

Service Description

Fast-Track Dispatch

FAST-TRACK DISPATCH (FTD or the “Program”) TERMS AND CONDITIONS

Dell is pleased to offer these Services to you (“You”, “Customer” or “End User”) in connection with Your purchase of a qualifying Dell system(s) and pursuant to the terms and conditions of the ProSupport Fast Track Dispatch Service Description and the provisions below. This agreement is between You and the Dell entity identified on Your invoice or separately-signed agreement with Dell. In consideration of the promises set forth below, the parties agree on the following:

I. END USER RESPONSIBILITIES

Except to the extent that the End User is designating itself as a Self-Maintainer, End Users are not subject to the Terms and Conditions of the Fast-Track Dispatch Program Agreement (“Agreement”). Notwithstanding the provisions of this paragraph, participating End Users must be Dell Corporate or Dell Public customers and not a Dell Home Sales Customer or Consumer Retail Customer. The Program is not available to individual consumer accounts associated with third-party extended service contracts.

II. THIRD PARTY MAINTAINER (TPM) RESPONSIBILITIES

A Third Party Maintainer may participate in the Program for the purpose of supporting Dell customers upon request by the End User and after approval by Dell. End User may apply to appoint a third-party maintainer (TPM) to provide service to End User pursuant to this Agreement. End User and its identified TPM are required to submit a joint application obtained by request through FastTrackAdmin@dell.com for consideration of enrollment into the Fast-Track Dispatch program. An approved TPM may only provide services pursuant to this agreement to the End User identified in the joint application. If the application is approved by Dell, TPM's are subject to all Self Maintainer requirements listed in Section IV below. In the event of a conflict between the terms of this Agreement and the Fast-Track Dispatch Account Setup Form available at the link identified in this paragraph, the terms of these documents will be followed according to the following order of preference: (1) this Agreement, and (2) the Fast-Track Dispatch Account Setup Form.

III. RESELLER RESPONSIBILITIES

Resellers who participate in the Fast-Track Dispatch program are required to provide information to Dell through the Fast-Track on-boarding process to;

- designate specific End Users that have purchased ProSupport entitled Dell System(s) from Reseller and for which Reseller plans to provide service; and,
- identify Dell Service Tags associated with End Users' systems qualifying for Fast-Track Dispatch service.

Resellers who participate in Fast-Track Dispatch are subject to all Self-Maintainer requirements listed in Section IV below.

IV. SELF MAINTAINER RESPONSIBILITIES

Self Maintainer agrees to adhere to the following responsibilities and restrictions with respect to maintaining ProSupport entitled Dell-branded Systems or Products (“Products”) under the Program.

- 1. Introduction.** Self Maintainer agrees to (a) Certifying no greater than 1 technician per 100 Dell products supported by IT staff; (unless additional certification training is purchased separately from Dell) (b) provide any information to Dell required under the Program in a timely manner; (c) pay all required Program fees; (d) maintain “current enrollment status” by renewing certification and applicable Program fees as required by Dell.
- 2. Certification of Self Maintainer Technicians.** Self Maintainer technicians must be Dell Fast-Track Dispatch Certified for the Products they intend to service (“FTD Certified Technician”). If a technician fails a FTD test, the technician must retake the test. FTD Technical Certification may not be transferred to another individual. Self Maintainer will ensure that its FTD Certified Technicians keep current with updates and new maintenance information as Dell makes this information available. Self Maintainer technicians may not share or allow anyone else to use their FTD tech ID and/or PIN. Dell reserves the right to revoke a requesting and/or diagnosing technician's FTD certification for failure to comply with the terms of the FTD terms and conditions.
- 3. Renewal.** Each individual FTD Certified Technician is required to renew his/her Certification as required by Dell.

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4. **On-site First Level Diagnosis.** Self Maintainer will ensure that Products are only maintained by FTD Certified Technicians certified for the product line being serviced. In the event of a failure of a Product covered under an appropriate service contract, a FTD Certified Technician will perform first level diagnosis, including troubleshooting, on-site of the problem and pre-determine the parts required to repair the Product. The FTD Certified Technician is expected to troubleshoot to the failed component. The results of this diagnosis, with information on troubleshooting performed, and predetermined part requested, will be communicated by the FTD Certified Technician to the appropriate Dell Technical Support Technician.
5. **Dell Troubleshooting.** If initial diagnosis and part(s) replacement by the FTD Certified Technician does not restore the failed product to working condition, Dell reserves the right to require troubleshooting steps to be performed with a Dell Technical Support Technician before a second part(s) dispatch will be approved.
6. **Accurate First-Time Diagnosis.** Self Maintainer's FTD Certified Technicians are expected to maintain service levels including accurate first-time diagnosis (as measured by repeat dispatch rate, parts per dispatch rates and no fault found rates for parts replacement). Dell reserves the right to notify the Self Maintainer, require re-Certification, and/or terminate the Self Maintainer's Fast-Track Dispatch enrollment if the Self Maintainer's service and correct diagnosis levels are not maintained.
7. **Authorized Requests for Warranty Parts Replacement.** Only certified Self Maintainer personnel may request warranty parts replacements through Dell's FTD Program. FTD Certification denotes authorization to request replacement parts. The service tag submitted when requesting parts must be the service tag of the ProSupport entitled Dell System with the failed part.
8. **Service Identification Restrictions.** While Self Maintainer may promote their services, Self Maintainer shall not identify itself as a Dell Service Provider or as any other type of authorized Dell service center or authorized service representative of Dell. Self Maintainer acknowledges and agrees that this Agreement does not convey any rights or license to Self Maintainer to use any service mark, service name, trademark, trade name, logo, insignia, slogan, emblem, symbol, design or other identifying characteristic of Dell or Dell Inc. in connection with the services provided hereunder, for itself, or to end user customers. However, FTD Certified technicians may identify their Dell Certified Technician status as qualification for employment.
9. **Export Regulations.** Self Maintainer acknowledges and agrees that the products licensed or sold hereunder, which may include services, software or technology, are subject to the export control laws and regulations of the United States and other applicable countries. Self Maintainer shall abide by such laws and regulations and shall not, directly or indirectly, export, re-export or transship Products in violation of any such laws and regulations, including without limitation, the U.S. Export Administration Regulations, the Enhanced Proliferation Control Initiative (EPCI) Regulations, the Foreign Asset Control Regulations and any economic sanctions imposed by the United States Government upon any foreign country. Self Maintainer further represents and warrants that the Products will not be destined to (a) any restricted country or end-user, and (b) to any end-user engaged in restricted activities related to the proliferation of weapons of mass destruction.
10. **Indemnity.** Except as prohibited by federal, state, provincial and local law, Self Maintainer agrees to indemnify and hold Dell harmless from any and all damages, costs and expenses (including legal fees and costs of court or settlement) arising out of or in connection with any claim by the End User or other third party arising out of the Self Maintainer's acts, omissions, misrepresentations, or breach of this Agreement, regardless of the form of action.
11. **Onsite Service.** Dell will not dispatch a Dell Technician to replace Dell designated Customer Replaceable Units (CRU). Dell will not dispatch a Dell Technician for labor only service. Self Maintainers are entitled to replace Field Replaceable Units (FRU) and Customer Replaceable Units (CRU) based on the FTD Certification training but may request a Dell technician dispatch for FRU incidents.
12. **Fix on Fail.** Self Maintainers may only request replacement parts for parts that have failed.
13. **Dell Recalls.** In the event of a Dell recall, part requests for a recall must be submitted via the current Dell recall process. FTD will not process these requests.

V. DELL RESPONSIBILITIES

Dell will support Self Maintainer's maintenance of Dell products by offering the following services.

1. **Training.** Dell will make online training available to Self Maintainer. Dell will make certification materials available in electronic formats.

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2. Technical Documentation. Dell will provide Online Technical Service Manuals. The Self Maintainer agrees to update all Technical Service Manuals as Dell provides updated information.

3. Restrictions. Dell, or the original creator, retains all rights in the materials provided, including but not limited to copyright. None of the materials may be copied, reproduced or distributed by any means without the prior written permission of Dell or the copyright owner.

VI. SERVICE PARTS (Warranty Replacement Parts)

Warranty Replacement Parts ("Service Parts") are replacement parts provided pursuant to End User's on-site service contract for the ProSupport entitled Dell System.

1. Dell will provide replacement parts on an exchange basis and will target response times corresponding to the service contract for the ProSupport entitled Dell System with the failed part. However, all online incident submission will be limited to next business day delivery regardless of the corresponding service contract for the ProSupport entitled Dell System. To be eligible for response times of less than next business day, Self Maintainer must have a corresponding service contract and contact Dell Fast-Track Dispatch by telephone. Self Maintainer must report each in-service contract repair to Dell technical support in advance and obtain Dell's authorization to return parts.

2. Service Parts are new or reconditioned, and are warranted for the remainder of the warranty term or service contract period of the Dell system in which the replacement part is installed. The type of labor coverage (partsdelivery, on-site, or return-to-Dell) is determined by the type of labor coverage for the system in which it is installed. Self Maintainer agrees to maintain records of servicing in sufficient detail to permit Dell to confirm that parts exchanged come from Products that are under an appropriate service contract.

VII. PAYMENT - Service Parts

The part(s) replaced by the Service Part(s) must be returned within ten (10) days of the replacement Service Part(s) shipment. If a part is not returned within 10 days of shipment of the Service Part(s), Self Maintainer may be invoiced by Dell and agrees to pay for all Service Part(s) to include applicable taxes and shipping charges. If any payment due from Self Maintainer is late and not because it is disputed in good faith, Dell may refuse to ship parts or respond to technical and support inquiries until payment is made.

VIII. TERM; TERMINATION

1. Term. This Agreement shall remain in effect for the service contract period corresponding to the ProSupport entitled product(s) or as required by Dell from the date of successful certification in the Program and may be renewed for successive periods thereafter as long as the Self Maintainer maintains payment of all required Program fees and maintains current FTD Certification for Technicians performing service on Dell Products unless terminated pursuant to the terms below.

2. Termination. Either party may terminate this Agreement for any or no reason at any time upon thirty (30) days written notice to the other. This Agreement will terminate immediately upon End User's termination of Self Maintainer's services. Per the Self Maintainer section: "Dell reserves the right to notify the Self Maintainer, require re-Certification, and/or terminate the Self Maintainer's Fast-Track Dispatch enrollment if the Self Maintainer's service and correct diagnosis levels are not maintained."

3. Survival. All provisions which by their nature are intended to survive the termination of this Agreement shall survive.

IX. DEFAULT

In the event of the failure of either party to fulfill any obligation under this Agreement, the party requesting performance shall provide the non-performing party written notice describing in detail the performance demanded and thirty (30) days to perform. If the non-performing party fails to perform such obligation within that time, the party requesting performance may, in addition to any other remedies available at law, not otherwise limited herein, terminate this Agreement.

X. LIMITED WARRANTY; LIMITATION OF REMEDIES AND LIABILITY

1. DELL MAKES NO WARRANTIES OR CONDITIONS WITH RESPECT TO THE SERVICES HEREIN, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS

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OF MERCHANTABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DELL EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS EXCEPT FOR THE WARRANTIES EXPRESSLY STATED FOR SPARE PARTS.

2. DELL'S ENTIRE LIABILITY IN CONTRACT, TORT OR OTHERWISE, UNDER THIS SERVICE AGREEMENT IS THE PERFORMANCE OF THE SERVICES DESCRIBED HEREIN. IF DELL IS UNABLE TO PERFORM SUCH SERVICES, OR PERFORMANCE IS NOT AN APPLICABLE REMEDY, SELF MAINTAINER'S ENTIRE REMEDY AND DELL'S ENTIRE LIABILITY WILL BE THE PAYMENT OF ACTUAL DIRECT DAMAGES NOT TO EXCEED THE MONIES PAID BY SELF MAINTAINER TO DELL UNDER THIS AGREEMENT FOR THE PRIOR YEAR.
3. IT IS SELF MAINTAINER'S RESPONSIBILITY TO BACKUP THE DATA ON THE SYSTEM AND TO PROVIDE ADEQUATE SECURITY FOR THE SYSTEM. SELF MAINTAINER UNDERSTANDS AND AGREES THAT DELL IS NOT RESPONSIBLE FOR LOSS, DESTRUCTION OR DAMAGE TO SOFTWARE, DATA OR LOSS OF USE OF ANY OF YOUR COMPUTER OR NETWORK SYSTEMS EVEN IF IT OCCURS AS A CONSEQUENCE OF ADVICE OR SUGGESTIONS PROVIDED BY DELL PERSONNEL.
4. EXCEPT FOR THE OBLIGATIONS OF THE SELF MAINTAINER ARISING OUT OF SECTION II.11, NEITHER PARTY HAS ANY LIABILITY TO THE OTHER FOR LOST PROFITS, LOSS OF BUSINESS OR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY ANY THIRD PARTY.

XI. MISCELLANEOUS

1. Neither party may assign this Agreement without the express written consent of the other party, except that no consent shall be required for any assignments by Dell to its affiliates.
2. Dell and Self Maintainer are independent contractors. Neither party will state, imply, nor knowingly permit anyone to infer that any other relationship exists between the parties.
3. Dell reserves the right to modify the terms and/or eligibility requirements applicable to the FTD Program at any time, or from time to time, or to terminate the FTD Program at any time at its discretion.
4. Where the Program is provided for the benefit of your operations located in the United States, the laws of Texas will apply. Where the Program is provided for the benefit of your operations located in Canada: (i) the laws of the province of Ontario and the federal laws of Canada applicable therein will apply; and (ii) the parties agree to the exclusive jurisdiction of the courts located in the province of Ontario. Where the Program is provided for the benefit of your operations located in Latin America, this agreement shall be governed by the same law and jurisdiction agreed by the parties for the purchase of the equipment which has been repaired.
5. If any provision of this Agreement is void or unenforceable, the parties agree to delete it and agree that the remainder of this Agreement will continue to be in effect.
6. This Agreement is the exclusive statement of the contract and entire agreement in effect between Dell and Self Maintainer with respect to the subject matter herein. No promise or amendment relating to the Agreement shall be binding unless it is in writing and signed by Dell.
7. IP Rights. Intellectual property rights in or relating to the Products, the returned or Service Parts, the Program and all associated documentation and training materials are the property of Dell or its affiliates.