



Services Agreement - Terms and Conditions
Windows® 2000 Datacenter® Software Support
For Dell PowerEdge™ Servers

BY ACCEPTING THE SERVICES AND SUPPORT DESCRIBED ON YOUR INVOICE, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. THESE TERMS AND CONDITIONS (THE "AGREEMENT") WILL SUPPLEMENT THE TERMS AND CONDITIONS OF ANY APPLICABLE OVERRIDING SIGNED PURCHASE AGREEMENT BETWEEN YOU AND DELL (INCLUDING WITHOUT LIMITATION, DELL'S STANDARD CUSTOMER PURCHASE AGREEMENT) OR, IN THE ABSENCE OF SUCH AN AGREEMENT, DELL'S STANDARD INVOICE TERMS AND CONDITIONS OF SALE (See WWW.DELL.CA). IF THERE IS ANY INCONSISTENCY BETWEEN THIS AGREEMENT AND THE APPLICABLE PURCHASE AGREEMENT OR DELL'S STANDARD INVOICE TERMS AND CONDITIONS OF SALE, THEN THE TERMS OF THE APPLICABLE PURCHASE AGREEMENT OR THE STANDARD INVOICE TERMS AND CONDITIONS OF SALE SHALL PREVAIL. THIS AGREEMENT IS BETWEEN YOU AND DELL CANADA INC., FORMERLY DELL COMPUTER CORPORATION, A CANADIAN CORPORATION ("DELL", "OUR" OR "WE"). ALL CAPITALIZED TERMS AND CONDITIONS NOT DEFINED HEREIN SHALL HAVE THE MEANING SPECIFIED IN THE AFOREMENTIONED SIGNED PURCHASE AGREEMENT OR DELL'S STANDARD INVOICE TERMS AND CONDITIONS.

If you purchased Windows 2000 Datacenter Software Support resolutions, Dell will provide software support services to you pursuant to the following terms and conditions:

1. **Products Covered ("Covered Software"):** Windows 2000 Datacenter Software Support ("Support") is available for Dell-branded systems only. Support covers the following operating system and applications on Dell PowerEdge servers:
 - Microsoft Windows 2000 Datacenter Server
 - Microsoft SQL Server® 7.0 with Service Pack 2 or later
 - Microsoft Exchange® Server 5.5 with Service Pack 3 or later
 - Microsoft Internet Information Server 5.0
 - Dell PowerSuites™ for Tape Backup (Veritas® BackupExec 8.0 Build 3316)
 - Dell Open Management Agents Version 1.0
 - Dell IT Assistant Version 5.2
2. **Scope of Services:**
 - a. Dell will help you to resolve your problems by providing electronic and telephone assistance to your designated representatives. For each PowerEdge Server with Windows 2000 Datacenter factory installed, you may purchase Support only as an annual contract with unlimited resolutions. A resolution is the initial contact call and any subsequent calls necessary to resolve the issue for you.

Windows 2000 Datacenter Software Support Covers

We will use commercially reasonable efforts to provide the following Support services to you:

- **The Datacenter Case Manager** will be assigned to understand customer issues and cases and will manage and track open issues. The Datacenter Case Manager will be an advisor to the Dell Datacenter support personnel and will be the point of escalation for the joint Dell/Microsoft Service Support Queue.
 - **For hardware and software change assessment** you can contact the Datacenter Case Manager to determine if a potential hardware or software change will require additional Dell services.
 - **One incident of on-site technical assistance** for a maximum of two days. The on-site technical assistance provides a technical analyst that will travel to the customer site and provide hardware or software troubleshooting incidents in the Windows 2000 Datacenter environment. For additional incidents of on-site technical assistance, the customer should contact their sales representative to purchase the **On-Site Technical Assistance** service.
 - **Proposed corrections** for Covered Software error messages.
 - **Problem determination** may include any of the following actions:
 - Information gathering
 - Analysis
 - Research including reproducing systems
 - Acquiring additional information
 - **Problem Resolution** may include any of the following actions:
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- Providing a resolution or steps towards a resolution
 - Workaround
 - Configuration changes
 - Escalate a bug report
 - **Escalation to the joint Dell and Microsoft Service Support Queue.**
 - **Defined hardware and software configuration called “qualified configuration,”** that has passed the Microsoft Windows 2000 LOGO 14-day certification tests.
 - **Customer defined Priority, which** allows the customer to assign the priority of all calls, for example, “down server,” “impaired server,” or “inconvenience” (Sev 1, Sev 2, Sev 3)¹. Each of these severity levels has a response time and process determined by Dell.
- Note:** Abuse of this privilege could result in the non-renewal of the Support contract.
- Upgrades for Windows 2000 Datacenter and other Covered Software.
 - **Additional administrative services**, such as assistance with installation of the Covered Software, or assistance with other covered utility software or application.
 - **We will respond** within one hour to mission-critical requests (mission-critical is defined as system down) and two hours for non-critical issues.

b. Limits on Windows 2000 Datacenter Software Support

Support includes support for the Covered Software only. The service is limited to a one-year contract.

What Windows 2000 Datacenter Software Support Does Not Cover

Support does not include the following types of support:

- Non-Dell hardware, or applications software support except for specified “covered software.”
- Remote or on-site training assistance.
- Remote administration of Dell systems.
- Scripting, programming, database design, or web development.

Dell makes no warranty or conditions, either express or implied, including, but not limited to, any implied warranties or conditions of merchantability and fitness for a particular purpose. Dell expressly disclaims all warranties and conditions.

DELL (INCLUDING DELL’S PARENTS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS) DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE, LOST OR CORRUPTED DATA OR SOFTWARE, PRODUCTS SOLD THROUGH DELL’S SOFTWARE AND PERIPHERALS DIVISION, OR THE PROVISION OF SERVICES OR SUPPORT. DELL WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT OR WEAPONS SYSTEMS. DELL WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN.

CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, DELL IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PURCHASE OF PRODUCTS AND/OR SERVICES UNDER THIS AGREEMENT.

THE FOREGOING LIMITATIONS APPLY REGARDLESS OF THE CAUSE OR CIRCUMSTANCES GIVING RISE TO SUCH LOSS, DAMAGE OR LIABILITY, EVEN IF SUCH LOSS, DAMAGE OR LIABILITY IS BASED ON NEGLIGENCE OR OTHER TORTS OR BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM).

NEITHER DELL NOR CUSTOMER MAY INSTITUTE ANY ACTION IN ANY FORM ARISING OUT OF THIS AGREEMENT MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN, OR IN THE CASE OF NONPAYMENT, MORE THAN EIGHTEEN (18) MONTHS FROM THE DATE OF LAST PAYMENT.

¹ **Severity 1:** System, network, server, or critical application down—situation severely impacting customer production and/or profitability.

Severity 2: High-impact problem in which production is proceeding, but in a significantly impaired fashion.

Severity 3: Important issue, which does not have significant current productivity impact for the customer.

SOME PROVINCES DO NOT ALLOW THE EXCLUSION OF LIMITATION OF (i) INCIDENTAL OR CONSEQUENTIAL DAMAGES OR (ii) IMPLIED WARRANTIES OR CONDITIONS, SO THE ABOVE EXCLUSIONS MAY NOT APPLY.

3. Your Responsibilities:

a. General: To receive Support, you are responsible for complying with the following:

1. Access to Support: You must confirm that the following conditions are true:

- The situation giving rise to the question is reproducible on a single system, i.e., one central processing unit with its workstations and other peripherals;
- The Covered Software is at the current release level and is part of the “qualified configuration” supported by Dell;
- Your designated representatives will submit all questions to Dell. Your designated representatives must have technical knowledge regarding the Covered Software, the hardware system, any other software involved, and in the facts and circumstances surrounding the incident;
- The full system, including software and hardware, is available to the representative and accessible by him or her without limit during any telephone discussions with Dell support personnel;
- The representative will follow the instructions and suggestions of Dell’s support personnel, using the full system.

2. Software/Data Backup: You understand and agree that Dell is not responsible for any lost or corrupted software or data. **Dell strongly recommends that you maintain a complete data backup and disaster recovery plan.**

3. Payment: Dell must have received payment for payment for this Support Agreement service within 30 days of the date of invoice. You shall pay an additional interest fee of 1.5% per month (19.56% per year) for invoices not paid within such 30 day period. Single resolutions are not available for Support.

b. How and When to Use:

Assistance: Support is available by calling 1-800-727-8649.

Availability: Support is available 24 hours a day, seven (7) days a week, 365 days a year.

4. General Terms:

a. Term and Renewal: You may purchase an annual contract with unlimited resolutions. When your contract period ends, you may renew this Agreement subject to approval and acceptance by Dell. Dell may change its rates, terms, and conditions for providing support at any time.

b. Cancellation: Dell, at its discretion, may terminate this Agreement on thirty (30) days notice to you, in which case you will be entitled to receive a pro-rated refund of any unearned support fees that you have paid. You may terminate this Agreement during, but not after, the time period set forth in Dell’s then-current Total Satisfaction Return Policy, in which case you will be entitled to receive a pro-rated refund of any unearned support fees that you have paid. Under this paragraph, any refund will be determined by Dell based on the passage of time and/or the number of support incidents, at Dell’s discretion.

c. Claims of Confidentiality or Proprietary Rights: You agree that any information or data disclosed or sent to Dell, over the telephone, electronically or otherwise, is not confidential or proprietary to you.

d. Assignment: Dell reserves the right to assign its right and obligations under this Agreement to a qualified third party designated by Dell without notice to you. In the event of such an assignment, Dell will no longer be responsible for any performance obligations under this Agreement or any other liability associated with this Agreement.

e. Entire Agreement: This Agreement is the entire agreement between you and Dell with respect to its subject matter and none of Dell’s employees or agents may orally vary the terms and conditions of this Agreement.

f. Language: The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including all notices, have been and will be drawn up in the English language only. Les parties aux presentes conferment leur volonte que cette convention, de meme que tous les documents, y compris tout avis, qui s’y rattachent, soient rediges en langue anglaise.



g. Miscellaneous: If any provision of this Agreement is void or unenforceable, the parties agree to delete it and agree that the remainder of the Agreement will continue to be in effect. Dell is not liable for failure or delay in performance due to any cause beyond its control. If Dell's ability to render Support is impaired by circumstances beyond Dell's control, Dell may terminate this Agreement, in which event, provided that the circumstances resulting in Dell's impaired ability to provide Support did not result from your actions or inaction, you will receive a refund for any unused portion of your service term for which you have paid. Neither Dell nor you may institute any action in any form arising out of this Agreement more than eighteen (18) months after the cause of action has arisen, or in the case of nonpayment, more than eighteen (18) months from the date of last payment.

5. Transfer of this Agreement. Subject to the limitations set forth in this Agreement, you may transfer this Agreement to anyone who buys your entire System before the termination date of this Agreement, provided you are the original end-user purchaser of the System and this Agreement, or you have purchased the System and this Agreement from its original end-user owner (or a previous transferee) and have complied with all the transfer rules in this Agreement.

Please note that if you move your System to a geographic location in which the Support service coverage is not available at the same price as you paid for this Agreement, you may incur an additional charge to maintain the same categories of Support service coverage at the new location. If you choose not to pay such additional charge, your Support Service may be automatically changed to categories of Support service that are available at such price or a lesser price in such new location with no refund available. Additionally, if (i) you transfer your Agreement to a buyer who will move the System to a geographic location in which the Support service coverage is not available at the same price as you paid for this Agreement, or (ii) if the transferee (i.e., the buyer) of this Agreement wishes to change the Support service coverage, then you may incur an additional charge for such transfer fee discussed above.

TO TRANSFER THIS SERVICE AGREEMENT:

- **Using the Internet:**
Complete the On-line Transfer Form located within Dell's Service and Support section at:
http://www.dell.ca/downloads/ca/transfer_ownership_en.pdf
- **Questions in regards to an ownership transfer:**
Call the Customer Relations Department at 1 800 847-4096