



**NetScout Systems, Inc.**  
**Maintenance and Support Services Terms for Products**

These Maintenance and Support Services Terms ("Maintenance Description") state the terms under which NetScout Systems, Inc. ("NetScout") or a NetScout-authorized third party will deliver technical support services for certain software products, including firmware ("Software") that have been licensed and/or certain hardware products ("Hardware") that have been purchased from NetScout or a NetScout authorized reseller or distributor and for which NetScout's makes technical support services available (Hardware and Software collectively referred to as "Product(s)") ("Maintenance") for Products on its enterprise and service provider price lists, upon customer's purchase of the same. If there is a conflict between the terms under which the Software was originally licensed or Hardware was originally purchased ("Agreement") and this Maintenance Description, the terms in this Maintenance Description will govern. NetScout reserves the right to change or discontinue Maintenance offerings without notice, subject to the terms in this Maintenance Description and provided Maintenance does not change for the remainder of the then-current Maintenance term. Terms not defined in this Maintenance Description are as defined in the Agreement. Questions regarding this Maintenance Description may be sent to [legalservices@netscout.com](mailto:legalservices@netscout.com).

**1. Maintenance Descriptions.** NetScout offers the following Maintenance support services. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Normal Business Hours" are Monday through Friday, 8:00 a.m. – 8:00 p.m. EST for North America and 8:00 a.m. – 5:00 p.m. local time for all other regions.

A. **MasterCare Support.** Subject to the terms herein, MasterCare Support services include: 24x7 access to technical support; one hour priority response on severity 1 technical support calls; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to NetScout customers generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as "Updates") for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; advanced replacement or onsite repair of Hardware during the coverage period; 24x7 access to self-help on the My NetScout's Maintenance portal located at <https://My.NetScout.com> ("My NetScout Portal") for technical answers; and knowledge transfer through NetScout's online learning center. Live technical telephone support is provided 24x7 for severity 1 issues received by telephone and non-severity 1 issues received by telephone during Normal Business Hours. All non-severity 1 issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. NetScout's service level guidelines are located at <https://www.netscout.com/support-services>. The level, availability and coverage period of Hardware support varies by Product family. For details, please email [customercare@netscout.com](mailto:customercare@netscout.com). Service timing is dependent upon the time of day that NetScout initiates a call to the third party providing the onsite repair, which is dependent upon the time of day that NetScout receives customer's call.

Customers purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings for an additional fee. Supplemental Maintenance Offerings not requiring separate signed terms will be delivered pursuant to this Maintenance Description.

i. **OnSite Engineer Services.** Onsite Engineer Services ("OSE Services") are provided by a NetScout technical support engineer located at customer's designated site that is within reasonable proximity to the Products ("Office Area") and may include any one or more of the following, as agreed to by the parties: local assistance with day-to-day administration of customer's network performance management environment, including: installation of operating system and Software upgrades for NetScout appliances only; Hardware maintenance, Software patches, and service pack installation, and oversight of monitored element changes; backup maintenance such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports and workspaces, discovering and configuring complex, custom or unknown applications, and integrating third-party tools; implementation assistance for installing and configuring new Products; beta testing new Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed forty (40) hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Customer holidays and paid time off, provided the number of Customer holidays is at least equal to the number of holidays NetScout

provides to its employees in the applicable territory. Additionally, for a maximum period of two weeks during the initial term and any renewal term, the onsite technical support engineer will not be at customer's designated site performing the OSE Services due to training at NetScout's corporate headquarters. If customer requests that the engineer travel to a site other than the Office Area to perform OSE Services, customer is responsible for all reasonable travel and other expenses associated with such travel.

ii. **Remote Site Engineer Services.** Remote Site Engineer Services ("RSE Services") is an annual service available to customers, provided by a NetScout shared remote technical support engineer located at a NetScout facility, and may include any one or more of the following, as agreed to by the parties: daily health and stability check on both devices and data; remote assistance with day-to-day administration of customer's NetScout performance management environment, including operating system and Software upgrades for NetScout appliances only, Hardware maintenance, Software patches and service pack installation, and oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and off-site storage of the data required during disaster recovery efforts; customization assistance for designing new reports, defining targeted workspaces, discovering and configuring complex, custom and unknown applications, and integrating third-party tools; implementation assistance installing and configuring new Products; facilitation of beta testing of new Products and features when requested; and an annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed for the number of hours per week as set forth in the Quotation, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts; Pune, India; or Shanghai, China, as applicable, and excluding NetScout holidays and paid time off. Additionally, for a maximum period of two weeks during the initial term and any renewal term, the remote technical support engineer will not be performing the RSE Services due to training at NetScout's corporate headquarters.

B. **Gold Support.** Subject to the terms herein and for existing NetScout customers who wish to renew previously purchased legacy Gold Support services, Gold Support services include: live telephone technical support during Normal Business Hours; Updates for covered Products; 72-hour return repair or onsite repair of Hardware, depending on the Product family; 24x7 access to self-help on the My NetScout Portal for technical answers; and knowledge transfer through NetScout's online learning center. 72-hour return repair on Hardware means the time from which the Hardware is received at NetScout to the time the repairs are completed. It does not include the shipping time back to the customer. 72-hour return repair on Hardware is on a per Hardware unit basis. If multiple Hardware units are returned for repair, additional time may be required.

2. **Term and Renewal.** Unless otherwise agreed to by the parties in writing, the initial term for (a) MasterCare Support will be the number of months specified in NetScout's Quotation, (b) OSE Services will be twelve (12) months commencing on the date the engineer arrives at customer's designated site, and (c) RSE Services will be twelve (12) months commencing on the date that the account becomes active, or as agreed to by the parties. MasterCare or Gold Support may be renewed for up to two years after discontinuation of sale of the applicable Product. Maintenance support services and Supplemental Maintenance Offerings may not be cancelled during the applicable term, and renewal notice will be provided at least sixty (60) days prior to the expiration of the then-current term.

3. **Invoicing, Fees and Pricing.** Fees for all Maintenance support services are due and payable net thirty (30) days from the invoice date. Payments are non-refundable. Expired MasterCare and Gold Support coverages may be subject to a reinstatement fee. Fees for Maintenance support services and Supplemental Maintenance Offerings are set forth in the applicable NetScout Quotation. Unless otherwise agreed to by the parties, Maintenance support services and Supplemental Maintenance Offerings may be renewed for additional terms upon payment of the applicable fees. Upon payment of the applicable fee, Customers purchasing RSE Services may convert to OSE Services.

4. **Continuing Availability.** If NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available in accordance with NetScout's then-current Product Life Cycle Policy, available on the My NetScout Portal.

5. **Substitutions: Software Updates.** NetScout reserves the right to substitute functionally compatible hardware not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product.

6. **Warranty.** NetScout warrants that Maintenance support services will be performed in a good and workmanlike manner. Customer's sole and exclusive remedy for breach of this warranty will be for NetScout to re-perform the

Maintenance support services at no expense to customer provided customer notifies NetScout in writing of such breach within thirty (30) days of its occurrence. EXCEPT FOR THE FOREGOING WARRANTY, NETSCOUT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. NETSCOUT EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

**7. Limitations and Exclusions.** Unless otherwise agreed to in writing by NetScout, Product is eligible for Maintenance support services provided such Product remains in the location to which such Product was originally shipped, and with respect to Hardware, provided such Hardware is within the applicable Hardware coverage period. If customer moves the Product from one location to another (“Product Relocation”), customer (a) does so at customer’s own risk, loss and expense, (b) is responsible for obtaining all necessary licenses to export, re-export or import the Product, and (c) will indemnify, defend and hold NetScout harmless from and against any and all claims, demands, suits, actions, damages, liabilities, fines, penalties, losses, and expenses including without limitation attorneys’ fees and disbursements and court costs (collectively, “Claims”) arising from Product Relocation. Failure to notify NetScout of Product Relocation may result in an inability for NetScout to perform its warranty obligations or Maintenance in accordance with this Maintenance Description, and NetScout will not be liable for any Claims resulting from Product Relocation.

NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare or Gold Support on Software beyond two (2) releases back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. Onsite repair may be provided by a third party and subject to parts availability. Same day service is not available in all areas. If customer has a party other than NetScout make repairs to the Products, such acts will void any warranty related to the Products. NetScout is not obligated to provide Maintenance support services with respect to claims resulting from the fault or negligence of customer or a third party; improper or unauthorized use of the Products; repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product Documentation. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under MasterCare or Gold Support and are separately chargeable at the then-current list price.

**8. Repairs.** A Return Material Authorization (“RMA”) number must be obtained prior to the return of defective Products for repair or replacement, and is subject to NetScout’s then-current advanced replacement policy, which customer may find on the My NetScout Portal. If NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide Maintenance support services with respect to such Products. Prior to returning defective Products to NetScout for repair or replacement, customer must remove any confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information, as such is defined under applicable local law, regulation or directive. In addition, customer is responsible for backing up customer’s data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of customer’s confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media. Unless otherwise agreed to by NetScout, (a) NetScout reserves the right to invoice customer for customer’s failure to return Products under an RMA, and (b) such invoice will be due and payable in accordance with **Section 3** above.

**9. Confidential Information.** All technical and business information, including without limitation all Software and Updates provided by NetScout, contain valuable trade secrets of NetScout and constitute confidential information. Customer agrees to protect the confidentiality of such information with the same degree of care by which it protects its own such confidential information, but no less than reasonable care. Customer may not provide access to or disclose confidential information to any third party without the prior written consent of NetScout.

**10. Incidental Use of Data.** Customer may provide to NetScout data and network traffic information including, but not limited to, configuration data, IP addresses, payload data (which includes the content of the message), screenshots, data dumps, and trace and log files (“Customer Data”). NetScout may use Customer Data to provide the services hereunder as well as for purposes compatible with providing the services including, but not limited to, error analysis and correction, and product and services adjustment, configuration, improvement, and development. In addition, NetScout may: (a) compile statistical and other information related to the performance, operation and use of the Products, and (b) use and share Customer Data in aggregated form to create statistical analysis and for research and development purposes (hereafter

“Product and Service Analyses”). NetScout retains all intellectual property rights in Product and Service Analyses. Customer retains all intellectual property rights in the Customer Data. NetScout’s Privacy Policy located at <http://www.netscout.com/legal/privacy-policy/> applies to NetScout’s collection, use, disclosure, transfer or other processing of Customer Data, and the terms of such Policy are incorporated herein by this reference.

**11. Indemnification.** Customer will defend, indemnify, and hold harmless NetScout from all Claims incurred by NetScout caused by the willful misconduct, or negligent act or omission of customer’s employees, contractors, or consultants.

**12. Limitation of Liability.** NETSCOUT WILL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND RESULTING FROM THE PROVISION OF PRODUCTS OR MAINTENANCE SUPPORT SERVICES HEREUNDER. IN NO EVENT WILL NETSCOUT'S TOTAL LIABILITY TO CUSTOMER FOR ANY OTHER DAMAGES EXCEED THE AMOUNT PAID OR PAYABLE FOR THE PRODUCT OR MAINTENANCE SUPPORT SERVICES GIVING RISE TO THE CLAIM.

**13. Customer Obligations.**

a. Access to Products. Customer will grant the NetScout engineer reasonable access to NetScout Products and any related systems, networks or equipment reasonably necessary to enable the engineer to perform MasterCare or Gold Support. Additionally, during any OSE Services term, customer will (i) make available to the engineer a dedicated office space, telephone, and telephone line at the Office Area and (ii) designate an employee of customer to act as a central point of contact for the engineer to coordinate the performance of OSE Services.

b. MasterCare Support Coverage for Products. OSE and RSE Services are an extension of MasterCare Support, therefore, customer must purchase and continuously maintain throughout the OSE or RSE Services term MasterCare Support coverage on all NetScout Products it has provisioned from NetScout or an authorized reseller or distributor of NetScout Products. NetScout will not be obligated to provide OSE or RSE Services if customer does not fulfill its payment obligations, or procure and continuously maintain MasterCare Support coverage on all NetScout Products owned or in the possession of customer.

c. Non-Solicitation. During the OSE or RSE Services term and for two years after termination or expiration thereof, customer will not directly or indirectly solicit, encourage or attempt to hire or engage any employee of NetScout to become employed by customer, or to become engaged as a contractor or subcontractor except through NetScout, without NetScout’s prior written consent. In cases where customer is an authorized NetScout Reseller, customer agrees to use the same standards to prevent End User, as defined in the agreement between the parties, from directly or indirectly soliciting, hiring or accepting any services from NetScout employees, agents or contractors associated with providing Supplemental Maintenance Offerings or Consulting Services, as applicable, that it uses to prevent solicitation of its own employees, contractors, and subcontractors. Customer will provide NetScout with prompt written notice in the event customer becomes aware of any solicitation or intent to solicit such NetScout employees, agents or contractors by End User. This Section will not apply to solicitation, recruitment or hiring in response to general circulation advertisements or advertisements made at job fairs, or in media circulated to the general public, or former employees of NetScout who have not been employed by NetScout for a period of three (3) months.