of this Master Agreement
- C. Exhibits or amendments to this Master Agreement
- D. The list of Products and Services contained in the Order

## 7. Payment Provisions

### A. Acceptance:

- I. **Products:** Unless otherwise agreed upon by Procuring Eligible Organization and Vendor or Reseller, within thirty (30) days from the date of delivery, the Procuring Eligible Organization shall accept or reject the Products for which installation by Vendor or Reseller is not needed. Procuring Eligible Organization may reject the Product for any of the following conditions: (i) not operable at power-up or following initial burn in period; (ii) fails because of factory-configured hardware, software, or firmware; (iii) incomplete or missing items or components; (iv) misconfigured; (iv) not what was ordered; or (vi) received in damaged condition. For Products for which installation by Vendor or Reseller is required, and unless otherwise agreed upon by Procuring Eligible Organization and Vendor or Reseller, the Procuring Eligible Organization shall be deemed to have accepted the Products unless such Procuring Eligible Organization notifies Vendor in writing within thirty (30) days of Vendor's or Reseller's completion of installation and verification tests that the Products have been rejected, and the specific reason for rejection as identified above.
  - II. **Services:** Unless otherwise agreed to by Procuring Eligible Organization and Vendor or Reseller, within thirty (30) days from completion of Services, Procuring Eligible Organization shall be deemed to have accepted the Services unless such Procuring Eligible Organization notifies Vendor in writing that the Services have been rejected, and the specific basis for rejection identified. Services shall be invoiced upon completion unless otherwise specified on the Order.
- B. **Payment of Invoice:** Invoices shall be submitted to the Procuring Eligible Organization upon delivery of the Product or Services. Payments shall be remitted to Vendor or Reseller at the address shown on the invoice. Payment shall be tendered to Vendor or Reseller within thirty (30) days of the date of delivery of Product or Services. After the thirtieth (30) day from the date of delivery of Product or Services, unless mutually agreed to, interest shall be paid on the unpaid balance due to Vendor or Reseller at the rate of one and one-half percent (1½) per month or the maximum rate allowed by law, rule, regulation or

- court order. The Procuring Eligible Organization shall make a good faith effort to pay within thirty (30) days after delivery of Product or Services.
- C. **Dispute Notice:** Procuring Eligible Organization shall notify Vendor or Reseller of any billing discrepancies or disputes about an invoice within ten (10) days after receiving it, specifying with particularity the basis of any such dispute (“Dispute Notice”). Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Vendor or Reseller will be subject to interest charges accruing from the original due date.
  - D. **Partial Shipment:** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Vendor or Reseller unless the Procuring Eligible Organization has clearly specified “No Partial Shipment” on each purchase order.
  - E. **Payment of Taxes:** The price listed under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Vendor or Reseller for, any and all taxes and/or duties assessed against or payable by Vendor or Reseller in connection with the sale of Hardware, licensing of Software or Documentation, or performance of Services except for taxes imposed upon Vendor’s or Reseller’s net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

## 8. Shipping

Vendor or Reseller shall ship the Products F.O.B. destination. Title to Products shall pass to Procuring Eligible Organization upon delivery. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon Acceptance.

## 9. Product Delivery

Unless otherwise agreed to by Procuring Eligible Organization and Vendor or Reseller, Vendor or Reseller agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order. If delivery cannot be made within thirty (30) calendar days, Vendor or Reseller will notify Procuring Eligible Organization within ten (10) business days following Order placement, and Procuring Eligible Organization, as its sole remedy, can cancel the order by written, electronic, or facsimile notification.

## 10. Price Guarantees

The Procuring Eligible Organization shall pay the lower of the prices contained in the Product List or an Announced Promotion Price or Large Order Negotiated Price (provided that, with respect to the applicability of Large Order Negotiated Prices, such Procuring Eligible Organization is a party to the Large Order Negotiated Price negotiations and the purchase is part of the project for which the Large Order Negotiated Price was negotiated).

### **11. Product Pricing**

Vendor agrees to maintain the Product List in accordance with the following provisions:

- A. Commercial Price List for all Equipment, Software and Documentation will be set forth at <http://www.lenovo.com/mhec> . Changes to commercial prices are subject to change with thirty (30) days prior written notice to MHEC.
- B. Discount Percentage Pricing: The prices for Products are the Commercial Price List less applicable discount as specified in Exhibit A. Except as set forth in Section 10 "Price Guarantees" or Section 36 "Administrative Reporting and Fees," the discount percentages set forth in Exhibit A shall remain firm during the term of this Master Agreement. Lenovo shall add new Product(s) to Commercial Price List as new Product(s) become available for sale. The pricing for all new Products shall be at the price discount levels provided herein, or as agreed to by the Parties.
- C. Should the list price of a Product on Vendor's Commercial Price List decrease at any time during this Master Agreement, Vendor agrees to a similar price reduction on this Master Agreement's Product List for the same Product, prior to the Administrative Fee set forth in Paragraph 36 of this Master Agreement.
- D. Vendor shall add new product(s) to the Commercial Price List when new product(s) shall become available for sale by Vendor. The pricing for all new Products shall incorporate, to the extent possible, similar or comparable discount levels provided herein, be as agreed by the Parties.

### **12. Services Pricing**

Vendor agrees to maintain the Service List in accordance with the following provisions:

- A. For any standard Services, in which the Services and corresponding pricing are on the Commercial Price List, the pricing will be as described in Section 11 "Products Pricing" for Discount Percentage Pricing, and the applicable discount percentage as noted in Exhibit B will apply. Except as set forth in Section 10, "Price Guarantees" or Section 36 "Administrative Reporting and Fees," the discount percentage set forth in Exhibit B shall remain firm for the term of the Master Agreement.
- B. For any custom Services that are not included on the Commercial Price List or require a Statement of Work, the prices for such Services purchased under this Master Agreement will be as mutually agreed upon by both Vendor and Procuring Eligible Organization and as set forth in a Vendor quote or an applicable Statement of Work or negotiated agreement.

### **13. Software License**

Lenovo grants Procuring Eligible Organization a non-exclusive license to use the version or release of the system Software for Equipment. Permitted use is for internal purposes only (and not for further commercialization). Commercial off the shelf Software is subject to any specific Software Licensing information that is in the Software product or its supporting material, and the License terms will govern its use.

#### 14. Warranties

- A. **Personal Computer Products:** Vendor warrants that each Vendor branded Hardware Product, other than a Machine, purchased by Eligible Organization for such Eligible Organization's own use and not for resale, is free from defects in material and workmanship under normal use during the Warranty Period. The Warranty Period for a Hardware Product starts on the original date of purchase specified on Vendor's or Reseller invoice unless specified otherwise by Vendor in writing. The Warranty Period and type of warranty service that apply to a Hardware Product are specified in Attachment A – Warranty Service Information (Personal Computer Products).
- B. **Machines:** Vendor warrants that each Machine is free from defects in materials and workmanship under normal use during the warranty period. Unless Vendor specifies otherwise, the warranties apply only in the country of acquisition. The warranty period for a Machine is a fixed period of time specified in Attachment B: Warranty Service Information – Machines (Servers and Storage Products) or as specified in a Transaction Document. The warranty period starts on the original date of purchase specified on Vendor's or Reseller's invoice unless specified otherwise by Vendor in writing. During the warranty period, Vendor shall provide repair and exchange Service for the Machine, without charge, under the type of Service designated by Vendor for the Machine. If a defect in material or workmanship is discovered during the warranty period and Vendor is unable to either: (i) repair it; or (ii) replace it with one that is at least functionally equivalent, Eligible Organization may return it to Vendor for a prorated refund.
- C. **Services:** Vendor warrants that it performs each Service using reasonable care and skill and according to its current description contained in this Agreement, a Statement of Work, an Attachment, or an Order. Eligible Organization shall provide timely written notice of any failure to comply with this warranty in order that Lenovo may take corrective action. Additional terms regarding Service for Machines during and after the warranty period are contained in Attachment C: Terms for Servers, Storage Products and Related Services.

- D. **Items to which these warranties do not apply:** These warranties shall not apply to any Hardware Product which has been subjected to misuse, accident, unauthorized modification; operated in an unsuitable physical or operating environment; subjected to natural disasters, power surges or unauthorized maintenance; to any third party hardware product, including those that Vendor may provide or integrate into a Hardware Product at Eligible Organization's request; or to software, whether provided with a Hardware Product or installed subsequently. These warranties do not include any technical support, such as assistance with "how-to" questions and those regarding Hardware Product set-up and installation. These warranties shall be voided by the removal or alteration of identification labels on a Hardware Product or its parts. In no event shall these warranties include liability for uninterrupted or error-free operation of a Hardware Product, correction of all defects; or any loss of, or damage to data by a Hardware Product.
- E. Vendor warrants that Procuring Eligible Organization shall acquire good and clear title to Lenovo branded Products being purchased under this Master Agreement, free and clear of all liens and encumbrances. For any non-Lenovo branded Products, Vendor warrants that it has the right to provide such products to the Procuring Eligible Organization.
- F. **THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. ALL SOFTWARE, SUPPORT AND ALL THIRD PARTY PRODUCTS AND SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIRD PARTY MANUFACTURERS, SUPPLIERS, DEVELOPERS, SERVICE PROVIDERS, LICENSORS OR PUBLISHERS MAY PROVIDE THEIR OWN WARRANTIES TO ELIGIBLE ORGANIZATION.**

#### 15. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving Vendor ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after it has been issued if the Product is ultimately accepted. At any time, Vendor may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Vendor of any warranty or other service obligations incurred under the terms of this Master Agreement.
- B. Either Party may terminate this Master Agreement for cause based upon material breach of the Master Agreement by the other Party, provided that the non-breaching Party shall give the breaching Party written notice specifying the breach and shall afford the breaching Party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching Party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty

(30) days, begun and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching Party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all remedies available to it under the law.

- C. In the event that either Party be adjudged insolvent or bankrupt by a court of competent jurisdiction, or upon the institution of any proceedings by or against it seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such event this Master Agreement may immediately be terminated or cancelled by the other Party hereto.
- D. In the event this Master Agreement expires or is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all Product and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

#### **16. Non-Appropriation**

This provision applies only to publicly funded Eligible Organizations. The terms of this Master Agreement and any Order issued for multiple years under this Master Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Master Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its obligations under this Master Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by Vendor and shall be final and binding. A Procuring Eligible Organization shall provide sixty (60) days notice, if possible, of its intent to terminate this contract for non-appropriation. The Procuring Eligible Organization shall send to Vendor a notice of its Governing Body's decision not to appropriate funds. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from Vendor will be paid by the Procuring Eligible Organization.

#### **17. Records and Audit**

Vendor agrees to maintain detailed records pertaining to the price of Services rendered and Products delivered for a period of six (6) years from the date of Acceptance of each Order. These records shall be subject to inspection by Procuring Eligible Organization and appropriate governmental authorities with Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to audit billings either before or after payment. Payment under this Master Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.



### **18. Independent Contractor**

Vendor and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Vendor has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Master Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the Parties.

### **19. Infringement Protection**

If a third party claims that a Vendor branded Hardware Product provided to MHEC or Eligible Organization by Vendor under this Agreement infringes that party's patent or copyright, Vendor will defend MHEC or an Eligible Organization against that claim at its expense, and pay all costs, damages, and attorneys' fees that a court finally awards against MHEC or an Eligible Organization or that are included in a settlement approved by Vendor, provided that MHEC or an Eligible Organization: (i) promptly notifies Vendor in writing of the claim; (ii) subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law, allows Vendor to control, and cooperates with Vendor in the defense and any related settlement negotiations; and (iii) is and remains in compliance with MHEC and such Eligible Organization's obligations in this Section 19. The foregoing is Vendor's entire obligation to MHEC and any Eligible Organization and MHEC's and any Eligible Organization's exclusive remedy regarding any third party claim of infringement. Vendor will have no obligation under this section with respect to any Claim of infringement resulting from (a) Services performed, or Product provided, pursuant to Eligible Organization's specification or design; (b) an Eligible Organization's unauthorized modification of a Product; (c) any combination, operation, or use of the Product with systems other than those provided by Vendor to the extent that such a Claim is caused by such modification, combination, operation, or use of the Product; or (d) infringement by a third party product alone, as opposed to its combination with a Vendor branded Product. Following notice of a Claim or a threat of actual suit, MHEC or an Eligible Organization shall permit Vendor, at its own expense and option, to: (1) resolve the claim in a way that permits continued ownership and use of the affected Product or Service by MHEC or an Eligible Organization; (2) modify the Product; (3) to provide a comparable replacement that is at least functionally equivalent at no cost to MHEC or an Eligible Organization; or (4) if Vendor determines that none of the foregoing options is reasonably available, in the case of a Product accept return of the Product, freight collect, and provide a reasonable depreciated refund and in the case of a Service, provide a refund less a reasonable adjustment for beneficial use.

### **20. Indemnification**

Vendor will indemnify, protect, save and hold harmless MHEC and Eligible Organizations, as well as the representatives, agents and employees of MHEC and

Eligible Organizations, from any and all claims or causes of action related to a claim of personal injury (including death) or damage to real property or tangible personal property, including all attorneys' fees incurred by MHEC and/or Eligible Organizations, caused by a Vendor branded Product provided to MHEC or an Eligible Organization under this Agreement or arising from the performance of the Master Agreement by Vendor, Vendor's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall give Vendor written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law permits Vendor to control the defense of any such claim or action at Vendor's own expense. MHEC and/or Eligible Organization agree that Vendor may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Eligible Organization shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Vendor with all reasonable assistance that Vendor may require.

#### **21. Limitation of Liability**

In any action arising out of or related to this Agreement or any Order placed hereunder, Vendor, MHEC, or Eligible Organization shall not be liable 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) any special, incidental, indirect, punitive, exemplary, or consequential damages; or (d) loss of profits, business, revenue, goodwill or anticipated savings; and The maximum cumulative liability of Vendor to MHEC or any Eligible Organization for all actions arising out of or relating to this Agreement and all orders placed hereunder, regardless of the form of the action or the theory of recovery, shall be limited to the greater of (i) direct damages up to \$500,000 or (ii) the total amount paid or payable by MHEC and any Eligible Organization to Vendor hereunder. The foregoing limitations under this section 21 do not apply to any indemnification obligations under Sections 19 and 20 of this Master Agreement.

#### **22. Confidentiality**

A. While Vendor is providing Services hereunder, Eligible Organization or Vendor may disclose to the other certain business information identified as confidential ("Confidential Information"). All such information shall be marked or otherwise designated as "Confidential" or "Proprietary". In order for such information to be considered Confidential Information pursuant to this Section 22 of the Master Agreement, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient within ten (10) days after oral disclosure. Both Eligible Organization and Vendor agree that, with

respect to Confidential Information it receives (as "Recipient") from the other (as a "Discloser") in connection with this Master Agreement or an Order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Master Agreement or an Order placed under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.

- B. Each Party will make reasonable efforts not to disclose the other Party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidential Information shall remain the property of and be returned to the Disclosure (along with all copies or other embodiments thereof) within fifteen (15) days of (a) the termination or completion of the Order under this Master Agreement, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Participant or Vendor of this Master Agreement or an Order under this Master Agreement directing that Confidential Information described generally or specifically in such demand be returned to the Discloser.
- C. Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, both Eligible Participant and Vendor agree to comply with any applicable data practices or similar type laws of the State in which Eligible Participant is located or founded.

### **23. FERPA (and Other Privacy Laws)**

The parties acknowledge that Vendor does not require access to MHEC or any Eligible Organization's data in the performance of its obligations under this Agreement. Where applicable in Vendor's provision of a Service pursuant to a Statement of Work under this Agreement, Vendor agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and federal privacy laws; and agrees to implement and maintain safeguards to protect the security, confidentiality, and integrity of information it receives from Eligible Organization.

### **24. Amendments**

Except as provided for in Section 6, "Order of Preference"; Section 11, "Product Pricing"; and Section 12 "Service Pricing"; this Master Agreement shall only be amended by written instrument executed by the Parties.

**25. Scope of Agreement**

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this Agreement, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.

**26. Invalid Term or Condition**

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

**27. Enforcement of Agreement**

A Party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Master Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

**28. Web Site Maintenance**

Vendor agrees to maintain and support Internet website(s) for access to the Product List, Service List, Product descriptions, Product specifications, Service descriptions, Service specifications and other aids in accordance with instructions provided by MHEC. In addition, Vendor will provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting. Vendor shall notify MHEC when there are additions and/or deletions made to the list of authorized Resellers.

**29. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under this Master Agreement. If Vendor is found to be not in compliance with these requirements during the life of this Master Agreement, Vendor agrees to take appropriate steps to correct these deficiencies.

**30. Compliance with Law**

Vendor shall comply with all applicable laws and governmental regulations, which by their terms, apply to Vendor's performance under an Order pursuant to this Master Agreement. Eligible Organization agrees to comply with all applicable laws and

governmental regulations in connection with this Master Agreement. MHEC agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement.

### **31. Applicable Law**

- A. As between Eligible Organization and Vendor, this Master Agreement will be construed in accordance with, and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.
- B. As between MHEC and Vendor this Master Agreement will be construed in accordance and its performance governed by the laws of the state of Minnesota. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.
- C. As between Eligible Organization, MHEC, and Vendor this Master Agreement will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

### **32. Conflict of Interest**

Vendor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Master Agreement.

### **33. Assignment**

Neither Party shall sell, transfer, assign or otherwise dispose of the Master Agreement or any portion thereof or of any right, title, or interest herein without the prior written consent of the other Party. This consent requirement includes reassignment of this Master Agreement due to change in ownership, merger, or acquisition of a Party or its subsidiary or affiliated corporations. Nothing in this Section shall preclude Vendor from employing a subcontractor in carrying out its obligations under this Master Agreement. Vendor's use of such subcontractors will not release Vendor from its obligations under this Master Agreement.

### **34. Survival**

Certain paragraphs of this Master Agreement including but not limited to Indemnification; and Limitation of Liability shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

**35. Notification**

A. **Between the Parties:** Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

<b>TO MHEC:</b>	<b>TO Vendor:</b>
Name: Nathan Sorensen	Name: Steve Rychly
Address:	Address:
105 Fifth Avenue South, Suite 450	1009 Think Place
Minneapolis, Minnesota 55401	Morrisville, NC 27560
Email: <a href="mailto:Nathans@mhec.org">Nathans@mhec.org</a>	Email: <a href="mailto:srychly@lenovo.com">srychly@lenovo.com</a>
Fax: 612-767-3353	Fax: 919-257-4996

B. **To Eligible Organization:** Notices shall be sent to Eligible Organization’s business address. The term “business address” shall mean the “Bill to” address set forth in an invoice submitted to Eligible Organization.

**36. Administrative Reporting and Fees**

On a quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), Vendor will, in a timely manner, make available to MHEC utilization reports and information generated by this Master Agreement, including but not limited to state-by-state and institution-by-institution information on sales volume and volume savings.

The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to 0.75% or 0.0075 of the net Product and Service sales for that quarter period (the “Fee”). MHEC, from time to time, may change the percentage of the Fee it will receive as a result of this Master Agreement. Any change in the fee shall also require a change in the Product List and Service List price.

**37. MHEC Not Liable For Eligible Participants**

MHEC is not liable to Vendor for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order and/or the Master Agreement.

**38. Announcements and Publicity**

Any announcements and publicity given to MHEC (or an Eligible Organization) resulting from this Master Agreement must receive the prior approval of MHEC (or Eligible

Organization). Vendor will not make any representations of MHEC's (or an Eligible Organization's) opinion or position as to the quality of effectiveness of the Products, Supplies and/or Services that are the subject of this Master Agreement without the prior written consent of MHEC (or Eligible Organization).

#### **39. Marketing**

Vendor will assist MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and a full service, on-line MHEC-specific web site to receive information on products, supplies, services and prices and to place Orders.

#### **40. Oversight Committee**

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Vendor in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise Vendor on the effectiveness of its implementation progression. There will be an annual meeting between Vendor and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.

#### **41. Force Majeure.**

Neither Vendor nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party unable to perform shall undertake reasonable action to notify the other Parties of the same.


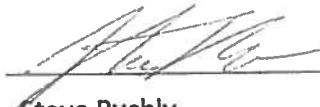
#### **42. Sovereign Immunity.**

Notwithstanding anything to the contrary in this Master Agreement or Order under this Master Agreement, this Master Agreement shall not be construed to deprive a Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Master Agreement or afforded by Eligible Organization's State to the Eligible Organization.

#### **43. Miscellaneous.**

All Parties to this Master Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Master Agreement that shall be considered an original and shall be admissible in any action to enforce this Master Agreement. Vendor may accept this Master Agreement either by its authorized signature or a signed Order. Except as

provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties; accordingly any additional terms on the Procuring Eligible Organization's ordering documents shall be of no force or effect. The Parties, by their representatives signing below, agree with the terms of this Master Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

	<u>Midwestern Higher Education Commission</u>	<u>Vendor</u>
Signature:	<u></u>	<u></u>
Name:	<u>Larry Isaak</u>	<u>Steve Rychly</u>
Title:	<u>President</u>	<u>Regional Sales Director</u>
	<u>Midwest Higher Education</u>	<u>Vendor</u>
Address:	<u>1300 South Second Street, Suite</u>	<u>1009 Think Place</u>
	<u>Minneapolis, Minnesota, 55454</u>	<u>Morrisville, NC 27560</u>
Date:	<u>10/19/2015</u>	<u>10/19/2015</u>



**Exhibit A  
Product List**

<b>Product Categories</b>	<b>MHEC End User Customer Discount off List Price Schedule</b>
Lenovo ThinkCentres	30% off List Price if Corporate Model; 3% off List Price if TopSeller Model*
Lenovo ThinkStations	28% off List Price if Corporate Model; 3% off List Price if TopSeller Model*
Lenovo ThinkPads	30% off List Price if Corporate Model; 3% off List Price if TopSeller Model*
Lenovo Tablet	32% off List Price if Corporate Model; 3% off List Price if TopSeller Model*
Lenovo Think/System X Servers	24% off List Price if Corporate Model; 3% off List Price if TopSeller Model*
Lenovo Storage	20% off List Price if Corporate Model; 3% off List Price if TopSeller Model*
Lenovo Visuals	12% off List Price; 3% off List Price if TopSeller Model*
Accessories	(20% off List Price; 3% off List Price If TopSeller Model*
Warrantles	20% off List Price
Lenovo.com Products	Not Applicable
* Only available through approved Lenovo MHEC Resellers.	

Price List for all Products can be found at: [http:// www.lenovo.com/mhec](http://www.lenovo.com/mhec)

**Exhibit B  
Services List**

<b>Warranty Services and Support</b>	
<b>Warranty Extensions</b>	Are available for periods of up to five years (depending on your system) giving you a fixed-term, fixed-cost service solution that allows you to accurately budget for equipment expenses
<b>Warranty Upgrades</b>	Upgrade to onsite service for convenience of parts and labor provided onsite, at your place of work
<b>Battery Warranty</b>	Extend a 1 year base battery warranty up to 3 years offering depot or onsite replacement by a trained technician.
<b>Priority Support</b>	24/7 access to advanced technicians
<b>Accidental Damage Protection</b>	Covers accidental drops, spills, bumps, and structural failures incurred under normal operating conditions or handling.
<b>Keep Your Drive</b>	Provides customers the option to retain their hard disk drive on their desktop or mobile system in the event of repair, replacement, or disposal of their
<b>Factory Integration Services</b>	
<b>Image Load</b>	Image installed in manufacturing and tested for compatibility with Lenovo hardware
<b>Verification</b>	Complete functionality and stability testing against client supplied image
<b>First Boot</b>	Execute deployment steps at factory to reduce attended desk side time
<b>Image Creation</b>	Lenovo ITC will build a complete imaging solution using customer provided applications
<b>Smart Image</b>	Smart image ensures you have compatibility across Lenovo hardware and your Windows image in a single dynamic imaging solution
<b>Custom Bios</b>	BIOS settings – EX. Password protect, Enable or disable options, change boot
<b>Asset Tag and Etching</b>	Factory Asset Tagging saves time and provides detailed asset information for importation into your asset management system/Add laser etching to showcase your logo and further reduce the risk of theft
<b>Professional &amp; Managed Services<sup>[1]</sup></b>	
<b>Automated Deployment Services</b>	Complete automation of image deployment & user configuration
<b>Asset Recovery Services</b>	Helps to mitigate the environmental and data security risks associated with end of-life asset disposal regardless of brand or model
<b>Deployment Services</b>	ex. Installation of new CPU and monitor (if applicable), Removal of deployment related dunnage, Join to company domain and migrate user settings and credentials

<sup>[1]</sup> For any professional or managed services not included on the Commercial Price List or require a Statement of Work, the prices for such services purchased under this Master Agreement will be as mutually agreed upon by both Vendor and Procuring Eligible Organization and as set forth in a Vendor quote or an applicable Statement of Work or negotiated agreement.

**Attachment A**  
**Warranty Service Information**  
**(Personal Computer Products)**

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If a defect in material or workmanship is discovered during the warranty period, warranty service may be obtained by contacting Lenovo or a Lenovo approved service provider ("Service Provider"). Except in the instances where warranty services is not available, Repair, correction and replacement in the manner described below, or refund shall constitute fulfillment of all of Lenovo's obligations under the Lenovo limited warranty. A list of Service Providers and their telephone numbers is available at [www.lenovo.com/support/phone](http://www.lenovo.com/support/phone).

Warranty service may not be available in all locations and may differ from location to location. Charges may apply outside a Service Provider's normal service area. Contact a local Service Provider for information specific to your location.

**Customer Responsibilities for Warranty Service**

Before warranty service is provided, Customer must take the following steps:

- follow the service request procedures specified by the Service Provider
- backup or secure all programs and data contained in the product
- provide the Service Provider with all system keys or passwords
- provide the Service Provider with sufficient, free, and safe access to Customer facilities to perform service
- remove all data, including confidential information, proprietary information and personal information, from the hardware Product or, if Customer is unable to remove any such information, modify the information to prevent its access by another party or so that it is not personal data under applicable law. The Service Provider shall not be responsible for the loss or disclosure of any data, including confidential information, proprietary information, or personal information, on a hardware Product returned or accessed for warranty service
- remove all features, parts, options, alterations, and attachments not covered by the warranty
- ensure that the hardware Product or part is free of any legal restrictions that prevent its replacement
- if Customer is not the owner of a hardware Product or part, obtain authorization from the owner for the Service Provider to provide warranty service

**What the Service Provider Will Do to Correct Problems**

When Customer contacts a Service Provider, Customer must follow the specified problem determination and resolution procedures.

The Service Provider will attempt to diagnose and resolve the problem by telephone, e-mail or remote assistance. The Service Provider may direct Customer to download and install designated software updates.

Some problems may be resolved with a replacement part to be installed by Customer called a "Customer Replaceable Unit" or "CRU." If so, the Service Provider will ship the CRU to Customer for installation.

If the problem cannot be resolved over the telephone; through the application of software updates or the installation of a CRU, the Service Provider will arrange for service under the **Type of Warranty Service** designated for the hardware Product as specified in the table below.

If the Service Provider determines that it is unable to repair the hardware Product, the Service Provider will replace it with one that is at least functionally equivalent.

If the Service Provider determines that it is unable to either repair or replace the hardware Product, Customer's sole remedy under this Limited Warranty is to return the hardware Product to the place of purchase or to Lenovo for a refund of the purchase price.

**Replacement Products and Parts**

When warranty service involves the replacement of a hardware Product or part, the replaced hardware Product or part becomes Lenovo's property and the replacement hardware Product or part becomes Customer's property. Only unaltered Lenovo hardware Products and parts are eligible for replacement. The replacement hardware Product or part provided by Lenovo may not be new, but it will be in good working order and at least functionally equivalent to the original hardware Product or part. The replacement hardware Product or part shall be warranted for the balance of the period remaining on the original hardware Product.

**What this Warranty Does not Cover**

This warranty does not cover the following:

- uninterrupted or error-free operation of a hardware Product
- loss of, or damage to, Customer data by a hardware Product
- any software programs, whether provided with the hardware Product or installed subsequently
- failure or damage resulting from misuse, abuse, accident, modification, unsuitable physical or operating environment, natural disasters, power surges, improper maintenance, or use not in accordance with the hardware Product information materials
- damage caused by a non-authorized service provider
- failure of, or damage caused by, any third party products, including those that Lenovo may provide or integrate into the Lenovo hardware Product at Customer's request, other than those failures or damages caused by Lenovo's faulty integration.
- any technical or other support, such as assistance with "how-to" questions and those regarding the hardware Product set-up and installation
- hardware Products or parts with an altered identification label or from which the identification label has been removed

**Warranty Information**

Lenovo Product	Standard Warranty	Type of Warranty Service
<b>ThinkCentre Desktops</b> (Global Model Plus)	Standard level of service is 3 years parts and labor Limited On-Site Warranty, Next Business Day Response, where available, 9 hours per day. Monday thru Friday excluding Holidays. Hours of Operation vary by country and can be found at support.lenovo.com.	1 & 2 Where Available
<b>ThinkStation Workstations</b>	Standard level of service is 3 years parts and labor Limited On-Site Warranty, Next Business Day Response, where available, 9 hours per day. Monday thru Friday, excluding Holidays. Hours of Operation vary by country and can be found at support.lenovo.com.	1 & 2 Where Available
<b>ThinkServer Servers</b>	Standard level of service is 3 years parts and labor Limited On-Site Warranty, Next Business Day Response, where available, 9 hours per day. Monday thru Friday, excluding Holidays. Hours of Operation vary by country and can be found at support.lenovo.com.	1 & 2 Where Available
<b>ThinkPad Notebooks</b> (Global Model Plus)	Standard level of service is 3 years parts and labor Limited On-Site Warranty, Next Business Day Response, where available, 9 hours per day. Monday thru Friday, excluding Holidays. Batteries have a 1 year parts and labor Customer Replaceable Unit (CRU) Warranty. Hours of Operation vary by country and can be found at support.lenovo.com.	1 & 2 Where Available
<b>ThinkPad Notebooks</b> (standard warranty)	Standard level of service is 3 years parts and labor Repair in Service Center Warranty. Batteries have a 1 year parts and labor Customer Replaceable Unit (CRU) Warranty.	1 & 3
<b>ThinkPad Battery</b>	One (1) Year	1 & 2
<b>ThinkVision Monitors</b>	Standard level of service is 3 year, Product Exchange Service. All shipping costs are paid for valid warranty claims.	7

Global Model Plus: International Warranty Service offering allows Products to receive warranty service in any country where that Product is sold and serviced.

If required, the Service Provider will provide repair or exchange service depending on the type of warranty service specified for the hardware Product and the available service. Scheduling of service will depend upon the time of Customer's call, parts availability, and other factors.

**Types of Warranty Service**

**1. Customer Replaceable Unit ("CRU") Service**

Under CRU Service, a Service Provider will ship CRUs to Customer for installation by Customer. CRU information and replacement instructions are shipped with the hardware Product and are available from Lenovo at any time upon request. CRUs that are easily installed by Customer are called "Self-service CRUs". "Optional-service CRUs" are CRUs that may require some technical skill and tools. Installation of Self-service CRUs is Customer's responsibility. Customer may request that a Service Provider install Optional-service CRUs under one of the other types of warranty service designated for the hardware Product. An optional service offering may be available for purchase from a Service Provider or Lenovo under which Self-service CRUs would be installed for Customer. Customer may find a list of CRUs and their designation in the publication that ships with the hardware Product or at [www.lenovo.com/CRUs](http://www.lenovo.com/CRUs). The requirement to return a defective CRU, if any, will be specified in the materials shipped with a replacement CRU. When return is required: 1) return instructions, a prepaid return shipping label, and a container will be included with the replacement CRU; and 2) Customer may be charged for the

replacement CRU if the Service Provider does not receive the defective CRU within thirty (30) days of Customer's receipt of the replacement CRU.

**2. On-Site Service**

Under On-Site Service, a Service Provider will either repair or exchange the hardware Product at Customer's location. Customer must provide a suitable working area to allow disassembly and reassembly of the hardware Product. Some repairs may need to be completed at a service center. If so, the Service Provider will send the hardware Product to the service center at its expense.

**3. Courier or Depot Service**

Under Courier or Depot Service, the hardware Product will be repaired or exchanged at a designated service center, with shipping at the expense of the Service Provider. Customer is responsible for disconnecting the hardware Product and packing it in a shipping container provided to Customer for return of the hardware Product to a designated service center. A courier will pick up the hardware Product and deliver it to the designated service center. The service center will return the hardware Product to Customer at its expense.

**4. Customer Carry-In Service**

Under Customer Carry-In Service, the hardware Product will be repaired or exchanged after Customer delivers it to a designated service center at Customer's risk and expense. After the hardware Product has been repaired or exchanged, it will be made available for collection by Customer. Failure to collect the hardware Product may result in the Service Provider disposing of the hardware Product as it sees fit, with no liability to Customer.

**5. Mail-In Service**

Under Mail-In Service, the hardware Product will be repaired or exchanged at a designated service center after Customer delivers it at Customer's risk and expense. After the hardware Product has been repaired or exchanged, it will be returned to Customer at Lenovo's risk and expense, unless the Service Provider specifies otherwise.

**6. Customer Two-Way Mail-In Service**

Under Customer Two-Way Mail-In Service, the hardware Product will be repaired or exchanged after Customer delivers it to a designated service center at Customer's risk and expense. After the hardware Product has been repaired or exchanged, it will be made available to Customer for return shipping at Customer's risk and expense. If Customer fails to arrange return shipment, the Service Provider may dispose of the product as it sees fit, with no liability to Customer.

**7. Product Exchange Service**

Under Product Exchange Service, Lenovo will ship a replacement hardware Product to Customer's location. Customer shall be responsible for its installation and verification of its operation. The replacement hardware Product becomes the property of Customer in exchange for the failed hardware Product, which becomes the property of Lenovo. Customer shall pack the failed hardware Product in the shipping carton used to ship the replacement hardware Product and return it to Lenovo. Transportation charges, both ways, shall be at Lenovo's expense. If Customer fails to use the carton in which the replacement hardware Product was received, Customer may be responsible for any damage to the failed hardware Product occurring during shipment. Customer may be charged for the replacement hardware Product if Lenovo does not receive the failed hardware Product within thirty (30) days of Customer's receipt of the replacement hardware Product.

**Attachment B  
Warranty Service Information - Machines  
(Servers and Storage Products)**

The performance of warranty service is subject to the following: (i) the time Customer's request for service is received; (ii) Machine technology and redundancy; and (iii) availability of parts. Customer should contact their local Lenovo representative, or the subcontractor or reseller performing services on behalf of Lenovo, for country and location specific information.

Lenovo Product	Standard Warranty	Type of Warranty Service
System X Servers	Determined by the Warranty Configured with the Server Configuration	Determined by the Warranty Configured with the Server Configuration

**Types of Warranty Service**

**Type 1 - Customer Replaceable Unit ("CRU") Service**

Lenovo provides replacement CRUs to Customer for installation by Customer. CRU information and replacement instructions are shipped with each Machine and are available from Lenovo at any time upon request. CRUs are designated as being either a Tier 1 (mandatory) or a Tier 2 (optional) CRU. Installation of a Tier 1 CRU is a responsibility of Customer. If Lenovo installs a Tier 1 CRU at Customer's request, Customer will be charged for the installation. Customer may install a Tier 2 CRU or request Lenovo to install it, at no additional charge, under the type of warranty service designated for Customer's Machine. In the materials shipped with a replacement CRU, Lenovo may require that a defective CRU be returned to Lenovo. When return is required by Lenovo: (1) return instructions and a container are shipped with the replacement CRU; and (2) Customer may be charged for the replacement CRU if Lenovo does not receive the defective CRU within fifteen (15) days of Customer's receipt of the replacement CRU.

**Type 5 - CRU and On-site Service**

At Lenovo's discretion, Customer will receive CRU service or Lenovo, or a Lenovo subcontractor or reseller, will repair the defective Machine at Customer's location and verify its operation. Customer must provide suitable working area to allow disassembly and reassembly of the Machine. The area must be clean, well lit and suitable for the purposes of repair.

**Type 6 - CRU and Courier or Depot Service**

At Lenovo's discretion, Customer will receive CRU service or Customer will disconnect the defective Machine and make it available for collection arranged by Lenovo. Lenovo will provide Customer with a shipping container for return of Customer's Machine to a designated service center. A courier will pick up Customer's Machine and deliver it to the designated service center. After repair or exchange, Lenovo will arrange the return delivery of the Machine to Customer's location. Customer is responsible for installation of the Machine and verification of its operation.

**Type 7 - CRU and Customer Carry-In or Mail-In Service**

At Lenovo's discretion, Customer will receive CRU service or Customer will ship (prepaid unless Lenovo specifies otherwise) the defective Machine suitably packaged to a location designated by Lenovo. After Lenovo has repaired or exchanged the Machine, Lenovo will make it available for collection by Customer. In the case of Mail-in Service, Lenovo will return the Machine to Customer at Lenovo's expense, unless Lenovo specifies otherwise. Customer is responsible for installation of the Machine and verification of its operation.

**Type 8 - CRU and Machine Exchange Service**

At Lenovo's discretion, Customer will receive specified CRU service or Lenovo will initiate shipment of a replacement Machine to Customer's location. Customer must pack the defective Machine into the shipping container that contained the replacement Machine and return the defective Machine to Lenovo. Transportation charges, both ways, shall be paid by Lenovo. Customer may be charged for the replacement Machine if Lenovo does not receive the defective Machine within fifteen (15) days of Customer's receipt of the replacement Machine. Customer is responsible for installation of the Machine and verification of its operation.

## Attachment C

### Terms for Servers, Storage Products and Related Services

#### 1. General Terms

##### 1.1 Definitions

**Machine** means a server or storage hardware Product identified by a Machine Type as well as its features, conversions or upgrades. The term "Machine" does not include any Programs, whether pre-loaded with the Machine, installed subsequently, or otherwise.

**Machine Code** means all code provided for a Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code. The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

**Program** means a software Product,

##### 1.2 Charges and Payment

###### 1.2.1 Charges

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). Lenovo will inform Customer in advance whenever additional charges apply.

Charges for Services are billed as specified in an order, which may be in advance, periodically during the performance of the Service, or after the Service is complete. Unless otherwise provided in this Agreement (including any applicable Attachment or order): i) Services for which Customer pays in advance must be used within the applicable contract period; and ii) Lenovo shall not be required to credit or refund any advance payments.

If a Transaction Document provides an estimated total charge for time and materials, the estimate is for planning purposes and budgetary purposes only. Lenovo invoices charges based on actual time and materials expended or actual or authorized use, subject to any specified minimum commitment.

###### 1.2.2 Changes to Charges

From time to time, Lenovo may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Lenovo may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement. Lenovo shall provide Customer three (3) months' written notice of any such change. An increase shall apply on the first day of the invoice or charging period on or after the effective date specified in the notice.

Lenovo may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if: i) Lenovo receives the order before the announcement date of the increase; and ii) one of the following occurs within three (3) months after Lenovo's receipt of the order:

- (i) Lenovo ships Customer the Machine or makes the Program available to Customer; or
- (ii) Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine.

##### 1.3 Changes to the Agreement Terms

Lenovo may change the terms of this Agreement by providing Customer at least three (3) months' written notice. However, no such change shall be retroactive. Any such change shall be effective



on the date specified in the notice. It shall only apply to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that Lenovo delay the effective date of the change to the end of the current renewable contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by: i) placing new orders for Products or Services after the change effective date; ii) failing to request that the effective date of the change be delayed until the end of the renewable contract period; iii) allowing transactions to renew after receipt of the change notice; or iv) failing to terminate non-expiring transactions prior to the effective date of the change. Changes to charges are implemented as described in Section 1.2 Charges and Payment above.

Except as provided above, in order for a change to be valid, it must be signed by both parties.

## **2. Machine Terms**

### **2.1 Production Status**

A Machine may be manufactured from parts that are not new. In some cases, a Machine may not be new and may have been previously installed. Notwithstanding such circumstances, Lenovo's applicable warranty terms shall apply to a Machine sold under this Agreement.

### **2.2 Installation**

#### **2.2.1 Machine Installation**

Customer shall provide an environment meeting the requirements for the Machine as specified in its published documentation.

Customer is responsible for installing a Machine according to instructions provided with the Machine.

#### **2.2.2 Engineering Changes**

Customer shall allow Lenovo to install mandatory engineering changes (such as those required for safety) on a Machine within thirty (30) calendar days of the date of Lenovo's notice to Customer unless otherwise agreed by the parties.

Many engineering changes require the removal of parts and the transfer of title and possession of the removed parts to Lenovo. Customer shall return all removed parts to Lenovo upon installation of the engineering change. Customer represents that Customer has permission from the owner and any lien holders to: i) install engineering changes; and ii) transfer title and possession of removed parts to Lenovo. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part shall be subject to the warranty or maintenance Service status of the replaced part.

## **3. Licenses for Machine Code**

Customer acknowledges that each Machine contains Machine Code. Regardless of the source from which Customer acquires a Machine, the Machine Code shall be subject to the terms of the license agreement included with the Machine.

## **4. Services**

### **4.1 Personnel**

Each party shall assign personnel that are qualified to perform the tasks required of such party under this Agreement and shall be responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party, in its sole discretion, may determine the assignment of its personnel and contractors.

Lenovo may engage subcontractors to provide or assist in providing Services. Lenovo shall be responsible for the performance of Services under this Agreement by its subcontractors.

#### 4.2 Customer Resources

If Customer is making available to Lenovo any facilities, software, hardware or other resources in connection with Services, Customer shall obtain any licenses or approvals related to these resources that may be necessary for Lenovo to perform the Services. Lenovo shall be relieved of any obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer shall reimburse Lenovo for any reasonable costs and other amounts that Lenovo may incur related to Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or order, Customer is responsible for: i) any data and the content of any database that it makes available to Lenovo in connection with Services ordered under this Agreement; ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data; and iii) backup and recovery of the database and any stored data. Lenovo's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and orders applicable to the particular Services transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

#### 4.3 Service for Machines (during and after warranty)

##### 4.3.1 Service for Machines

Lenovo provides certain types of Service to keep Machines in, or restore them to, conformance with their specifications. Lenovo will inform Customer of the available types of Service for a Machine. At its discretion, Lenovo will: i) either repair or exchange the defective Machine; and ii) provide the Service either at Customer's location or a service center. Lenovo manages and installs selected engineering changes that apply to Machines and may also perform preventive maintenance.

Any feature, conversion, or upgrade must be installed on a Machine which is: i) the designated, serial-numbered Machine, if applicable; and ii) at an engineering-change level compatible with the feature, conversion, or upgrade.

When the type of Service requires that Customer deliver the defective Machine to Lenovo, Customer agrees to ship it suitably packaged (prepaid unless Lenovo specifies otherwise) to a location designated by Lenovo. After Lenovo has repaired or exchanged the Machine, Lenovo will deliver it to Customer at Lenovo's expense unless Lenovo specifies otherwise. Lenovo is responsible for loss of, or damage to, Customer's Machine while it is: i) in Lenovo's possession; or ii) in transit in those cases where Lenovo is responsible for the transportation charges.

Customer shall:

obtain authorization from the owner to have Lenovo service a Machine that Customer does not own;

(i) where applicable, before Lenovo provides Service, --

1. follow the problem determination and service request procedures that Lenovo provides,
2. secure all programs, data, and funds contained in a Machine, and
3. inform Lenovo of changes in a Machine's location.

follow the Service instructions that Lenovo provides (which may include installing Machine Code and other software updates either downloaded from an Lenovo Internet Web site or copied from other electronic media); and

(ii) when Customer returns a Machine to Lenovo for any reason --

1. securely erase from any Machine all programs not provided by Lenovo with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data"); and ii) Customer's confidential or proprietary information

and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information, e.g., by making it anonymous, so that it ceases to be Personal Data under applicable law;

2. remove all funds from Machines returned to Lenovo. Lenovo is not responsible for any funds or Programs not provided by Lenovo with the Machine, or data contained in a Machine that Customer returns to Lenovo; and
3. authorize Lenovo to ship all or part of the Machine or its software to other Lenovo or third party locations around the world to perform its responsibilities under this Agreement.

#### **4.3.2 Replacements**

When Service involves the exchange of a part or Machine, the item replaced by Lenovo becomes Lenovo's property and the replacement becomes Customer's property. Customer represents that all replaced items are genuine and unaltered. A replacement may not be new, but it will be in good working order and at least functionally equivalent to the replaced item. The replacement assumes the warranty or maintenance Service status of the replaced item. Before Lenovo exchanges a part or Machine, Customer shall remove all features, parts, options, alterations, and attachments not under Lenovo's service. Customer shall also: i) only provide a part or Machine that is free of any legal obligations or restrictions that prevent Lenovo from receiving free and clear title to it; and ii) transfer ownership and possession of replaced parts to Lenovo.

Service for some Machines involves an exchange replacement part or Machine for installation by Customer. Such exchange replacements may be: i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive); or (ii) an entire Machine.

Customer may request Lenovo to install the replacement CRU or Machine, however, Customer may be charged for the installation. Lenovo provides information and replacement instructions with Machines as well as at any time upon request. Lenovo may require that a failed CRU or Machine be returned to Lenovo as a condition for replacement. When return is required, return instructions and a container are shipped with the replacement. Customer may be charged for a replacement if Lenovo does not receive the failed CRU or Machine within fifteen (15) calendar days after Customer's receipt of the replacement.

#### **4.3.3 Items Not Covered**

Repair and exchange Services do not cover:

- (i) accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- (ii) Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- (iii) Machines with removed or altered Machine or part identification labels;
- (iv) failures caused by a product for which Lenovo is not responsible;
- (v) service of Machine alterations; or
- (vi) service of a Machine on which Customer is using capacity or capability, other than that authorized by Lenovo in writing.

#### **4.4 Warranty Service Upgrade**

For certain Machines, Customer may select an upgrade from the standard type of warranty service for the Machine. Lenovo charges for an upgrade to be added during the warranty period.

Customer may not terminate the upgrade or transfer it to another Machine during the warranty period.

At the end of the warranty period, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty service upgrade.

#### **4.5 Maintenance Coverage**

When Customer orders maintenance Service for a Machine, Lenovo will notify Customer of the start date. Lenovo may inspect the Machine within one (1) month of the start date. If the Machine is not in an acceptable condition for Service, Customer may have Lenovo restore it for an additional charge or withdraw its request for maintenance Service. Customer shall pay Lenovo for any maintenance Service performed at Customer's request.

#### **4.6 Automatic Service Renewal**

Renewable Services renew automatically for a period of the same duration unless either party elects not to renew by written notice to the other not less than one (1) month prior to the end of the current period.

During an automatic renewal period, Customer may terminate the Service on one (1) month's written notice to Lenovo. Lenovo will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

#### **4.7 Termination and Withdrawal of a Service**

Either party may terminate a Service transaction if the other party materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to Lenovo provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments, Transaction Documents, and orders.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- (i) Customer permanently removes the eligible Product, for which the Service is provided, from productive use by Customer and its affiliates;
- (ii) the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- (iii) the Machine has been under maintenance Service for at least one (1) year and Customer gives Lenovo one (1) month's written notice prior to terminating the maintenance Service.

Customer shall pay Lenovo for: i) Services provided and any Products delivered; and ii) reimbursable expenses incurred, through the date of termination. If Customer's termination is without cause, Customer shall also pay any applicable adjustment or termination charges as well as such expenses Lenovo may incur as a result of such termination. Lenovo may withdraw a Service or support for an eligible Product on three (3) months' written notice to Customer. If Customer has paid for such Service or support in advance, Lenovo shall refund Customer on a prorated basis. Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

**Attachment D**  
**Reseller Acceptance of Terms Document**  
**Standard Template**

***lenovo*** Partner Network Reseller Attachment  
**Order Fulfiller Attachment for Sales to the CUSTOMER, acting by and through**  
**Midwestern Higher Education Commission ("MHEC") under Contract MHEC-**  
**10272015**

**Our Relationship**

As a Lenovo Order Fulfiller under the terms of this Order Fulfiller Attachment ("Attachment"), you shall market to, accept orders and payment from, and fulfill to Authorized Purchasers the Products and Services that Lenovo approves you to market and fulfill on our behalf at prices and terms established by Lenovo and the MHEC, pursuant to Contract MHEC-10272015 between the MHEC, acting by and through the MHEC and Lenovo (United States) Inc. ("Agreement"). As a Lenovo Order Fulfiller, you shall manage the Product and Services ordering process from order receipt and delivery to payment receipt.

Our relationship under this Attachment is limited to fulfillment of Lenovo sales under the Agreement. You acknowledge that you are not authorized to act on behalf of Lenovo in any activities before the signing of Attachment by both parties that would constitute lobbying under "state" laws. You also warrant that you will not undertake any activities on behalf of Lenovo that would constitute lobbying under applicable law. You acknowledge that you are knowledgeable with applicable "state" laws concerning governmental procurement and lobbying activities, and you will obtain advice and counsel as you determine is warranted to remain in compliance with the terms of this Attachment.

You have no Agreement with the CUSTOMER under this Attachment and you agree not to present any claim against the MHEC related to this Attachment. The parties agree that any purchase order from an Authorized Purchaser to Order Fulfiller would constitute a separate Agreement between Order Fulfiller and Authorized Purchaser, however any such purchase order shall be governed by the terms of the CUSTOMER Standard Contract form executed between Lenovo and CUSTOMER DATE.

**2. Marketing Approval**

You may market and fulfill Products and Services as our Order Fulfiller to an Authorized Purchaser as specified in the Schedule A of this Attachment.

**3. Your Responsibilities to Lenovo**

You agree to:

1. at all times, when you are acting as Lenovo Order Fulfiller under the Agreement, to comply with all terms of the Agreement;
2. actively market, accept and fulfill orders only from Authorized Purchasers, and receive payment for Products and Services in compliance with the terms of the Agreement;
3. distinguish to the Authorized Purchasers between those activities you perform on your own behalf under your prices and terms (i.e. not delivered under the Agreement), and those you perform on Lenovo's behalf under the Agreement as our Order Fulfiller;
4. advise Lenovo of the Product's planned installation dates and any dependencies;
5. follow the procedures Lenovo specifies for the sale and ordering, fulfillment, payment, collection, transaction fees and activation of Products and Services;
6. report all Product and Services sales to Lenovo monthly within three business days following the end of each calendar month as Lenovo may specify, including but not limited

to the Products and Services sold, the date sold, date delivered and the invoice price to Authorized Purchasers;

7. disclose to the Authorized Purchaser that you retain the difference between the sale price collected from an Authorized Purchaser and the amount you pay Lenovo for Products and Service sold to Authorized Purchasers under the Agreement.
8. indemnify, defend and hold harmless Lenovo, Lenovo's affiliates, directors, employees, and the MHEC from any and all claims, liabilities or judgments arising out of this Attachment with respect to your negligent acts or omissions resulting in any:
  1. breach of any of your representations, warranties or any other term of this Attachment, or the Agreement;
  2. asserted or actual infringement of any intellectual property
  3. personal injury, death or property damage caused by you;
4. unlawful, unfair, or deceptive trade practices attributable to you or your contractors

With respect to the above indemnification, you shall pay all damages and costs including, but not limited to, attorney fees, damage awards, settlement payments, fines, and the cost of internal resources of Lenovo and Lenovo's Affiliates to handle such matters. The provisions of this Section 3(8) shall survive the expiration or termination of this Attachment.

#### **4. Your Responsibilities To Authorized Purchasers**

As our Order Fulfiller, when you make a sale of Products or Services under the Agreement, you agree to be responsible for Authorized Purchaser satisfaction regarding order receipt, invoicing, delivery and/or installation as appropriate with our Products and Service. You assume no responsibility for product warranty or merchantability for sales of Lenovo Products in unopened boxes.

#### **5. Compensation**

You earn no fee from Lenovo under this Attachment. Rather, your compensation for your efforts as our Order Fulfiller under the Agreement and this Attachment is the amount over the price you pay to Lenovo for the Product or Service and the amounts you collect from the Authorized Purchaser.

You acknowledge that the Agreement prices are established under the Agreement, and you may not charge an Authorized Purchaser any price above that established in the Agreement for each specific Product or Service. Therefore your compensation would be the difference between what you pay Lenovo and what you charge the Authorized Purchaser.

**Returns:** You agree to accept returns if the Product you marketed and sold is returned to you according to the terms of the Agreement and to issue a refund to the Authorized Purchaser for the amount you charged such Authorized Purchaser.

In addition to any other rights under law or this Attachment, Lenovo may recover amounts paid to you for an amount equal to the loss or damage that Lenovo suffers as a result of your breach of the terms of this Attachment.

#### **6. Placement and Fulfillment of Orders:**

Orders under the contract shall be placed by Eligible Entities in keeping with the terms of Contract MHEC-10272015 and will be placed directly with **<BUSINESS PARTNER NAME>**.

**<BUSINESS PARTNER NAME>** will fulfill orders by facilitating shipping under FOB Destination terms to the Eligible Entity's indicated address on the purchase order and billing the Eligible Entity accordingly.

#### **7. Pricing and Payment:**

Product pricing will be set by the Manufacturer and will be consistent with the terms established in the Contract MHEC-10272015.

Manufacturer agrees to provide pricing updates as frequently as with each update provided to the MHEC.

**8. Terminating this Attachment**

Either party may terminate this Attachment, with or without cause, upon thirty (30) days' prior written notice. If, under applicable law, a longer notice period is mandatory, then the notice period is the minimum notice period allowable.

If Lenovo notifies you of our intent to terminate for cause, Lenovo may, at our discretion, allow you a reasonable opportunity to cure. If you fail to do so, the date of termination is that specified in the notice.

However, if either party breaches a material term of the Attachment, the other party may terminate the Attachment on written notice. Examples of such breach by you include, but are not limited to: your failure to maintain Authorized Purchaser satisfaction regarding order receipt, invoicing, delivery and/or installation your repudiation of this Attachment; or your making any material misrepresentations to Lenovo or an Authorized Purchaser. You agree that our only obligation is to provide the notice called for in this section and Lenovo is not liable for any claims or losses if Lenovo so terminates.

When this Attachment is terminated, each party agrees to promptly settle any related accounts with the other. Lenovo may offset any amounts due you against amounts due Lenovo as allowable under applicable law.

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Each party agrees that the complete Agreement between us regarding your marketing of Products and Services under this Attachment consists of this Attachment, the CUSTOMER Contract and your Lenovo Partner Network Agreement and related Attachments.

By signing this Attachment you accept its terms and the terms of Contract MHEC-10272015 between Midwestern Higher Education Commission and Lenovo (United States) Inc.

Agreed to: Midwestern Higher Education Commission

Agreed to: Lenovo (United States) Inc.

By \_\_\_\_\_

By \_\_\_\_\_

(Authorized signature)

(Authorized signature)

Name:

Name:

Date:

Date:

Reseller number:  
Reseller address:

Lenovo address: 1009 Think Place, B1,  
Morrisville, NC 27560

## Schedule A

Lenovo approves your participation for qualifying sales to the Midwestern Higher Education Commission ("MHEC") under the terms of the Agreement and Attachment.

You will only sell to Authorized Purchasers the products and services that are included in the Agreement. Non-contract purchases are unencumbered by this Agreement.

You will assign a single-point-of-contact that will work with the Lenovo Account Team and/or Assigned Channel Representative on all contract related matters.

You will provide Lenovo with monthly sales reports no later than the third day of the month following the prior month's end. You will also provide Lenovo with cumulative quarterly sales reports no later than the third day of the quarter end as described below or as may change from time to time. Specific report format and fields will be supplied separately and communicated to you by Lenovo. Any updates or changes in the reporting requirements via the Agreement will be communicated to you in a timely manner. You will be expected to provide any additional reporting requirements requested via updates to the Agreement that Lenovo has agreed to.

Quarter 1; July 1 - September 30

Quarter 2; October 1 - December 31

Quarter 3; January 1st - March 31st

Quarter 4; April 1 - June 30

Failure to provide these reports in a timely manner may result in the termination of this participation agreement.

You will not call, write, or communicate with the MHEC administrative contract owner. All communications and questions must be directed to Lenovo regarding Lenovo pricing, products, policies, procedures, web sites, etc.

You acknowledge that the Agreement prices are established under the Agreement, and you may not charge Authorized Purchasers any price above that which has been established in the Agreement for each specific Product or Service.

You will create and maintain a MHEC approved web site per the requirements in the Agreement (if applicable). This web site will be linked off of Lenovo's MHEC web site in which you are listed as an authorized Order Fulfiller for the Agreement. Products, software, etc. that are not authorized products on the Agreement and/or Addendum will not be included on the web site.

You will request and receive Lenovo's approval prior to selling or adding/removing any newly announced products to your Reseller web site as Lenovo must obtain pricing and permission to add or remove products from the Agreement and not the Reseller.

Authorized Purchasers do not pay shipping or handling fees, i.e. standard shipping is no charge to the Authorized Purchaser. You must ensure that Authorized Purchasers receive free ground shipping. Authorized Purchasers will be responsible for any expedited deliver