



NetScout Systems, Inc.

Maintenance and Support Services Terms for Products

Customer is the licensee of certain software products, including firmware ("Software") and/or is the owner of certain hardware products ("Hardware" and together with Software collectively referred to as "Product") that have been purchased from NetScout or a NetScout authorized reseller or distributor. The Software and Hardware are subject to the terms of the agreement under which the Software was originally licensed and the Hardware was originally purchased ("Agreement"). These Maintenance and Support Services Terms ("Maintenance Description") state the terms under which NetScout will deliver technical support services for such Products ("Maintenance") upon customer's purchase of the same. In the event of a conflict between the terms of the Agreement and this Maintenance Description, the terms this Maintenance Description will govern. NetScout reserves the right to change or discontinue Maintenance offerings without notice, subject to the terms of 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. If you have questions regarding this Maintenance Description, please contact 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. 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 Hardware Coverage Period.

A. **MasterCare Support.** Subject to the terms herein, MasterCare Support services includes: 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 MasterCare 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. The level, availability and Coverage Period of Hardware support varies by Product family. Visit http://www.netscout.com/library/Legal%20Documents/Netscout_legal_Support_Hardware_Matrix.pdf for details. Onsite repair may be provided by a third party and subject to parts availability and geographical restrictions. Same day service is not available in all areas. 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. NetScout's service level guidelines are located at http://www.netscout.com/library/Support/NetScout_mc_Mastercare_Support.pdf. Customer may purchase Supplemental Maintenance Offerings for an additional fee.

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 MasterCare 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.

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

➤ OnSite Engineer Services. Onsite Engineer Services ("OSE Services") are provided by a NetScout technical support engineer located at customer's designated site 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; 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 NetScout Products; beta testing new NetScout Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed 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 designated site that houses the Office Area, as defined in Section 13, to perform OSE Services, customer is responsible for all reasonable travel and other expenses associated therewith.

➤ 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, 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 NetScout 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.

➤ Technical Account Manager Services. Technical Account Manager Services ("TAM Services") are provided by a NetScout shared remote technical support engineer located at a NetScout facility as the point of contact for all technical issues regarding NetScout Products and includes the following: 24x7 remote assistance; support for five customer contacts; escalation of technical service requests as required; ownership of all client customer technical support issues; acting as a direct liaison to NetScout engineers, quality assurance and other technical support experts; communication on patches; provide a conduit for networking and sharing best practices; and managing weekly status calls to discuss open issues.

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 quote, (b) OSE Services will be 12 months commencing on the date the engineer arrives at customer's designated site, and (c) RSE and TAM Services will be 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 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 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 MasterCare and Gold Support, and TAM Services are set forth in the applicable NetScout quotation. Unless otherwise agreed to by the parties, OSE and RSE Services may be renewed for additional terms upon payment of a the applicable fees, Customers purchasing TAM Services may convert to RSE or OSE Services, and 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 for no less than two years from the date of discontinuation of sale. For Software, such MasterCare or Gold Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release.

5. Substitutions: Software Updates. NetScout reserves the right to substitute functionally compatible products 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. NetScout Products are warranted in accordance with the terms of the then-current end user product license agreement accompanying the Products. 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. 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 one release 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. 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 NetScout's MasterCare 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 MasterCare or Gold Support 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, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. 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. Confidentiality obligations set forth in the then-current end user product license agreement accompanying the Products will apply.

10. Indemnification. Customer will defend, indemnify, and hold harmless NetScout from all suits, claims, costs, damages, losses, and expenses (including without limitation reasonable attorney's fees) incurred by NetScout caused by the willful misconduct, or negligent act or omission of customer's employees, contractors, or consultants.

11. 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.

12. Insurance. NetScout carries the necessary workers compensation insurance required under Massachusetts' law. Additionally, in its performance of the OSE Services, NetScout will comply with applicable regulatory labor laws.

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 in a location that is within a reasonable proximity of the Products ("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, RSE and TAM Services are an extension of MasterCare Support, therefore, customer must purchase and continuously maintain throughout the OSE, RSE or TAM 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, RSE or TAM 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, RSE or TAM 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 will 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.