

# **lenovo** International Program License Agreement

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## **Part 1 - General Terms**

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN “ACCEPT” BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE, ON BEHALF OF ITSELF AND ITS ASSIGNEES AND SUCCESSORS IN TITLE, AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN “ACCEPT” BUTTON, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

### **1. Definitions**

“**Authorized Use**” – the specified level at which Licensee is authorized to execute or run the Program. That level may be measured by number of users, millions of service units (“MSUs”), Processor Value Units (“PVUs”), or other level of use specified by Lenovo.

“**Lenovo**” – Lenovo PC HK Limited or one of its affiliates.

“**License Information**” (“**LI**”) – a document that provides information and any additional terms specific to a Program. The Program’s LI is available at <http://www.lenovo.com/sla>. The LI can also be found in the Program’s directory, by the use of a system command, or as a booklet included with the Program.

“**Program**” – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

“**Proof of Entitlement**” (“**PoE**”) – evidence of Licensee’s Authorized Use. The PoE is also evidence of Licensee’s eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If Lenovo does not provide Licensee with a PoE, then Lenovo may accept as the PoE the original paid sales receipt or other sales record from the party (either Lenovo or its reseller) from whom Licensee obtained the Program, provided that it specifies the Program name and Authorized Use obtained.

“**Warranty Period**” – one year, starting on the date the original Licensee is granted the license.

### **2. Agreement Structure**

This Agreement includes **Part 1 - General Terms**, **Part 2 - Country-unique Terms** (if any), the LI, and the PoE and is the complete agreement between Licensee and Lenovo regarding the use of the Program. It replaces any prior oral or written communications between Licensee and Lenovo concerning Licensee’s use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

### **3. License Grant**

The Program is owned by Lenovo or a Lenovo supplier, and is copyrighted and licensed, not sold.

Lenovo grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

- a. Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
- b. the backup copy does not execute unless the backed-up Program cannot execute;
- c. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
- d. Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee’s behalf and 2) complies with the terms of this Agreement;
- e. Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the

Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and

- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another Lenovo Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

### **3.1 Trade-ups, Updates, Fixes, and Patches**

#### **3.1.1 Trade-ups**

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

#### **3.1.2 Updates, Fixes, and Patches**

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

### **3.2 Fixed Term Licenses**

If Lenovo licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and Lenovo agree to renew it.

### **3.3 Term and Termination**

This Agreement is effective until terminated.

Lenovo may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program and the PoE. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

## **4. Charges**

Charges are based on Authorized Use obtained, which is specified in the PoE. Lenovo does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If Licensee wishes to increase its Authorized Use, Licensee must notify Lenovo or an authorized Lenovo reseller in advance and pay any applicable charges.

## **5. Taxes**

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on Lenovo's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

## **6. Money-back Guarantee**

If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party (either Lenovo or its reseller) from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

## **7. Program Transfer**

Licensee may transfer the Program and all of Licensee's license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee's license terminates.

## **8. Warranty and Exclusions**

### **8.1 Limited Warranty**

Lenovo warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by Lenovo (such as an announcement letter). Licensee agrees that such documentation and other Program content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

The warranty applies only to the unmodified portion of the Program. Lenovo does not warrant uninterrupted or error-free operation of the Program, or that Lenovo will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

During the Warranty Period, Lenovo provides Licensee with access to Lenovo databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the Software Support Handbook for further information at <http://www.support.lenovo.com>.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the Lenovo databases, Licensee may return the Program and its PoE to the party (either Lenovo or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

### **8.2 Exclusions**

**THESE WARRANTIES ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.**

**THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.**

**THE WARRANTIES IN THIS SECTION 8 (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY LENOVO. THE DISCLAIMERS IN THIS SUBSECTION 8.2 (EXCLUSIONS), HOWEVER, ALSO APPLY TO LENOVO'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITION OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY LENOVO'S WARRANTY OBLIGATIONS UNDER THIS AGREEMENT.**

## **9. Licensee Data and Databases**

To assist Licensee in isolating the cause of a problem with the Program, Lenovo may request that Licensee 1) allow Lenovo to remotely access Licensee's system or 2) send Licensee information or system data to Lenovo. However, Lenovo is not obligated to provide such assistance unless Lenovo and Licensee enter a separate written agreement under which Lenovo agrees to provide to Licensee that type of technical support, which is beyond Lenovo's warranty obligations in this Agreement. In any event, Lenovo uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, Lenovo may use Lenovo entities and

subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes Lenovo to do so.

Licensee remains responsible for 1) any data and the content of any database Licensee makes available to Lenovo, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide Lenovo access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that Lenovo may incur relating to any such information mistakenly provided to Lenovo or the loss or disclosure of such information by Lenovo, including those arising out of any third party claims.

## **10. Limitation of Liability**

The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

### **10.1 Items for Which Lenovo May Be Liable**

Circumstances may arise where, because of a default on Lenovo's part or other liability, Licensee is entitled to recover damages from Lenovo. Regardless of the basis on which Licensee is entitled to claim damages from Lenovo (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Lenovo's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that is the subject of the claim.

This limit also applies to any of Lenovo's Program developers and suppliers. It is the maximum for which Lenovo and its Program developers and suppliers are collectively responsible.

### **10.2 Items for Which Lenovo Is Not Liable**

**UNDER NO CIRCUMSTANCES IS LENOVO, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:**

- a. LOSS OF, OR DAMAGE TO, DATA;**
- b. SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

### **10.3 Suppliers and Program Developers**

The collective liabilities of Lenovo and its suppliers and Program developers are subject to the limitations of liability described in this Agreement. Such parties disclaim all liability for consequential or other indirect damages. Such parties are an intended beneficiary of these limitations and disclaimers and the limitations of liability for Lenovo and its suppliers and Program developers are not cumulative.

## **11. Compliance Verification**

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means this Agreement and applicable amendments and transaction documents and policies provided by Lenovo, including but not limited to any policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

### **11.1 Verification Process**

Licensee agrees to create, retain (for a period of three years following the quarterly period to which the records relate), and provide to Lenovo and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of Lenovo's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, Lenovo may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program

Terms. Such verification will be conducted in a manner that reasonably minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. Lenovo may use an independent auditor to assist with such verification, provided Lenovo has a written confidentiality agreement in place with such auditor.

## **11.2 Resolution**

Lenovo will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to Lenovo the charges that Lenovo specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

## **12. Third Party Notices**

The Program may include third party code that Lenovo, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices Lenovo identifies third party code as "Modifiable Third Party Code," Lenovo authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. Lenovo's service and support obligations, if any, apply only to the unmodified Program.

## **13. General**

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs Lenovo provides to Licensee in tangible form, Lenovo fulfills its shipping and delivery obligations upon the delivery of such Programs to the Lenovo-designated carrier, unless otherwise agreed to in writing by Licensee and Lenovo.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- e. Licensee authorizes Lenovo PC HK Limited and its affiliates (and their successors and assigns, contractors and Lenovo Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with Lenovo products and services, or in furtherance of Lenovo's business relationship with Licensee.
- f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor Lenovo is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, except as permitted under Subsection 10.3 (Suppliers and Program Developers) for purposes of giving Lenovo's suppliers and Program developers the benefit of the limitation on liability, nor is Lenovo responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which Lenovo May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which Lenovo is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions)

above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.

- k. Lenovo has signed agreements with certain organizations (called "Lenovo Business Partners") to promote, market, and support certain Programs. Lenovo Business Partners remain independent and separate from Lenovo. Lenovo is not responsible for the actions or statements of Lenovo Business Partners or obligations they have to Licensee.
- l. The license and intellectual property indemnification terms of Licensee's other agreements with Lenovo (such as the Lenovo Customer Agreement) do not apply to Program licenses granted under this Agreement.

## **14. Geographic Scope and Governing Law**

### **14.1 Governing Law**

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and Lenovo's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

### **14.2 Jurisdiction**

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

# Lenovo International Program License Agreement

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## Part 2 - Country-unique Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction);
- Americas country amendments to other Agreement terms;
- Asia Pacific country amendments to other Agreement terms; and
- Europe, Middle East, and Africa country amendments to other Agreement terms.

### Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction)

#### 14.1 Governing Law

*The phrase “the laws of the country in which Licensee obtained the Program license” in the first paragraph of 14.1 Governing Law is replaced by the following phrases in the countries below:*

##### AMERICAS

- (1) in **Canada**: the laws in the Province of Ontario;
- (2) in **Mexico**: the federal laws of the Republic of Mexico;
- (3) in the **United States**: the laws of the State of New York, United States;
- (4) in **Venezuela**: the laws of the Bolivarian Republic of Venezuela;
- (5) in **Brazil**, the laws of the Federative Republic of Brazil;

##### ASIA PACIFIC

- (6) in the **Brunei, Cambodia, Korea, Laos, Myanmar, Singapore, and Vietnam**: the laws of Singapore;
- (7) in **Australia**: the laws of the State or Territory in which the transaction is performed;
- (8) in **Hong Kong S.A.R** and **Macau S.A.R**: the laws of Hong Kong Special Administrative Region (“S.A.R”);
- (9) in **Taiwan**: the laws of Taiwan;

##### EUROPE, MIDDLE EAST, AND AFRICA

- (10) in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna; in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; in South Africa, Namibia, Lesotho, and Swaziland the laws of Hong Kong Special Administrative Region (“S.A.R”)
- (11) in **Estonia, Latvia, and Lithuania**: the laws of Finland;
- (12) in United Kingdom, the laws of England and Wales

## 14.2 Jurisdiction

### AMERICAS

*The following paragraph pertains to jurisdiction and replaces Subsection 14.2 (Jurisdiction) as it applies for those countries identified in bold below:*

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

- (1) in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires;
- (2) in **Bolivia**: the courts located in the city of Santa Cruz de la Sierra;
- (3) in **Brazil**: the court of Sao Paulo, SP;
- (4) in **Chile**: the Civil Courts of Justice of Santiago;
- (5) In **Colombia**: the courts located in Bogotá, D.C.;
- (6) in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);
- (7) in **Mexico**: the courts located in Mexico City, Federal District;
- (8) in **Paraguay**: the courts located in the city of Asunción;
- (9) in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- (10) in **Uruguay**: the courts of the city of Montevideo;
- (11) in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

### ASIA PACIFIC

- (12) in **Thailand**: the courts of Bangkok;
- (13) in **Taiwan**: the courts of Taipei;
- (14) in **Korea**: the courts of Seoul;

*The following paragraph pertains to jurisdiction and replaces Subsection 14.2 (Jurisdiction) as it applies for those countries identified in bold above:*

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong S.A.R., without regard to its or any other jurisdiction's conflict of laws principles. All claims or disputes arising out of or in connection with this Agreement shall be brought exclusively in a court located in Hong Kong, S.A.R. To that end, each party irrevocably consents to the exclusive jurisdiction of, and venue in, such a court, and waives any: (i) objection it may have to any proceedings brought in any such court, (ii) claim that the proceedings have been brought in an inconvenient forum, and (iii) right to object (with respect to such proceedings) that such court does not have jurisdiction over such party. Without limiting the generality of the forgoing, each party specifically and irrevocably consents to personal and subject matter jurisdiction for such claims or disputes in a court sitting in Hong Kong, S.A.R., and to the service of process in connection with any such claims or disputes by the mailing thereof by registered or certified mail, postage prepaid to such party, at the address set forth in, or designated pursuant to, this Agreement. To the fullest extent permitted by law, each party hereby expressly waives (on behalf of itself and on behalf of any person or entity claiming through such party) any right to a trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or in any manner connected with this Agreement or the subject matter hereof. The "United Nations Convention on Contracts for the International Sale of Goods" does not apply to this Agreement.

### EUROPE, MIDDLE EAST, AND AFRICA

- (1) in **Austria, France, Greece, Italy, Portugal, Spain, and the United Kingdom**;
- (2) in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, Namibia, New Caledonia, Niger, Reunion, Senegal, Seychelles, South Africa, Swaziland, Togo, Tunisia, Vanuatu, and Wallis and Futuna**;



- (3) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Israel, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe;** and
- (4) in **Turkey.**

### 14.3 Arbitration

*The following paragraph is added as a new Subsection 14.3 (Arbitration) as it applies for those countries identified in bold below. The provisions of this Subsection 14.3 prevail over those of Subsection 14.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:*

#### ASIA PACIFIC

- (1) In **Brunei, Cambodia, Korea, Laos, Myanmar and Vietnam:**

Disputes arising out of or in connection with this Agreement will be finally settled by arbitration which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

- (2) In the **People's Republic of China:**

In case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

- (3) In **India:**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

## **EUROPE, MIDDLE EAST, AND AFRICA**

- (4) In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:**

All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. Lenovo may, however, institute proceedings in a competent court in the country of installation.

- (5) In **Estonia, Latvia, and Lithuania:**

All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

## **AMERICAS COUNTRY AMENDMENTS**

### **BRAZIL**

#### **5.Taxes**

*The following paragraph replaces the paragraph of Section 5 (Taxes):*

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on Lenovo's net income, then Licensee agrees to pay that amount, as specified in an invoice and/or added in the Charges—Charges may be grossed up in order to include the duty, tax, levy or fee—Licensee shall make available to Lenovo any documentation regarding the withholding or payment of any duty, tax, levy, or fee, including those based on Lenovo's net income. Licensee shall hold Lenovo entirely harmless of any dispute of any duty, tax, levy, or fee charged or imposed, in any way, by any authority. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

*The following is added to the end of this Section 10 (Limitation of Liability):*

Except as expressly required by law without the possibility of contractual waiver, Licensee and Lenovo intend that the limitation of liability in this Limitation of Liability section shall apply to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action.

### **CANADA**

#### **10.1 Items for Which Lenovo May be Liable**

*The following replaces Item 1 in the first paragraph of this Subsection 10.1 (Items for Which Lenovo May be Liable):*

1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by Lenovo's negligence; and

### 13. General

*The following replaces Item 13.d:*

- d. Licensee agrees to comply with all applicable export and import laws and regulations, including those of that apply to goods of United States origin and that prohibit or limit export for certain uses or to certain users.

*The following replaces Item 13.i:*

- i. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is Lenovo responsible for any third party claims against Licensee except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by Lenovo's negligence for which Lenovo is legally liable to that third party.

*The following is added as Item 13.m:*

- m. For purposes of this Item 13.m, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

- (1) General

- (a) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
    - (b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

- (2) Security Safeguards

- (a) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
    - (b) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
    - (c) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
    - (d) Additional or different services required to comply with the Laws will be deemed a request for new services.

- (3) Use

- Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

- (4) Access Requests

- (a) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
    - (b) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
    - (c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

- (5) Retention

- Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

- (6) Public Bodies Who Are Subject to Public Sector Privacy Legislation

- For Licensees who are public bodies subject to public sector privacy legislation, this Item 13.m applies only to Personal Data made available to Licensee in connection with this Agreement,

and the obligations in this section apply only to Licensee, except that: 1) section (2)(a) applies only to Lenovo; 2) sections (1)(a) and (4)(a) apply to both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

## **PERU**

### **10. Limitation of Liability**

*The following is added to the end of this Section 10 (Limitation of Liability):*

Except as expressly required by law without the possibility of contractual waiver, Licensee and Lenovo intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action.

#### **10.1 Items for Which Lenovo May be Liable**

*The following is added at the end of this Subsection 10.1:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by Lenovo's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

## **UNITED STATES OF AMERICA:**

### **5. Taxes**

*The following is added at the end of this Section 5 (Taxes)*

For Programs delivered electronically in the United States for which Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

Licensee agrees to be responsible for any sales and use tax liabilities that may arise as a result of Licensee's subsequent redistribution of Programs after delivery by Lenovo.

### **13. General**

*The following is added to Section 13 as Item 13.m:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the Lenovo Corporation.

*The following is added to Item 13.f:*

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

## **ASIA PACIFIC COUNTRY AMENDMENTS**

### **AUSTRALIA:**

#### **5. Taxes**

*The following sentences replace the first two sentences of Section 5 (Taxes):*

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Program itself, that is not otherwise provided for in the amount payable, Licensee agrees to pay it when Lenovo invoices Licensee. If the rate of GST changes, Lenovo may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

#### **8.1 Limited Warranty**

*The following is added Subsection 8.1 (Limited Warranty):*

The warranties specified this Section are in addition to any rights Licensee may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

#### **8.2 Exclusions**

*The first two paragraphs are deleted and replaced with the following:*

THE BENEFITS GIVEN BY THIS WARRANTY ARE IN ADDITION TO YOUR RIGHTS AND REMEDIES AT LAW, INCLUDING THOSE UNDER THE AUSTRALIAN CONSUMER LAW.

We are required by the Australian Consumer Law to include the following statement:

*Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.*

### **10.1 Items for Which Lenovo May be Liable**

*The following is added to Subsection 10.1 (Items for Which Lenovo Maybe Liable):*

Where Lenovo is in breach of a condition, warranty or consumer guarantee implied by the Competition and Consumer Act 2010, and Lenovo's liability is capable of being limited, then Lenovo's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods.

### **HONG KONG S.A.R, MACAU S.A.R, AND TAIWAN**

*As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "the country in which the original Licensee was granted the license" and "the country in which Licensee obtained the Program license") are replaced with the following:*

- (1) In **Hong Kong S.A.R**: "Hong Kong S.A.R"
- (2) In **Macau S.A.R**: "Macau S.A.R" except in the Governing Law clause (Section 14.1)
- (3) In **Taiwan**: "Taiwan."

### **INDIA**

#### **10.1 Items for Which Lenovo May be Liable**

*The following replaces the terms of Items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by Lenovo's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by Lenovo pursuant to, or in any way related to the subject of this Agreement, Lenovo's liability will be limited to the charge paid by Licensee for the individual Program that is the subject of the claim.

### **13. General**

*The following replaces the terms of Item 13.g:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

### **INDONESIA**

#### **3.3 Term and Termination**

*The following is added to the last paragraph:*

Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

### **13. General**

*The following as added as Item 13.m:*

All notices, requests, reports or other communications shall be made in English language. If this Agreement is translated into any language other than English, unless required otherwise by applicable law, the English language text shall prevail.

### **JAPAN**

#### **13. General**

*The following is inserted after Item 13.f:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

## **NEW ZEALAND**

### **8.1 Limited Warranty**

*The following is added:*

The warranties specified in this Section are in addition to any rights Licensee may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which Lenovo provides, if Licensee requires the goods for the purposes of a business as defined in that Act.

### **10. Limitation of Liability**

*The following is added:*

Where Programs are not obtained for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

## **PEOPLE'S REPUBLIC OF CHINA**

### **4. Charges**

*The following is added:*

All banking charges incurred in the People's Republic of China will be borne by Licensee and those incurred outside the People's Republic of China will be borne by Lenovo.

## **PHILIPPINES**

### **10.2 Items for Which Lenovo Is not Liable**

*The following replaces the terms of Item 10.2b:*

b. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

## **SINGAPORE**

### **13. General**

*The following replaces the terms of Item 13.i:*

Subject to the rights provided to Lenovo's suppliers and Program developers as provided in Section 10 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

## **TAIWAN**

### **8.1 Limited Warranty**

*The last paragraph is deleted.*

## **EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS**

### **EUROPEAN UNION MEMBER STATES**

#### **8. Warranty and Exclusions**

*The following is added to Section 8 (Warranty and Exclusion):*

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 8 Warranty and Exclusions. The territorial scope of the Limited Warranty is worldwide.

### **EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW**

**Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.**

### **13. General**

*The following replaces Item 13.e:*

- (1) **Definitions** – For the purposes of this Item 13.e, the following additional definitions apply:
  - (a) **Business Contact Information** – business-related contact information disclosed by Licensee to Lenovo, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about Customer



and its contractors as legal entities (for example, Customer's revenue data and other transactional information)

- (b) **Business Contact Personnel** – Licensee employees and contractors to whom the Business Contact Information relates.
  - (c) **Data Protection Authority** – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
  - (d) **Data Protection & Electronic Communications Legislation** – (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.
  - (e) **Lenovo Group** – Lenovo PC HK Limited, its affiliates, and their respective Business Partners and subcontractors.
- (2) Licensee authorizes Lenovo:
- (a) to process and use Business Contact Information within Lenovo Group in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee and Lenovo Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing Lenovo Group products and services (the “Specified Purpose”); and
  - (b) to disclose Business Contact Information to other members of Lenovo Group in pursuit of the Specified Purpose only.
- (3) Lenovo agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- (4) To the extent required by the Data Protection & Electronic Communications Legislation, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable Lenovo Group to process and use the Business Contact Information for the Specified Purpose.
- (5) Licensee authorizes Lenovo to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

## **AUSTRIA**

### **8.2 Exclusions**

*The following is deleted from the first paragraph:*

#### **MERCHANTABILITY, SATISFACTORY QUALITY**

### **10. Limitation of Liability**

*The following is added:*

The following limitations and exclusions of Lenovo's liability do not apply for damages caused by gross negligence or willful misconduct.

#### **10.1 Items for Which Lenovo May Be Liable**

*The following replaces the first sentence in the first paragraph:*

Circumstances may arise where, because of a default by Lenovo in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from Lenovo.

*In the second sentence of the first paragraph, delete entirely the parenthetical phrase:*

“(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)”.

## **10.2 Items for Which Lenovo Is Not Liable**

*The following replaces Item 10.2b:*

b. indirect damages or consequential damages; or

## **BELGIUM, FRANCE, ITALY, AND LUXEMBOURG**

### **10. Limitation of Liability**

*The following replaces the terms of Section 10 (Limitation of Liability) in its entirety:*

Except as otherwise provided by mandatory law:

#### **10.1 Items for Which Lenovo May Be Liable**

Lenovo’s entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Lenovo is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months’ charges) Licensee paid for the Program that has caused the damages.

The above limitation will not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Lenovo is legally liable.

#### **10.2 Items for Which Lenovo Is Not Liable**

**UNDER NO CIRCUMSTANCES IS Lenovo OR ANY OF ITS PROGRAM DEVELOPERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.**

#### **10.3 Suppliers and Program Developers**

The limitation and exclusion of liability herein agreed applies not only to the activities performed by Lenovo but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which Lenovo as well as its suppliers and Program developers are collectively responsible.

## **GERMANY**

### **8.1 Limited Warranty**

*The following is inserted at the beginning of Section 8.1:*

The Warranty Period is twelve months from the date of delivery of the Program to the original Licensee.

### **8.2 Exclusions**

*Section 8.2 is deleted in its entirety and replaced with the following:*

Section 8.1 defines Lenovo’s entire warranty obligations to Licensee except as otherwise required by applicable statutory law.

### **10. Limitation of Liability**

*The following replaces the Limitation of Liability section in its entirety:*

- a. Lenovo will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, Lenovo will be liable, regardless of the basis on which Licensee is entitled to claim damages from Lenovo (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Program is subject to fixed term charges, up to 12 months’ charges) Licensee



paid for the Program that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.

- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, Lenovo will not be liable for indirect or consequential damages, even if Lenovo was informed about the possibility of such loss or damage.
- d. In case of delay on Lenovo's part: 1) Lenovo will pay to Licensee an amount not exceeding the loss or damage caused by Lenovo's delay and 2) Lenovo will be liable only in respect of the resulting damages that Licensee suffers, subject to the provisions of Items a and b above.

### **13. General**

*The following replaces the provisions of 13.g:*

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 8.1 (Limited Warranty) of this Agreement.

*The following replaces the provisions of 13.i:*

No right or cause of action for any third party is created by this Agreement, nor is Lenovo responsible for any third party claims against Licensee, except (to the extent permitted in Section 10 (Limitation of Liability)) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) Lenovo is legally liable to that third party.

## **IRELAND**

### **8.2 Exclusions**

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

## **IRELAND AND UNITED KINGDOM**

### **2. Agreement Structure**

*The following sentence is added:*

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.

### **10.1 Items for Which Lenovo May Be Liable**

*The following replaces the first paragraph of the Subsection:*

For the purposes of this section, a "Default" means any act, statement, omission or negligence on the part of Lenovo in connection with, or in relation to, the subject matter of an Agreement in respect of which Lenovo is legally liable to Licensee, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default by Lenovo in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from Lenovo. Regardless of the basis on which Licensee is entitled to claim damages from Lenovo and except as expressly required by law without the possibility of contractual waiver, Lenovo's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Licensee as an immediate and direct consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Program is subject to fixed term charges, up to 12 months' charges) for the Program that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which Lenovo is legally liable is not subject to such limitation.

### **10.2 Items for Which Lenovo is Not Liable**

*The following replaces Items 10.2b and 10.2c:*

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

## LICENSE INFORMATION

The Programs listed below are licensed under the following License Information terms and conditions in addition to the Program license terms previously agreed to by Client and Lenovo. If Client does not have previously agreed to license terms in effect for the Program, the Lenovo International Program License Agreement (L814-0008-01) applies.

Program Name: Lenovo Switch Center, v8.1, 1 Year S&S

Program Number: 5641-N81

Program Name: Lenovo Switch Center, v8.1, 3 Year S&S

Program Number: 5641-N83

Program Name: Lenovo Switch Center, v8.1, 5 Year S&S

Program Number: 5641-N85

As described in the International Program License Agreement ("IPLA") and this License Information, Lenovo grants Licensee a limited right to use the Program. This right is limited to the level of Authorized Use, such as a Processor Value Unit ("PVU"), a Value Unit ("VU"), or other specified level of use, paid for by Licensee as evidenced in the Proof of Entitlement. Licensee's use may also be limited to a specified machine, or only as a Supporting Program, or subject to other restrictions. As Licensee has not paid for all of the economic value of the Program, no other use is permitted without the payment of additional fees. In addition, as stated in the IPLA, Licensee is not authorized to use the Program to provide commercial IT services to any third party, to provide commercial hosting or timesharing, or to sublicense, rent, or lease the Program unless expressly provided for in the applicable agreements under which Licensee obtains authorizations to use the Program. Additional rights may be available to Licensee subject to the payment of additional fees or under different or supplementary terms. Lenovo reserves the right to determine whether to make such additional rights available to Licensee.

Program's specifications can be found in the collective Description and Technical Information sections of the Program's Announcement Letters.

### Supporting Programs

The Program is licensed as a multi-product package and includes the Supporting Programs identified below. Licensee is authorized to install and use such Supporting Programs only to support Licensee's use of the Principal Program under this Agreement and within the limits of the Proofs of Entitlement for the Program (unless broader rights are provided elsewhere in this License Information document). The phrase "to support Licensee's use" would include only those uses that are necessary or otherwise directly related to a licensed use of the Principal Program or another Supporting Program. The Supporting Programs may not be used for any other purpose. Licensee is not authorized to transfer or remarket the Supporting Programs separate from the Principal Program. A Supporting Program may be accompanied by license terms, and those terms, if any, apply to Licensee's use of that Supporting Program. In the event of conflict, the terms in this License Information document supersede the Supporting Program's terms. When Licensee's right to use the Program expires or terminates, Licensee must discontinue use, destroy or promptly return all copies of the Supporting Programs to the party from whom Licensee acquired the Program. If Licensee downloaded the Supporting Programs, Licensee should contact the party from whom Licensee acquired the Program. If Licensee wishes to license the Supporting Programs for any use beyond the limits set forth above, please contact an Lenovo Sales Representative or the party from whom Licensee acquired the Program to obtain the appropriate license.

The following are Supporting Programs licensed with the Program:

IBM WebSphere Application Server Liberty Core V8.5.5

### Components Not Used for Establishing Required Entitlements

When determining the number of entitlements required for Licensee's installation or use of the Program, the installation or use of the following Program components are not taken into consideration. In other words, Licensee may install and use the following Program components, under the license terms, but these components are not used to determine the number of entitlements required for the Program.

Administrative Scripting  
IBM HTTP Server  
IBM Thin Client for JPA with WebSphere Application Server  
Performance and Analysis Tools: Dynamic Cache Monitor  
Web Servers Plugins

#### Separately Licensed Code

The provisions of this paragraph do not apply to the extent they are held to be invalid or unenforceable under the law that governs this license. Each of the components listed below is considered "Separately Licensed Code". Lenovo Separately Licensed Code is licensed to Licensee under the terms of the applicable third party license agreement(s) set forth in the NON\_Lenovo\_LICENSE file(s) that accompanies the Program. Notwithstanding any of the terms in the Agreement, or any other agreement Licensee may have with Lenovo, the terms of such third party license agreement(s) governs Licensee's use of all Separately Licensed Code unless otherwise noted below.

Future Program updates or fixes may contain additional Separately Licensed Code. Such additional Separately Licensed Code and related licenses are listed in another NON\_Lenovo\_LICENSE file that accompanies the Program update or fix. Licensee acknowledges that Licensee has read and agrees to the license agreements contained in the NON\_Lenovo\_LICENSE file(s). If Licensee does not agree to the terms of these third party license agreements, Licensee may not use the Separately Licensed Code.

For Programs acquired under the International Program License Agreement ("IPLA") or International Program License Agreement for Non Warranted Program ("ILAN") and Licensee is the original licensee of the Program, if Licensee does not agree with the third party license agreements, Licensee may return the Program in accordance with the terms of, and within the specified time frames stated in, the "Money-back Guarantee" section of the IPLA or ILAN Lenovo Agreement.

Note: Notwithstanding any of the terms in the third party license agreement, the Agreement, or any other agreement Licensee may have with Lenovo:

- (a) Lenovo provides this Separately Licensed Code to Licensee WITHOUT WARRANTIES OF ANY KIND;
- (b) Lenovo DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE, NON-INFRINGEMENT OR INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SEPARATELY LICENSED CODE;
- (c) Lenovo is not liable to Licensee, and will not defend, indemnify, or hold Licensee harmless for any claims arising from or related to the Separately Licensed Code; and
- (d) Lenovo is not liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages including, but not limited to, lost data, lost savings, and lost profits, with respect to the Separately Licensed Code.

Notwithstanding these exclusions, in Germany and Austria, Lenovo's warranty and liability for the Separately Licensed Code is governed only by the respective terms applicable for Germany and Austria in Lenovo license agreements.

Note: Lenovo may provide limited support for some Separately Licensed Code. If such support is available, the details and any additional terms related to such support will be set forth in the License Information document.

The following are Separately Licensed Code:

AXL Software TACACS+ client 1.14  
AXL Software RADIUS client 3.43p  
Sencha Ext JS 3.0  
VMware vSphere SDK components 4.0

#### Source Components and Sample Materials

The Program may include some components in source code form ("Source Components") and other materials identified as Sample Materials. Licensee may copy and modify Source Components and Sample Materials for internal use only provided such use is within the limits of the license rights under this Agreement, provided however that Licensee may not alter or delete any copyright information or notices contained in the Source

Components or Sample Materials. Lenovo provides the Source Components and Sample Materials without obligation of support and "AS IS", WITH NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF TITLE, NON-INFRINGEMENT OR NON-INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### Install

Install is a unit of measure by which the Program can be licensed. An Install is an installed copy of the Program on a physical or virtual disk made available to be executed on a computer. Licensee must obtain an entitlement for each Install of the Program.

L/N: L-DKAG-9UNKCJ  
D/N: L-DKAG-9UNKCJ  
P/N: L-DKAG-9UNKCJ