



# Managed Service Provider Direct Purchase Attachment

BY CLICKING THE BOX INDICATING YOUR AGREEMENT TO THE MANAGED SERVICE PROVIDER DIRECT PURCHASE ATTACHMENT (THIS "ATTACHMENT"), YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND AGREE TO (AND ARE AUTHORIZED TO AGREE TO) THE TERMS OF THIS ATTACHMENT FOR THE LEGAL ENTITY ON WHOSE BEHALF YOU ARE ACCEPTING ITS TERMS AND CONDITIONS AND THAT YOU UNDERSTAND THIS IS A BINDING LEGAL AGREEMENT. IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, THE PARTIES HEREBY AGREE TO THE TERMS OF THIS ATTACHMENT.

The terms of this Attachment are incorporated in and made a part of the Lenovo Agreement for Resellers (the "Agreement") held by and between Reseller and Lenovo (Canada) Inc. The terms of this Attachment are in addition to or modify the terms of the Agreement. Unless defined herein, defined terms shall have the meaning set forth in the Agreement. To the extent that any terms of this Attachment conflict with those of the Agreement, the terms of this Attachment will prevail.

This Attachment shall be effective on the date the Reseller clicks to accept its terms ("Effective Date").

This Attachment governs Reseller's purchase of Lenovo Products and Services directly from Lenovo for resale to its End Users under the limited circumstances as set forth below in this Attachment.

## 1. Authorization and Scope

**1.1** This Attachment authorizes Reseller to purchase Products and Services directly from Lenovo as sold on the Datto Commerce marketplace website for Reseller to resell to End Customers in the Canada ("Territory"). This Attachment does not authorize any other direct sales from Lenovo.

**1.2** A Product or Service becomes subject to this Attachment when Lenovo accepts Reseller's order in writing; ships the Product; or makes the software Program or Service available to Reseller. Confirmation of Lenovo's receipt of a Reseller order does not constitute Lenovo's acceptance of the order.

## 2. Reseller's Responsibilities To Lenovo

Reseller shall:

1. order Products and Services only on Datto Commerce;
2. upon request of Lenovo, provide relevant financial information about Reseller including, but not limited to, an audited annual financial report;
3. ensure that the terms in any agreement that Reseller may have with an End User does not conflict with the Agreement and this Attachment;
4. maintain records of each Product and Service transaction (for example, marketing, sales, special bid credit or a warranty claim) for three (3) years after the Term of this Attachment;
5. provide combined hardware Products and software Programs to End Users in the same combination as received from Lenovo;
6. for Programs Reseller installs for the End User: i) secure legally enforceable documentation confirming that the End User has accepted the license documents and has authorized Reseller to take actions necessary to accept the license documents on the End User's behalf; ii) retain such documentation for a minimum of three (3) years; and iii) provide such documentation to Lenovo upon request for Lenovo to verify compliance with this section;
7. ensure that the Microsoft Certificate of Authenticity (COA) and Associated Product Material (APM) included with Lenovo Products (not to be priced separately) are included with the Lenovo Product provided to End Users; and
8. promptly provide to Lenovo information, notifications and documents that the End User is responsible to provide Lenovo through the Lenovo Reseller, as specified by Lenovo;

### **3. Reseller's Responsibilities to End Users**

Reseller shall:

1. provide the support necessary to maintain customer satisfaction and participate in customer satisfaction programs established by Lenovo;
2. refund the amount paid for a Product returned by an End User if such return is permitted under the Lenovo warranty or software Program license;
3. provide a copy of the Lenovo Limited Warranty along with the name and address of the warranty service provider and a description of the Customer Replaceable Unit process to End Users;
4. advise End Users that any modification to a Product may void the Lenovo Limited Warranty and that the Lenovo warranty may not apply to exported Products;
5. comply with all applicable export and import laws, including those of the United States;
6. provide a dated sales receipt which specifies the End User's name, the part number or the machine type/model, and serial number if applicable to End Users; and
7. inform End Users that the sales receipt or proof of purchase will be necessary to obtain warranty service or software Program upgrades; and
8. accurately present all Products and Services in accordance with the information Lenovo provides, and in no event shall Reseller misrepresent any aspect of Products and/or Services to End Users.

### **4. Remarketing of Services**

The terms of sale applicable to Services provided by Lenovo shall be as set forth by Lenovo in this Attachment, a Services Attachment or Transaction Document provided to Reseller. Lenovo or a Lenovo designated service provider shall perform the Services under the terms of a separate agreement with the End User.

### **5. Ordering and Delivery**

**5.1** Products may only be ordered in minimum order quantities as advised by Lenovo from time to time; or, as applicable, in an operations guide.

**5.2** Any special promotional offering from Lenovo may not be combined with other Lenovo programs.

**5.3** Products may be shipped from different sources of supply and Reseller may receive multiple shipments and invoices relating to a single order.

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

**5.5** Lenovo shall ship a Program's media and documentation to Reseller, as specified in an order. For Programs Lenovo provides in tangible form, Lenovo fulfills its shipping and delivery obligations upon the delivery of such Programs to the Lenovo-designated carrier.

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

**5.7** Lenovo shall select the method of shipment and pay the associated charges for the shipment of Products.

**5.8** Lenovo may apply a cancellation charge for orders canceled by Reseller.

### **6. Returns**

**6.1** Products may not be returned to Lenovo for credit except as Lenovo, in its sole discretion, may designate from time to time.

**6.2** In the event that Lenovo elects to allow Products to be returned for credit, Lenovo will issue an announcement specifying the terms on which the Product may be returned to Lenovo. In addition, all returns of Products for credit shall be subject to the following:

1. prior approval of Lenovo;
2. Products consisting of hardware Products and software Programs sold by Lenovo under a single part number may only be returned in the same complete combination as received from Lenovo;

3. Products must have been purchased directly from Lenovo;
4. Products must be received by Lenovo within one (1) month of the date of Lenovo's approval of the return;
5. Products must be returned in their original, unopened package with no damage;
6. any credit shall be in the amount of the purchase price of Product;
7. transportation costs for the return of Products shall be borne by Reseller;
8. Products shall be free of any liens or encumbrances; and
9. Products must be from within the country which they were shipped by Lenovo.

## **7. Price, Charges, Invoicing, Payment and Taxes**

### **7.1 Price, Charges and Discount**

The price, charges or discount applicable to a Product or Service may be made available by Lenovo in either published form or through Lenovo's electronic information system.

### **7.2 Price, Charges and Discount Changes**

Lenovo may change prices, charges and increase discounts applicable to Products or Services at any time. Lenovo may decrease discounts on one (1) month's notice to Reseller. If Lenovo decreases the price or increases the discount for a Product, Reseller may receive a price decrease credit or a discount increase credit for Products acquired directly from Lenovo and remaining in Reseller's inventory or in transit from Lenovo. Products acquired under a special offering (for example, a promotional price, Special Bid or a special incentive) may not be eligible for a full credit. Reseller must certify its inventory to Lenovo in writing within one (1) month of the effective date of the change. The credit shall be the difference between the price Reseller paid and the new price.

### **7.3 Invoicing, Payment and Taxes**

If not paid in advance of shipment, all amounts are due upon receipt of invoice. Any payment not received by Lenovo within thirty (30) days of date of invoice shall be overdue. Reseller may use a credit only after issuance by Lenovo. If any governmental authority requires Lenovo to collect a duty, tax, levy, or fee on a transaction under this Attachment, excluding any tax based on Lenovo's net income, Reseller shall pay such amount as specified in Lenovo's invoice. If Reseller claims to be exempt from any taxes relating to the Products and Services purchased from Lenovo, then Reseller shall provide Lenovo with evidence sufficient to support such claim. Lenovo may offset any amounts due Reseller or designated for Reseller's use, including marketing funds, promotional offerings, incentives or special bid rebates, against amounts due Lenovo from Reseller.

### **7.4 Failure to Pay Any Amounts Due**

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

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

## **8. Reporting**

Reseller shall provide sales-out reports, including date, Product description, machine type, model or part number and serial number (when applicable), destination country, unit and extended cost, quantity and End User name as requested by Lenovo.

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

**9.1** Lenovo transfers title to hardware Products to Reseller upon delivery to Lenovo's designated carrier. Title to a hardware Product shall revert to Lenovo when it is accepted by Lenovo as a returned hardware Product. Lenovo does not transfer title to software Programs.

**9.2** Lenovo shall bear the risk of loss or damage to hardware Products until they are delivered to Lenovo's designated carrier for shipment to Reseller. Thereafter, Reseller assumes risk of loss or damage. Hardware

Products will be covered by insurance, arranged and provided by Lenovo for Reseller, covering the period until they are delivered to Reseller.

## **10. Installation.**

For third party Products Lenovo approves Reseller to market or sell, Reseller shall inform its End User in writing: 1) that the Products are non-Lenovo; 2) the manufacturer, supplier, service provider or publisher who is responsible for warranty (if any); and 3) of the procedure to obtain any warranty service.

## **11. Limitation of Liability**

**11.1** In any action arising out of or related to this Attachment or any order issued hereunder, neither party, including the Enterprise of which it is a part shall be liable to the other party or the Enterprise of which it is a part for any of the following even if informed of their possibility and whether arising in contract, tort, (including negligence) or otherwise: (a) third-party claims for damages; (b) loss of, or damage to, data; (c) special, incidental, indirect, punitive, exemplary or consequential damages; or (d) loss of profits, business, revenue, goodwill or anticipated savings; and

**11.2** The maximum cumulative liability of either party and the Enterprise of which it is a part to the other party and the Enterprise of which it is a part for all actions arising out of or related to this Attachment 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 Reseller and the Enterprise of which it is a part to Lenovo and the Enterprise of which it is a part for all orders issued under this Attachment.

**11.3** The provisions of Sections 11.1 and 11.2 shall also limit the liability of Lenovo, its subcontractors, suppliers and program developers, collectively, to Reseller and the Enterprise of which it is a part.

**11.4** The provisions of Sections 11.1 and 11.2 shall not apply to Lenovo's obligations under Sections 12 and 13 below.

## **12. Intellectual Property Infringement Protection**

If a third party claims that a Lenovo branded Product that Lenovo sells to Reseller under this Attachment infringes that party's patents or copyrights, Lenovo shall defend Reseller against that claim at Lenovo's expense and pay all costs, damages and attorney's fees that a court finally awards against Reseller, or that are included in a settlement approved by Lenovo, provided that Reseller: (i) promptly notifies Lenovo in writing of the claim; (ii) allows Lenovo to control, and cooperates with Lenovo in, the defense and any related settlement negotiations; and (iii) is and remains in compliance with Reseller's obligations in this Section 12. The foregoing is Lenovo's entire obligation to Reseller regarding any claim of infringement. If such a claim is made or appears likely to be made, and Reseller maintains inventory of Products, Reseller shall permit Lenovo, in its discretion, to enable Reseller to continue to use and sell the Products; to modify them; or to replace them with Products that are at least functionally equivalent. If Lenovo determines that none of these alternatives is reasonably available, Reseller shall promptly return the Products to Lenovo at its written request. Lenovo will then provide a credit to Reseller equal to the amount paid for the Products. Lenovo shall have no obligation regarding any claim based on: i) anything Reseller or a third party on Reseller's behalf provides which is incorporated into, or combined with a Product; ii) modification of a Product by Reseller or a third party on Reseller's behalf; iii) the combination, operation, or use of a Product with any products not provided by Lenovo as a system, or the combination, operation, or use of a Product with any product, data, apparatus or business method that Lenovo did not provide; iv) Lenovo's compliance with Reseller's specifications or requirements; or (v) infringement by a third party product alone, as opposed to its combination with Lenovo Products.

## **13. Indemnification**

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

**14. Miscellaneous**

**14.1 Term and Termination.** The term of this Attachment shall begin on the Effective Date and continue until the earlier of: i) termination of this Attachment as set forth herein; or ii) termination of the Agreement. Either party may terminate this Attachment without cause, on one (1) month's written notice. If either party breaches a material term of the Attachment, the other party may terminate the Attachment immediately on written notice. The termination of this Attachment shall not terminate the Agreement. Termination of the Agreement shall terminate the Attachment. The termination or expiration of this Attachment shall not affect the obligations of either party to the other party pursuant to any order previously executed hereunder.

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

**14.3** This Attachment is the sole and complete understanding of the parties regarding the subject matter herein, superseding all prior or contemporaneous agreements and understandings, whether written or oral. Any reproduction of this Attachment made by reliable means (for example, photocopy, facsimile or electronic copy) is considered an original, to the extent permissible by law.

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Name	Company	Date
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Signature