



## Agreement for Asset Recovery Services

BY A) CLICKING THE BOX INDICATING YOUR AGREEMENT TO THE LENOVO AGREEMENT FOR ASSET RECOVERY SERVICES; OR B) PLACING AN ORDER FOR ASSET RECOVERY SERVICES IN THE DEDICATED LENOVO ARS PORTAL ("PORTAL"), YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND AGREE TO (AND ARE AUTHORIZED TO AGREE TO) THE TERMS OF THE LENOVO AGREEMENT FOR ASSET RECOVERY SERVICES FOR THE LEGAL ENTITY ON WHOSE BEHALF YOU ARE ACCEPTING ITS TERMS AND CONDITIONS AND THAT THE REGISTRATION INFORMATION YOU PROVIDED IS TRUE AND CORRECT. THIS AGREEMENT IS SUPPLEMENTAL TO THE AGREEMENT FOR RESELLERS WHICH BUSINESS PARTNER ACCEPTED, AND IS SUBJECT TO AS A PARTICIPANT IN THE LENOVO PARTNER NETWORK PROGRAM, ANY SUCCESSOR PROGRAM, OR ANY OTHER AGREEMENT BETWEEN THE PARTIES PERMITTING THE RESALE OF LENOVO SERVICES.

### 1. Scope

This Agreement sets forth the terms upon which Lenovo, from time to time upon request of a business partner registered with the Lenovo Partner Program or otherwise authorized under a Reseller Agreement ("Customer"), will remove and dispose of Customer's end users' ("End User") surplus desktop computers, mobile computers, servers, monitors, printers, and other computer equipment ("**Product**") in accordance with the terms and conditions described in this Agreement. This Agreement also contains the terms you will pass to your End Customer. You will only sell Asset Recovery Services to End Users who agree to the applicable terms of this Agreement, most specifically outlined at section 12, Flow Down Terms.

### 2. Services

**2.1** At any time and from time to time during the term of this Agreement, Customer may create one or more service requests (each, a "Service Request") in the Lenovo ARS Portal ("Portal") requesting Lenovo to perform the Services (defined below). The Service Request will include, without limitation, the Products to be disposed of, including asset count, manufacturer, make, model, asset address/location, operating condition and, if available, manufacturers' serial number. Following receipt of a Service Request, Lenovo shall arrange for the retrieval of the Product at the End User location(s) or other location(s) designated by Customer ("Customer location") indicated in the Service Request and performance of the remaining Services. Services will be performed Monday through Friday during local business hours unless otherwise agreed. Once received at Lenovo's designated service center (the "**Service Center**") Lenovo will make a determination with respect to each Product as to how best to dispose of it including through reconditioning, recycling or disposal in accordance with applicable regulatory requirements. If Lenovo determines that a Product can be reconditioned or otherwise has resale value, Lenovo will pay the Customer a purchase price for such Products in accordance with Section 9 below.

**2.2** Services shall include the following, as applicable (the "**Services**"):

2.2.1 At Customer's location:

- (a) Lenovo shall package Product and palletize the Product as necessary for shipment to the Service Center.
- (b) Lenovo shall ship the Product from the Customer location to the Service Center, at Customer's expense, using a carrier of Lenovo's choice.

2.2.2 Upon receipt at the Service Center:

- (a) Lenovo shall create a record of the Products provided by Customer including asset count, manufacturer, make, model, asset address/location, Product operating condition and, if available, manufacturers' serial number. Lenovo has no obligation to compare the list of Products actually received to the description of Products included in the Service Request and the list of Products prepared by Lenovo shall control for all purposes.
- (b) Lenovo shall remove Customer property and/or asset tags from the Products.
- (c) Lenovo shall collect all optical media and portable magnetic media (CD's, DVD's, etc.) included with the Products in a locked confidential container and destroy such media through a bonded process.
- (d) For Products that will be reconditioned, Lenovo shall:

- (1) perform "Data Sanitization" in accordance with the National Institute of Standards & Technology (NIST) SP800-88 clearing standards; and
  - (2) provide a certificate of data destruction with respect to such Products.
- (e) For Products to be recycled or disposed of, Lenovo shall:
  - (1) destroy the storage device in a manner that allows tracking by the storage device's serial number and the parent product's serial number;
  - (2) provide a certificate of data destruction by storage device serial number and the product serial number;
  - (3) recycle or dispose of Product in accordance with applicable regulatory requirements; and
  - (4) provide a certificate of environmental disposition for recycled Product;

**2.3** If Customer requires additional services not provided in this Section 2, a change authorization memorializing the additional services and fees shall be executed by the parties in accordance with Section 8 below.

### **3. Customer Responsibilities**

Customer shall:

- (a) Designate a project manager who will be the point of contact for all communications related to Services under this Agreement with the authority to act on behalf of End User and Customer in all matters regarding this Agreement;
- (b) Complete all applicable fields in each Service Request in the Portal for the Services requested including, without limitation, the full address for each location, on-site contact name, phone number, e-mail address and any special access instructions for each location where the Products are to be retrieved;
- (c) Provide access to the building/room at Customer's location where the Products are located;
- (d) Provide a working environment at each Customer location compliant with applicable health and safety regulations sufficient for Lenovo to take possession of the Products and package, palletize and otherwise prepare the Products for shipment;
- (e) Either (i) Remove any passwords or tracking software (i.e. – Computrace) from Product that may limit access to Product or (ii) provide all passwords necessary to gain full access to the Products;
- (f) Perform a backup of data on all Products prior to making available to Lenovo for the Services;
- (g) Ensure that no Product is contaminated by any hazardous substances that were not part of the Product when sold as new;
- (h) Obtain and provide to Lenovo any consents or approvals necessary for provision of the Services described in this Agreement, including the right to use and/or modify any hardware, software, firmware without infringing the rights of the providers or owners of such items;
- (i) Inform Lenovo of any changes to locations and/or Product counts at least 48 hours prior to scheduled pick up;
- (j) Ensure all Product scheduled for Service is available at the agreed location and ready for Lenovo to commence the Services upon Lenovo's arrival at such location; and
- (k) Provide special security clearances or safety training and clothing (steel toe boots, safety goggles, etc.), if required to access the location of the Products.

### **4. Lenovo Responsibilities**

Lenovo shall designate a project manager as the point of contact for all communications related to the Services to be provided under this Agreement. The point of contact shall have the authority to act on behalf of Lenovo in all matters regarding this Agreement and shall:

- (a) establish and maintain communications regarding Services through Customer's point of contact;
- (b) provide a project status report to Customer's point of contact via email upon request; and
- (c) provide a clear escalation path for any Customer concerns along with a list of the key contacts, telephone and email contact information prior to the start of Services.

### **5. Completion of Services**

**5.1** Upon completion of the Services for each Service Request, Lenovo shall provide a settlement report (a "**Settlement Report**") to Customer listing the Product received, including the make, model, serial

number (if applicable) and Customer location thereof, a description of the Services provided, the Service fees, the shipping fees, and the final purchase price for any Product with resale value.

- 5.2** Lenovo's responsibilities with respect to a Service Request shall be complete when the Services have been performed and confirmed by a final Settlement Report, a certificate of data destruction, and certificate of environmental disposition, if applicable, issued to the Customer's point of contact. The Settlement Report, certificate of data destruction, and certificate of environmental disposition, if applicable, will be provided to Customer within thirty (30) business days of the date of Product pickup.

## **6. Price, Charges and Payment**

- 6.1** The price list for Services is set in the quotation or equivalent document provided by Lenovo's dedicated ARS representative or generated through an authenticated Lenovo website, application or other authorized source. Final charges for Services and shipping fees are based on the actual quantity of Product picked up by Lenovo and delivered to the Service Center.
- 6.2** For each Service Request, Lenovo shall issue an invoice to Customer for the Service fees and shipping fees set forth in the Settlement Report. All amounts are due upon receipt of invoice. Any amounts not received by Lenovo within thirty (30) days of the date of invoice shall be overdue. Customer shall pay a late payment fee of the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by law on the undisputed past due balance of the invoice amount. Customer shall pay any applicable sales, use or similar taxes, fees or duties unless Customer provides exemption documentation to Lenovo. Customer is responsible for taxes, if any, from the date on which the Services are provided by Lenovo. No other discounts, quantity entitlements, or promotions apply unless expressly agreed in writing by Lenovo.

## **7. Title and Risk of Loss.**

- 7.1** Title and risk of loss to all Products will be deemed to have transferred to Lenovo upon delivery of the Products to Lenovo's carrier.
- 7.2** Upon Lenovo's request, Customer agrees to execute and deliver or cause to be executed and delivered all such further documents or instruments as may reasonably be required to evidence such transfer of title to Lenovo.
- 7.3** Customer represents and warrants or where applicable ensure that End User represents and warrants to Lenovo that it has good title to the Products, free of liens and encumbrances, and the right to transfer title and possession of such Products to Lenovo in accordance with this Agreement.

## **8. Project Change Control Procedure**

If there is a change to the Services as described in Section 2 above, it must be identified by its project number. In the event of such a change, prices and charges shall be adjusted accordingly. Lenovo shall confirm any agreed changes to Customer via a change authorization or equivalent document. Nothing herein shall obligate Lenovo to proceed with a change except as agreed by the parties. Notwithstanding the foregoing, Lenovo will pick up all Products provided to Lenovo by the Customer at the location designated in a Service Request, whether or not such Products were included in the Service Request completed by the Customer. To the extent the Product counts differ from the counts Customer provided in a Service Request in accordance with Section 1 above, Customer authorizes and agrees to obtain authority from End User for Lenovo to provide Services with respect to any such additional or different Products in accordance with the terms of this Agreement and agrees to pay any additional Service and shipping fees for the processing of such Product. If Lenovo determines that any of the additional or different Products can be reconditioned or otherwise have resale value, Lenovo will pay Customer for such Product in accordance with Section 9 below.

## **9. Resale Value**

- 9.1** Lenovo will pay Customer for any Product that Lenovo determines can be reconditioned or otherwise has resale value. Lenovo will take title to and dispose of all other Products in accordance with this Agreement without the payment of any purchase price by Lenovo.
- 9.2** Determination and Payment of Resale Value:
- 9.2.1** Upon request, Lenovo will make an initial assessment of whether the Products can be reconditioned or otherwise have resale value and provide an estimate of the price Lenovo would be willing to pay therefor, based on information about the Products provided by Customer prior to the start of the

Service engagement or Service Request. The initial assessment and estimate will assume that such Products are functional, complete, and in good cosmetic condition. It is an estimated price only and shall not be in any way considered the final purchase price for the Product.

9.2.2 After Product has been delivered by Customer to Lenovo at the pickup location, Lenovo will assess the condition of the Product and determine (a) which Products have resale value and (b) the then current fair market value of such Products. The list of such Products and final purchase prices that Lenovo will pay Customer for such Products will be set forth in the Settlement Report. The final purchase price may be greater or less than any estimated price provided to Customer. Any Products that are not in good condition or good working order, or that have missing components such as floppy drive, optical drive, memory, hard drive (if missing at the time of collection), power adaptor, battery, etc. may be deemed to have no resale value. If a Product has cosmetic deficiencies or is in need of repairs, Lenovo may apply deductions to the value that otherwise would apply to such Product if it were in functional, complete and good cosmetic condition to account for cosmetic deficiencies or needed repairs. If the deductions exceed such value, the Product will be deemed to have no resale value.

9.2.3 Lenovo will pay Customer the final purchase price set forth in the Settlement Report within thirty (30) calendar days of delivery of the Settlement Report to Customer.

## **10. Personnel**

10.1 Each party is responsible for the supervision, direction, control, and compensation of its respective personnel.

10.2 Lenovo personnel used in the performance of Services shall be as determined by Lenovo in its sole discretion.

10.3 Lenovo may subcontract a Service, or any part of it, to subcontractors selected by Lenovo.

## **11. Services Warranty**

11.1 Lenovo warrants Services will be performed in a workmanlike manner consistent with standards in the information technology industry.

11.2 In the event Lenovo fails to perform Services in accordance with Section 2 above, Customer shall provide written notice of such failure to Lenovo within three (3) days after the completion of such Services. Lenovo will either correct the failure or provide a credit of the charges paid to Lenovo for the defective portion of the Services, at Lenovo's option. This Section 11 sets forth the extent of Lenovo's liability for Services and the sole remedy of Customer in the event that the Services do not comply with this Agreement.

11.3 THIS WARRANTY IS 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.

11.4 Lenovo does not warrant uninterrupted or error-free operation of any deliverable or other aspect of the Services.

## **12. Flow Down Terms**

Customer shall notify the End User of the existence of this Agreement and shall ensure their acceptance of it through: (a) incorporation into the agreement between Customer and End User; or (b) providing notice of the required terms ("Flow Down Terms") and obtaining legally binding acceptance by other means. Lenovo may refuse to provide or perform any Services for such End-User unless it is reasonably satisfied that the End User has agreed to be bound by this Agreement. Customer has an obligation to inform Lenovo if it becomes aware of any End User's material violation of any of the Flow Down Terms. It is Customer's responsibility to ensure compliance and compatibility with applicable laws in the relevant jurisdictions (of sale and performance of Services, and location of relevant parties) including but not limited to those relating to: provision of the Service to its End User, Flow Down Terms, and Customer's contractual agreement with the End User. For the avoidance of doubt, material Flow Down Terms include but are not limited to the following sections of the Agreement: 3; 6; 7; 9; 11; 14; 15.1; 15.2 15.4.

### **13. Term and Termination**

**13.1** This Agreement begins on the Effective Date and shall continue until the later of: (i) three (3) years; or (ii) completion of all Service Requests in accordance with Section 1 above, unless otherwise agreed by the parties in writing.

**13.2** Either party may terminate this Agreement if the other party fails to comply with any material terms, provided the party alleged not to be in compliance is provided with written notice and a reasonable time to comply.

### **14. Limitation of Liability**

**14.1** In any action arising out of or related to Services, this Agreement or any order issued hereunder, neither party nor its affiliates, shall be liable to the other party or its affiliates for any of the following even if informed of their possibility and whether arising in contract, tort, (including negligence) or otherwise: (a) third-party claims for damages; (b) loss of, or damage to, data; (c) special, incidental, indirect, punitive, exemplary or consequential damages; or (d) lost profits, business, revenue, goodwill or anticipated savings.

**14.2** The total liability of either party and its affiliates to the other party and its affiliates for all actions arising out of or related to a Service Request issued hereunder, regardless of the form of the action or the theory of recovery, shall be limited to the amount paid or payable by Customer or its affiliate to Lenovo or its affiliate under the applicable order.

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

**14.4** The limits in Sections 14.2 and 14.3 also apply to Lenovo's subcontractors, suppliers and program developers. They are the maximum amounts for which Lenovo and its subcontractors, suppliers and program developers may be liable collectively.

**14.5** The provisions of Sections 14.1, 14.2, and 14.3 shall not limit either party's liability for damages brought or asserted by a third party for: (i) bodily injury (including death); (ii) real property; or (iii) tangible personal property for which a party is legally liable.

### **15. General Terms**

**15.1** Customer Information. Lenovo and its affiliates may store, use and process contact information and other information about Customer, including names, phone numbers, addresses, and e-mail addresses, necessary to perform under this Agreement. Such information will be processed and used in connection with this Agreement and Services. It may be transferred by Lenovo to any country where Lenovo does business and may be provided to entities acting on Lenovo's behalf to perform obligations under this Agreement. Lenovo may also disclose such information where required by law.

**15.2** Compliance with Laws. Each party shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including all applicable export and import regulations, orders and policies of the United States. It is Customer's responsibility to ensure compliance and compatibility with applicable laws in the relevant jurisdictions (of sale and performance of Services, and location of

relevant parties) including but not limited to those relating to: provision of the Service to its End User, Flow Down Terms, and Customer's contractual agreement with the End User.

- 15.3** Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party. Neither party shall unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, within the affiliated group of companies of which either party is a part; or to a successor organization by merger or acquisition, shall not require the consent of the other party. Lenovo may assign its rights to payments under this Agreement without Customer's consent.
- 15.4** Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of North Carolina, without regard to its or any other jurisdiction's conflict of laws principles. All claims or disputes arising out of or in any manner connected with this Agreement shall be brought exclusively in a court located in Wake County, North Carolina. To that end, each party irrevocably consents to the exclusive jurisdiction of, and venue in, any such 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 Wake County, North Carolina, and to the service of process in connection with any such claim or dispute by the mailing thereof by registered or certified mail, postage prepaid to such party, at the address set forth in, or designated pursuant to, this Agreement. To the fullest extent permitted by law, each party hereby expressly waives (on behalf of itself and on behalf of any person or entity claiming through such party) any right to a trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or in any manner connected with this Agreement or the subject matter hereof.
- 15.5** Force Majeure. Except for payment obligations, neither party shall be liable to the other for any failure or delay in the performance of its obligations, to the extent such failure or delay is caused by fire, flood, earthquakes, other elements of nature; acts of war; terrorism, riots, civil disorders, rebellions or revolutions; epidemics, communication line or power failures; governmental laws, court orders or regulations; or any other cause beyond its reasonable control.
- 15.6** Survival. Any terms of this Agreement, which by their nature survive the expiration, termination or cancellation of this Agreement, including but not limited to Limitation of Liability, shall survive the expiration or termination of this Agreement.
- 15.7** Complete Understanding. This Agreement is the sole and complete understanding of the parties regarding the subject matter hereof, superseding all prior or contemporaneous agreements and understandings, whether written or oral.
- 15.8** Severability. If the whole or any part of a provision of this Agreement is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, it shall be deleted and the remainder of this Agreement shall remain full force and effect.

**By placing an order, you accept and are bound to the terms and conditions of this Agreement**

