

PREMIUM SERVICE TERMS AND CONDITIONS



All Technical Services (defined below) ordered by You are governed by the terms and conditions set out below ("Agreement").

These services will be provided to You by the Novell entity identified below ("Novell"):

Technical Services Ordered	Novell Entity
Premium 1000, 2000, 3000, SUSE Linux Enterprise Server/Desktop Support	Novell Nederland B.V.
Premium 4000, 5000 ((Premium 3000 ASE where available) Optional On-site Support / IT Services (Management Services/Monitoring Services)	Novell entity in Your bill-to country, if it exists. In all other cases: Novell entity employing the PSE/DSE or other support engineer.

1. **Technical Services:** The services offered ("Technical Services") are more fully described in the current version of the Novell Premium Service Reviewers Guide ("Program Description"), which is hereby incorporated into and made a part of this Agreement. The writing of documents and reports is not included as part of the Technical Services offered under this Agreement unless otherwise specifically agreed in writing by Novell. Novell reserves the right to revise the Program Description from time to time. A revised Program Description will supersede all earlier versions and will become effective and binding upon notification to You. If any changes to the Program Description result in any materially less or inferior Technical Services You had contracted, then You may notify Novell in writing within 30 days of Novell's notification of the change. In this case the previous Program Description will remain valid for You for the remaining term of the Technical Services You have purchased but any new orders for Technical Services or contract renewals will be subject to the changed Program Description.

The following services are available as part of the Technical Services and when ordered the following terms shall apply:

A. **Premium Service, SUSE Linux Enterprise Server/Desktop Support:** Novell will provide You with Technical Services for the offering that You order as described in the Program Description. The standard hours of business for Novell's EMEA Services Centre are Monday to Friday between 9a.m. and 6p.m. GMT +1 . If You purchase a Premium package with 24x7 support, support outside of these hours will be provided by other support centres around the World. The "Response Time" referred to in the Program Description is defined as the time from placing Your support request to Novell contacting You in reference of that request. This can either be in writing, via email or telephone call. Please note that the Response Time is a targeted reaction time and is neither a problem resolution time nor guaranteed by Novell.

The Technical Services You acquire from Novell, which are made available on a per server or per unit basis as per the Program Description may only be utilised by Yourself for one specific server or unit for the term of the Premium Services. Any such server or unit must be covered either by Novell Upgrade Protection or Novell Maintenance. You may not utilise the Technical Services for any other server or unit. Novell reserves the right to reject at any time the delivery of support if You request support for uncovered servers or units or in case of a missing or expired Upgrade Protection or Maintenance for such servers or units.

B. **Single Service Request Support** A Service Request is a support request that can be submitted to Novell over the internet or via telephone. A single service request describes a single technical problem You may have with Novell Software in conjunction with Your IT environment. In the case of single incident support, Novell's liability to You is limited as set out below.

C. **PSE/DSE:** A Dedicated Support Engineer ("DSE") or a Primary Support Engineer ("PSE") is included within some of the Premium Service offerings and is available as an option on other offerings as described in the Program Description. As

a guideline, over the contract period, the weekly time spent working on customer issues by a PSE is no more than 25% of his/her working time and by a DSE no more than 80% of his/her working time. The PSE or DSE will provide support to You for Your sites based in one country, unless otherwise agreed prior to the commencement of support provision. The support by the PSE/DSE is provided mainly by telephone. The PSE/DSE is also available for a certain amount of On Site Visits as described in the Program Description. Any unused weekly working time cannot be carried forward or refunded. A PSE/DSE is available to You from Monday to Friday during normal business hours applicable in the country ("Core Time") where the PSE/DSE is placed. The maximum daily working time must not exceed the lesser of 10 hours or as permitted by law. The maximum weekly overtime may not exceed 4 hours. Services rendered to You outside the Core Time will be charged at an additional rate save for a true emergency situation which is defined as being a situation in which Your network, or critical parts of Your network, are down or not accessible or where critical network errors occur. If the PSE/DSE is not available because of holidays, illness or for any other reason Novell will supply You with a backup contact. Foreseeable absence times will be communicated in advance to You. Where You require a DSE to be based at Your site, You agree to provide a desk, telephone with international dial (for business purposes only), car parking and remote access (ideally ISDN) to the Novell corporate network. Additionally, Novell reserves the right to remove the DSE for training as needed. Until such facilities are available, Novell will only be able to provide a remotely based DSE service.

D. **Trial Service Request:** A Trial Service Request is a single support request which can be offered to You by Novell without charge in case of a subsequent purchase of a Premium Services package. You or Novell may terminate the Trial Service Request at any time without any special reason or termination deadline. Novell's liability to You for a Trial Service Request is limited as set out below.

E. **On Site Visits :** You may prefer to have Novell's specialised support engineers personally assisting You at Your location in critical situations or with the troubleshooting and maintenance of Novell Software. The minimum On Site activity is one working day. A working day is defined as 8 hours during standard hours of business. Time additional to the standard working day will be charged at a pro-rata hourly rate. If You are utilising the On Site Service there MUST ALWAYS be an incident open referring to the issue. Novell will not send an engineer On Site when there has been no opportunity to resolve issues using normal service.

F. **Scheduled Standby:** The Scheduled Standby Service allows You to request a Novell support engineer with a specific skill set for planned work outside normal business hours who will assist You via telephone. The engineer will be on standby for a pre-arranged amount of time. A minimum upfront notice of 3 working days is required. The engineer will be available in advance for up to four or eight hour discussion of the project for which Scheduled Standby is requested. During the Scheduled Standby period the engineer is available on mobile phone for support. The prices for Scheduled Standby differ for working days, over night and during weekends and

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public holiday as described in the price list for this Service. Scheduled Standby Service for products that are no longer in the General Support phase of the Novell Product Lifecycle may be refused.

G. Solution Support:

(i) Definition: Solutions involve customizable Novell Software products, which require more specific technical support than standard installations of products. Examples of such products include (but are not limited to) Novell Identity Manager and Novell Access Manager. A solution is customized when changes to the core Novell technologies go beyond the traditional boundary of product configuration that is normally achieved during the product installation. Customized solutions are created when standard Novell products are modified by either Novell Consulting, in-house developers or third party developers to create a specific business or technical solution. These modifications take the form of specifically written pieces of code to create bespoke applications or Web services. This kind of support requires an understanding of the individual customizations in place and this is achieved via a PSE/DSE. Solution Support is therefore available as part of either a Premium 4000 or 5000 contract only (and Premium 3000 ASE contracts where available).

(ii) Extent of Support provided through Premium Service. The customer is required to provide complete documentation of the customized solution, which follows the Novell standards (available from your Service Account Manager), in order to receive support. In the case where Novell standards are not followed, Novell reserves the right to provide either limited support or no support. Novell will only provide troubleshooting support for customized solution to A. determine:

- (a) if a Novell component is not working properly, or,
- (b) if there is a customer specific non-Novell application/environment issue or,
- (c) there is an issue with the customized software deliverables themselves

In order to address the technical issue at hand, in scenarios (a) and (b) Novell Technical Services provides troubleshooting assistance, and when appropriate and possible software modifications produced by Novell. In scenario (c), Novell will provide support under the Premium contracts mentioned in (i) above, solely for defects detected within customized software deliverables supplied by Novell.

Except as expressly stated above, Novell will not provide any support on customized Novell software under the Premium Service.

(iii) Period of support: The solution will be supported for as long as the requirements for support are met (within Premium Service contract duration and subject to the applicable fees paid). Should a standard software product go out of the 'General support' phase of the Novell Support Lifecycle and that software product is part of the solution being supported, (with no Extended support package purchased) the solution would then cease to be supported.

H. IT Services (Management Services/ Monitoring Services): IT Services (Managed Services / Monitoring Services) consist of Monitoring, Health Checks, Reporting, Workflow procedures, operating and maintenance tasks. The initial proposal is given in the Service Description. The Service Description is the base for the Statement of Work (SOW), (the Statement of Work is created during the Implementation). The On-site Implementation takes place before the beginning of the service. The SOW outlines the service deliverables, Service Level Agreements and the responsibilities for You and for

Novell. In the case that the number of products or components or coverage time or Service Level Agreements increase during delivery phase Novell may incur additional charges accordingly.

2. Term / Payment. If You order Premium Service, the Technical Services will commence on the date Novell releases the CONTACT ID (or PIN) (see section 5d below) to You and will expire one (1) year after such date ("Term"). If You order a PSE or a DSE as an optional item, the services of the PSE or DSE will commence on the date Novell makes these services first available to You and end one (1) year after such date ("Co-Terminus Date"). At the end of each Term this Agreement will not renew automatically. If you wish to renew Your Premium Service, you must submit a new Premium Service Order Form, completed and signed and accompanied with a purchase order where required by Novell. Either party may terminate the relationship 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.

Refunds for unused Service Requests will not be given. The provision of Technical Services to You is always subject to Your payment of the appropriate fee. You must submit a valid purchase order with the order form and pay the applicable fees as set forth in the price list. All fees will be payable net thirty (30) days from date of invoice. Any amounts not paid by the due date will be subject to an interest charge of 1% per month (or, if less, the amount allowed by law) from the due date to the date payment is made.

3. Limited Warranty.

Warranty for Technical Services. Except in the case of a Trial service request as to which Novell gives no warranty, Novell warrants that the Technical Services will be provided using reasonable care and skill. This warranty will be effective for a period of 60 days (the "Warranty Period") following the provision of the Technical Services to You ("the Warranty Period"). You must notify Novell in writing during the Warranty Period if You believe that Novell has not met its obligations under the above warranty. In such an event, Novell will work with You in good faith to determine the nature of the breach and, if agreed with You, the best way to remedy the breach to Your reasonable satisfaction. If after a reasonable period of time Novell is unable to remedy any such breach or remedy it to Your reasonable satisfaction, Your sole and entire remedy is termination of this Agreement in exchange for a refund of the amount paid by You to Novell for the portion of the Services which Novell is unable to correct. This warranty specifically excludes non-performance issues caused as a result of a non-Novell hardware or firmware malfunction or defect, software not developed by Novell under this Agreement, or by incorrect data or incorrect procedures used or provided by You or a third party, or defects which are outside the reasonable control of Novell. You agree to reimburse Novell for time and materials for any Technical Services provided by Novell at Your request to remedy excluded non-performance problems. This warranty will immediately cease if You or any third party modifies any portion of a Deliverable and/or modifies Your system so that any Novell Software or Deliverable from Novell is no longer functional or appropriate.

DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 3A, NOVELL MAKES NO WARRANTY OR REPRESENTATIONS REGARDING ANY TECHNICAL SERVICES PROVIDED UNDER THIS AGREEMENT. NOVELL DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR

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PURPOSE. NOVELL DOES NOT WARRANT THAT ANY SERVICES WILL SATISFY YOUR REQUIREMENTS OR THAT ANY TECHNICAL SERVICES PROVIDED WILL PROVIDE UNINTERRUPTED USE OF YOUR SOFTWARE OR SYSTEMS.

4. **Confidentiality.** Except as otherwise provided in this Agreement, "Confidential Information" means any information that the disclosing party ("Discloser") desires to protect against unrestricted disclosure by the receiving party ("Recipient") and that (a) if disclosed in tangible or electronic form, is marked in writing as "confidential" or (b) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential". In either case, Recipient agrees to exercise reasonable care to protect Confidential Information from unauthorised disclosure, which care shall in no event be less than the Recipient gives to protect its own trade secrets. The Recipient may disclose Confidential Information only to its employees or agents who need to know such information and shall inform such employees, by way of policy and agreement that they are bound by obligations of confidentiality. Confidential Information will not include any information that (1) is already in the possession of the Recipient without obligation of confidence; or (2) is independently developed by the Recipient; or (3) is or becomes publicly available without breach of this Agreement; or (4) is rightfully received by the Recipient from a third party without obligation of confidence; or (5) is released for disclosure by the Discloser with its written consent; or (6) consists of Residuals. The term "Residuals" means ideas, concepts, know-how, or techniques contained in information that are retained in memory by persons who have access to the Confidential Information. The receiving party shall have no obligation to limit or restrict the assignment of such persons. However, this provision will not be deemed to grant to the Recipient a license under the Discloser's copyrights or patents or to give the Recipient the right to disclose the business plans of the disclosing party or any financial, statistical, or personnel data. These confidentiality obligations shall survive for three (3) years after expiration or termination of this Agreement.
5. **Customer Obligations.**
- A. **Assistance.** You agree to cooperate with and assist Novell in the performance of the Technical Services, and to provide the resources necessary to enable Novell to perform its obligations to You. This may include the availability of a remote network connection to Your IT environment, access to Your data, to necessary information and / or the availability of support material and 3rd party software licenses if not available to Novell.
- B. **BACKUP.** IT IS IMPORTANT FOR YOU TO NOTE THAT YOUR FILES MAY BE ALTERED OR DAMAGED IN THE COURSE OF NOVELL PROVIDING TECHNICAL SERVICES TO YOU. IT IS YOUR RESPONSIBILITY TO ENSURE THAT YOU TAKE ALL APPROPRIATE MEASURES TO ISOLATE AND BACK UP YOUR SYSTEMS TO PREVENT A LOSS OR CORRUPTION OF DATA OR INFORMATION.
- C. **Modifications.** You must not make, alter, or attempt to make any patches, repairs, or alterations, or perform maintenance or cause repairs to be made, on the Novell Software or Deliverables supported under this Agreement, except as may be approved in advance and in writing by Novell. If, in the opinion of Novell, any unauthorised alterations, additions, adjustments to, or repair of the Novell software or Deliverables substantially and adversely affects Novell's ability to render Technical Services, Novell reserves the right to terminate this Agreement immediately upon written notice to You in which case no refund will be given.
- D. **Contact ID (or PIN).** Your authorised contacts must be limited to those professionals who take Technical Services calls within
- Your organisation (e.g., help desk personnel, consultants, system administrators). You are responsible for the security of the support incidents and must distribute the PIN only to those authorised to call Novell. PIN means the limited access codes for receiving Technical Services provided to You by Novell under this Agreement. Novell reserves the right to terminate this Agreement immediately upon written notice to You in the event Novell discovers a violation of this provision.
- E. **Hazardous Environments.** You acknowledge that the Technical Services (including any Deliverables provided to You as part of the Technical Services) are not intended for configuring, supporting or otherwise servicing on-line control equipment in hazardous environments requiring fail-safe performance, such as, but not limited to, nuclear facilities, aircraft navigation, aircraft communications systems, air traffic control, direct life support machines or weapons systems, in which failure of the products could lead directly to death, personal injury, or severe physical or environmental damage.
6. **Subcontract.** Novell may subcontract any portion of the Technical Services, including On Site services, to a third party contractor without Your prior consent, provided that Novell remains fully responsible to You for the performance of all Technical Service obligations under this Agreement. For all purposes of this Agreement, any such subcontractor will be deemed to be an independent contractor of Novell and not an employee, agent, joint venturer, or partner of Novell.
7. **Software and Deliverables:** Subject to Novell's receipt of the appropriate fees Novell makes available to You a non-exclusive, non-transferable, non-assignable, worldwide, perpetual right to use, execute, perform, reproduce, display and distribute copies of any Deliverables provided to You by Novell as part of the Technical Services or other support materials internally within Your organisation. In the event that such Deliverables are made available to You subject to a separate License Agreement, the provisions of such a License Agreement shall prevail over the provisions of this section 7. Deliverables are defined as any Software (Patches, Novell Support Connection CD etc.) or documentation or hardware which is made available to You by Novell under this Agreement.
8. **Covered Products.** Novell will provide Technical Service on all current versions of Novell's Software products. In respect of any Novell software products, which are customised for Your environment or system, the support for such products is limited to the standard installation of this product without any customisations, unless You have purchased a Premium 4000 or 5000 Support Agreement (or Premium 3000 ASE Agreement where available). Novell will support non-current versions of its Software in accordance with its support life cycle policy, which is published at <http://support.novell.com/lifecycle/> along with the then-current list of unsupported products. Novell reserves the right to limit or discontinue support of non-current versions of Software from time to time.
9. **Limitation of Liability.**
- A. For death or personal injury caused by the negligence or wilful default of Novell or Novell's employees there shall be no limitation of liability. Except in that instance and in the two instances mentioned below, Novell's liability for any claim for direct damages, including physical damage to property, arising under or relating to this Agreement or any Technical Services or Deliverables provided under this Agreement shall be limited to 1.25 times the fees paid by You for the Technical Services or Euro 30,000, whichever is the greater. In the case of Trial Incidents, Novell's liability shall be limited to Euro 50 and in respect of Single Incidents shall be limited to Euro 500.

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- B. Under no circumstances shall Novell be liable to You for any indirect, special, incidental or consequential damages, (including, but not limited to, damages for loss of profits, loss of business, loss of data, data corruption or interference with data) arising under or relating to this Agreement or any Technical Services or Deliverables provided to You under this Agreement even Novell has been advised of the possibility of such damages.
10. **Force Majeure.** Neither party will be liable for any failure or delay in performance, if such failure or delay is due to causes beyond its reasonable control. However, if a party's performance of any material obligation is reasonably expected to be delayed more than 3 months due to any such cause, the other party may terminate this Agreement upon 30 days' prior written notice.
11. **Taxes.** Your fees are exclusive of any applicable taxes. You agree to pay and bear the liability for any taxes associated with the delivery of any support tools or other Deliverables under this Agreement, including but not limited to VAT.
12. **Solicitation of Employment:** You hereby agree that You will not, unless agreed to in writing by Novell, solicit the services of employees of Novell or any other entity within the Novell group who has been assigned to providing Technical Services under this Agreement, during the term of this Agreement and for one year after the last Technical Services are provided under this Agreement. If such action occurs and results in such employee accepting employment with You, You hereby agree to pay to Novell, as liquidated damages that individual's Novell annual salary to offset such recruiting and training costs.
13. **Export Compliance.** Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or classification to export, re export or import deliverables. The parties agree not to export or re export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist countries as specified in the U.S. export laws. The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses. Please consult the Bureau of Industry and Security web page www.bis.doc.gov before exporting Novell products. Please refer to www.novell.com/info/exports/ for more information on exporting Novell software. Upon request, Novell will provide you specific information regarding applicable restrictions. However, Novell assumes no responsibility for your failure to obtain any necessary export approvals
14. **Miscellaneous.**
- A. **Governing Law.** This Agreement will be governed by the substantive law, excluding the private international law rules, of the country of Your principal residence, where that country is 1) a member state of the European Union or 2) a member state of the European Free Trade Area or 3) the Republic of South Africa. In such event, venue for any dispute relating to this Agreement will be in the country Your principle residence. In any other case within Europe, the Middle East, or Africa, the applicable law shall be the law of the Federal Republic of Germany, with venue in Düsseldorf.
- B. **Entire Agreement.** This Agreement and the Program Description constitute the entire Agreement between You and Novell and supersede any prior agreement or communications between the parties with respect thereto, whether written or oral.
- C. **Severability.** If any provision or portion of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect. The parties will replace any such invalid provision with a new provision that best meets the original economic intention of the parties.
- D. **Binding Effect/Assignment.** This Agreement is binding upon the parties' respective representatives, successors, and assignees, however You may not assign this Agreement without the prior written consent of Novell.
- E. **Modifications/Amendments.** Except for Novell's right to revise the Program Description from time to time as provided in Section 1 above, this Agreement may be modified only by a written instrument signed by authorised representatives of both You and Novell. In particular, the terms of any purchase order which You may submit are deemed invalid.