

Novell Academic License Agreement (Canadian Customers Only)

This Academic License Agreement (ALA) is entered into by Novell Canada, Ltd., a Canadian corporation with headquarters at 3100 Steeles Ave East, Suite 500, Markham, Ontario, L3R 8T3, ("Novell"), and the customer entity signing below ("Customer"). This ALA consists of these Terms and Conditions, the Annual Fee Worksheet and the End User License Agreement of the Software covered under this program.

Terms and Conditions

1. Definitions. Capitalized terms used in the ALA are defined as follows

1.1 ALA License Fee means the license fee set forth in the attached ALA Annual Fee Worksheet that Customer must pay to be licensed under this ALA to use Software. The ALA license fee is an annual payment that must be paid each year during the ALA term.

1.2 Annual Period means the period beginning on the first day of the month following the Effective Date and ending one year thereafter, and each consecutive one-year period thereafter during the term of the ALA.

1.3 Authorized Users means (a) students currently enrolled in Customer, and (b) Customer's faculty and administrative personnel.

1.4 Customer means an educational organization that has been approved by Novell and has signed this ALA. The Customer signing this ALA will be liable for the actions and omissions of all schools, education administrative organizations, or other entities with respect to obligations under this ALA.

1.5 Effective Date means the date on which the ALA is signed by an authorized Novell representative, which will follow the customers signing.

1.6 FTE means a Full-Time Equivalent faculty, staff, or student. The number of Customer's FTE's shall be calculated as the sum of (a) the number of full-time faculty and staff plus the total number of part-time faculty and staff work hours in an average work week divided by 40; and (b) the number of full-time students plus the total number of part-time student credit hours divided by the number of credits that Customer uses to identify full-time status. For Customers in the United States or Canada that declare a student FTE to their accreditation or governing board, the pre-existing FTE definition of the accreditation organization or governing board may be used in place of subpart (b) above.

1.7 Internal Use means use by (a) Authorized Users for Customer's internal operations, and (b) while performing work for Customer on Customer's premises, Customer's consultants and contractors. Student use of the Software is restricted to use on equipment owned or leased by Customer.

1.8 Master Software means master media from which customer may install software.

1.9 Software means (collectively or individually, as the context requires) the Novell software licensed under this ALA.

1.10 Upgrade means any new version of a Software product which bears the same product name, including version changes evidenced by a number change immediately to either the right or left of the decimal (for example, GroupWise 5.1 to 5.2 of GroupWise 1.0 to 5.0). If a question arises as to whether a product offering is an Upgrade or a new product, Novell's opinion will prevail, provided Novell treats the product offering the same for all its end users customers generally.

1.11 Workstation means any single-user computer or workstation, whether attached to a network or otherwise, that is owned or leased and operated by Customer at Customer's location.

2. Licenses. Subject to the provisions of this ALA only, and conditional upon Customer paying the applicable annual ALA License fee, Novell grants and Customer accepts a non-exclusive, non-transferrable license to copy and distribute the software identified on the ALA Annual Fee Worksheet for Internal Use by Authorized Users on Customer's Workstations. Only Authorized Users may copy and/or use the software.

2.1 Department Workstation. Despite any provision in the ALA to the contrary, if Customer purchases the ALA for less than an entire organization, such purchase must be made using Department workstation pricing, and only Authorized Users within the department or organizational unit for which the Workstation price was paid are licensed to use the Software.

2.2 Limited Warranty and Additional Terms The Academic License is subject to the license terms and restrictions set forth in the applicable License Terms document that accompany a Software product. This license Terms document describes the limited warranty and warranty disclaimers for ALA software, and is incorporated into the ALA. If there is a conflict between a provision of the License Terms document and this ALA, the ALA provisions shall govern.

2.3 Removal from Price List. For any Software licensed under the ALA which Novell removes from the Novell Product Price List, Customer may not make additional copies of the product after such removal occurs, unless Novell agrees to in writing otherwise.

2.4 GroupWise Mailbox License. Customer must include as part of the Annual Fee Worksheet a report showing the number of GroupWise Mailboxes (accounts for the storage of electronic mail, whether attached to a network and/or remote) created for the GroupWise product.

2.4.1 Remote Access. A Mailbox License for the use of faculty or staff will include the right to remote access. A GroupWise Mailbox license used by a student can only be used with remote access if (a) Customer agrees to track all Master Software created for installation of student workstations, (b) Customer ensures students given remote access agree to the license terms of the Software and (c) Customer accepts liability for students actions in regard to the software license. Should Customer choose not to accept the above student remote access terms, Customer may implement a GroupWise Mailbox License for student use that provides remote access only through GroupWise Web Access.

2.5 Special Products. Products delivered under the ALA to Customer that include non-Novell products, evaluation products, or products requiring key activation, may require additional purchase if Customer chooses to be licensed to use such products, and such products may not be available under this ALA on a site license basis.

2.6 Third-Party Royalties. The use and copying of some Novell software products under the ALA may require payment of royalties to third-party licensors. If such products are made available hereunder, and if Customer elects to use such products, Customer must report (in a form and manner specified by Novell) Customer's copying and use of all such products and must pay the required royalties, provided that Novell gives Customer written notice of the royalty obligation at or before the time Customer makes copies of such products under this ALA.

3. Delivery of Software Media and Documentation.

3.1 Software Media. Novell will provide Customer 1 set of software media for software ordered under the ALA. Novell will make available to Customer, either directly or through third parties, additional sets of software media at the prices listed in the Novell Public Sector MLA Price List. Customer must keep a written record of the location of Master Software it receives under the ALA. Upon ALA termination, Customer's right to use Master Software terminates, and Customer must return all Master Software to Novell (see 7.4.1 below). Master Software is not available in all regions: in such regions Novell will fulfill ALA orders using other media.

3.2 Delivery. Delivery in Canada will be made CPT, carriage paid to customer's address (incoterms 1990).

3.3 Title & Risk of Loss. For shipment within Canada, title to any deliverables, exclusive of Novell's rights to intellectual property, and risk of loss will pass to Customer upon delivery to Customer's carrier.

3.4 Duplication. Subject to the ALA's license restrictions, Customer may make and install Software copies from the Master Software for Internal Use (including an archival or backup copy for each Software product licensed). All copies of Software must be made from the Master Software and must reproduce any serial numbers and all proprietary rights notices. Customer may make copies of the Documentation, up to the number of licenses purchased, for use with the Software.

3.5 Customer's Responsibility. Customer agrees to track all Master Software and duplicated Master Software and to return or destroy all Master Software and any such copies upon termination or expiration of the ALA Customer shall not allow Master Software to be used in any instance for anything but Customer's Internal Use.

3.6 Documentation. Other than documentation in electronic or CD-ROM format, no documentation will be provided to Customer as part of the annual fee. Customer may copy the Documentation from the on-line screen for use with the Software.

4. Upgrade Protection. For any Software covered by Customer's payment of the ALA annual fee, Novell will make available any Upgrades released during the ALA within a reasonable period of time after they become commercially available. Upgrades to non-Novell products delivered with ALA software may not be available from Novell. Nothing in this ALA shall be construed to warrant or imply that any Upgrades will be produced for any product.

5. Technical Services. No technical services are included in the ALA. Technical Services may be purchased through Novell or a Novell-approved third party provider under separate contract. Customer should contact a third party or refer to the Novell Internet web site for information concerning technical support programs or other a la carte support options.

6. Placing Orders and Payment Terms.

6.1 Annual License Fee. Customer may obtain Software by submitting to Novell a completed and signed ALA Annual Fee Worksheet with a Customer purchase order for the amount of the annual fee. The total, non-refundable annual license fee will be payable in a lump sum net 30 days from the date of invoice.

6.1.1 Within at least 15 days prior to the end of each Annual Period, Customer shall submit to Novell a new ALA Annual Fee Worksheet certifying either (a) the total number of Customer workstations or (b) the total number of Customer Full Time Equivalent (FTE) faculty, staff and students. Customer shall submit the applicable annual ALA License Fee with the ALA Annual Fee Worksheet.

6.2 Minimum Order. The minimum Annual License Fee is \$5,000.

6.3 Price and Product Changes. Novell may revise the ALA prices at any time to (a) change the prices for Software licenses or other deliverables, or (b) add or delete available products or other offerings. Any price increase made to a Software product license which Customer has previously purchased under the ALA will only apply to subsequent license purchases. If the ALA prices change less than 120 days prior to the end of a contract term, Customer may choose to terminate the ALA by giving written notice to Novell within 30 days of Novell providing Customer with the price change notification.

6.4 Taxes. Fees are exclusive of all applicable taxes. Customer agrees to pay and bear the liability for any taxes associated with the delivery of the Software, including but not limited to sales, use, excise, and added value taxes but excluding taxes based upon Novell's net income, capital, or gross receipts. If Customer is required to withhold taxes, Customer will furnish Novell all required receipts and documentation substantiating such payment. If Novell is required by law to remit any tax or duty on behalf, or for the account, of Customer upon the delivery of Software, Customer will reimburse Novell within 30 days after Novell notifies Customer in writing of such remittance. Customer will provide Novell with valid tax exemption certificate in advance of any remittance otherwise required to be made by Novell on behalf of, or for the account of, Customer where such certificates are applicable.

6.5 Late Payments. Payments made later than the invoice due date will accrue interest from the date due to the date paid at the lesser of the rate of twelve percent (12%) per annum or the highest rate allowed by applicable law. Customer will pay reasonable costs and attorney's fees if Novell is required to undertake collection measures against Customer.

6.6 Canadian Dollar Payments. All fees shall be paid in Canadian Dollars.

7 Term and Termination.

7.1 Term. The Term of this ALA will begin on the Effective Date and will remain in effect for a period of three years after the first day of the month following the Effective Date. The ALA will be automatically renewed for one year periods until either party gives written notice at least ninety (90) days prior to the end of the ALA term.

7.2 Termination for Cause. Either party may terminate the ALA upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party. If Customer terminates the ALA for cause, Novell will refund Customer a prorated portion of the annual fees paid for the period beyond termination.

7.3 Termination for Convenience. Either party may terminate the ALA solely for convenience at the end of any annual period by giving the other party written notice at least ninety (90) days prior to the end of the annual period. If Novell terminates for convenience, Novell will refund Customer an amount, prorated on a monthly basis, of the ALA License Fee to cover the unexpired term.

7.4 Effect of Termination. Upon expiration or termination of the ALA for any reason, Customer's right to duplicate the Software and to acquire new licenses or receive Upgrades and Updates through ALA Upgrade Protection will immediately terminate. Except as may be explicitly provided for in the ALA, License and Upgrade Protection Fees paid by Customer are non-cancelable and non-refundable.

7.4.1 Transition from ALA. Upon termination or expiration of the ALA, all rights granted under the ALA will immediately terminate and Customer shall return all software media to Novell and remove all software copies made hereunder, except such copies for which licenses were or are purchased by Customer under section 7.5.2 below. All licenses purchased outside of the ALA will remain the property of Customer and will survive termination or expiration of the ALA. Within 30 days after termination or expiration hereof: (a) Customer may submit an order for any licenses available under Section 7.5.2, and (b) Customer shall certify in writing that all copies of Software for which no continuing licenses have been purchased have been removed and that all fees due have been paid.

7.4.2 Survival of Terms. For any licenses Customer uses after expiration of the ALA under the previous Transition from ALA section, the General Terms provision below and the terms of the applicable End User License Agreements govern Customer's use of the Software.

7.5 Ownership Registration

7.5.1 Installed Base Upgrade. Upon execution of the ALA, Customer may list on the Installed Base Upgrade Form the software licenses owned by Customer prior to ALA execution. During the initial term of the ALA, upon payment of an ALA annual license fee Customer shall be licensed to any Upgrades to such Software for one-third of the software licenses listed; this one-third of the Installed Base licenses is covered under the Upgrade Protection terms of the ALA. Customer's rights to use these licenses will continue upon contract termination or expiration.

7.5.2 New Licenses. During the ALA term, upon ALA annual license fee payment, Customer will receive perpetual license rights for new licenses installed under the ALA equal in value to 30% of the ALA annual license fee. Pricing for such licenses shall be determined from the then current Novell Academic Price List.

8. Formal Audits. During the ALA term and for 2 years after its termination, Customer will maintain complete records showing (a) amounts due and paid, (b) copying and use of the Software, and (c) the total number of workstations, computers or other devices connected to a network which uses Novell's Software. During this time period Novell will have the right, at its expense and upon no less than 3 working days prior written notice, to audit Customer's use of the Software and records related to this use and ALA payments. Such audit may be conducted by Novell or its authorized representative, will not interfere unreasonably with Customer's business activities and will be conducted no more often than once per calendar year, unless a previous audit disclosed a material discrepancy. If such audit shows Customer understated actual use of the Software or otherwise underpaid amounts owing, Customer will immediately pay all amounts owing. If an audit shows Customer understated use of the Software or underpaid amounts owing by more than 5%, Customer will pay the reasonable expenses of the audit. Novell will use information received during an audit solely for the purposes of this ALA and will otherwise maintain the confidentiality of such information.

9. Limitation of Liability. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL WILL NOT BE LIABLE TO CUSTOMER FOR INDIRECT, SPECIAL, RELIANCE, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND (INCLUDING LOSS OF PROFITS, BUSINESS, OR DATA) RELATED TO OR ARISING UNDER THIS ALA WHETHER IN A CONTRACT, TORT OR OTHER ACTION FOR OR ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, DELAY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. Some provinces/jurisdictions do not allow exclusion or limitation of incidental or consequential damages, so these exclusions or limitations may not be applicable.

TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL'S LIABILITY TO A CUSTOMER FOR ANY CAUSE OF ACTION ARISING UNDER THIS ALA WILL NOT EXCEED THE AMOUNT OFFEES PAID BY THAT CUSTOMER UNDER THIS ALA

10. General Terms.

10.1 Employees and Agents. Customer will use reasonable efforts to inform its employees, agents, or others using the Software that it may only be used, copied or transferred subject to the ALA license terms.

10.2 Notices. All notices to a party shall be in writing and will be deemed effective upon confirmed receipt by the recipient's person identified as its primary ALA contact. Notices may be delivered by mail, fax, or courier.

10.3 Law. Each party will, at its own expense, comply with any applicable law, statute, administrative order, or regulation. The ALA will be governed by the laws of the Province of Ontario and applicable federal Canadian laws, unless the laws of the province of Customer's domicile require otherwise, in which case the laws so required will govern. The conflicts of law rules of the governing law are excluded.

10.4 Assignment. This ALA is binding upon the parties' and their respective successors and assigns. Unless expressly permitted herein neither party may transfer, assign, or delegate any right or obligation set forth in the ALA without prior written consent of the other party. Neither party will unreasonably withhold consent for an assignment to the other party's subsidiary. Either party may, upon prior written notice, assign the ALA to the surviving company or other organization in the event of a merger or acquisition.

10.5 Severability/ Waiver. If an ALA provision is held invalid or unenforceable, the provision shall be severed to the extent of such invalidity, ir unenforceability, and shall not affect or impair the remaining provisions hereof. No waiver of any ALA right shall be effective unless made in writing signed by an authorized representative of the waiving party.

10.6 Modifications. Except as may be expressly provided for in the ALA, including Novell's right to revise ALA Prices, the ALA may not be modified except in writing signed by authorized representatives of each party. In particular, the terms of a purchase order will not modify the ALA unless the parties agree otherwise in writing.

10.7 Entire Agreement. The ALA is the entire agreement and understanding between the parties as to its subject matter. The ALA supersedes all other prior and contemporaneous agreements and statements on these subjects. Each party warrants that in entering into this ALA, it has not relied upon or been induced by any representation or statement not expressly set forth in the ALA.

Customer Information

Organization Name

Address

Primary Contact Name

Shipping Address

Phone

Fax

E-mail address

Return to:

Novell Academic Sales Contract Administrator
3100 Steeles Ave East, Suite 500
Markham, ON L3R 8T3

Customer Signature

Signature

Print Name

Title

Date

Novell Canada, Ltd.

Signature

Print Name

Title

Date