



NetScout Systems Texas LLC End User License Agreement

NETSCOUT SYSTEMS TEXAS LLC ("NETSCOUT TEXAS") WILL LICENSE PRODUCTS TO YOU ONLY IF YOU ACCEPT THIS END USER LICENSE AGREEMENT ("AGREEMENT"). CAREFULLY READ THIS AGREEMENT BEFORE USING THE PRODUCTS. By clicking the "I accept" button below or by installing or using the Software, you have indicated that you understand this Agreement and accept all of its terms. If you do not accept all the terms of this Agreement, click on the button that indicates that you do not accept the terms of this Agreement and do not install the Software. Some third party materials and software may be included in the Products and subject to other terms found in the applicable documentation, or "Read Me" or "About" files. By using the Software, you agree to comply with such terms.

Definitions

"APIs" mean the software application interfaces and workflow methods made generally available by NetScout Texas in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

"Enterprise" means an entity that has been assigned a Maintenance account number. In the event an entity has multiple Maintenance account numbers, each Maintenance account is a separate Enterprise and requires a separate Enterprise License.

"Enterprise License" means the Software identified in the Quotation as an Enterprise License.

"Evaluation Product" shall have the meaning set forth below in [Section 15](#).

"Hardware" means hardware products generally available on NetScout Texas's price list.

"Maintenance" means technical support services for the Products that NetScout Texas makes available upon purchase in accordance with NetScout Texas's then-current technical support services terms.

"Managed Services" means your use of Products to perform network management and monitoring services for Service Provider Customers. Title to the Hardware and licenses to Software remain with you and are not resold to Service Provider Customers.

"Outsourcer" means a third party facility manager or outsourcer who has entered into a then-current services agreement with you in which you may permit access to and operation of the Products at your authorized data center and access to Maintenance for Outsourcer solely to perform Outsourcing Services.

"Outsourcing Services" means network management and monitoring services performed by Outsourcer strictly for you and as described in [Section 8](#).

"Pre-Released Products" shall have the meaning set forth below in [Section 15](#).

"Product" means Software and Hardware provided by NetScout Texas or NetScout Texas's authorized reseller or distributor.

"Quotation" means the document under which NetScout Texas or NetScout Texas's authorized reseller or distributor offers for sale and license its Products, Maintenance, and associated services.

"Service Provider" means you when acting in the capacity of providing Managed Services to Service Provider Customers.

"Service Provider Customer" means a customer of yours who has an agreement with you for Managed Services, provided that such Managed Services would not be a violation of United States ("U.S.") export restrictions.

"Software" means NetScout Texas proprietary programs in object code and the firmware contained on the Hardware, generally available on NetScout Texas's price list. The term Software does not include APIs.

"Software Development Kit" or "SDK" means the NetScout Texas API, together with applicable documentation, any sample code, and any sample applications provided with the API.

"Unsupported Products" shall have the meaning set forth below in [Section 15](#).

"Updates" means maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to NetScout Texas customers generally as part of Maintenance pursuant to a valid Maintenance contract.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Agreement, NetScout Texas grants you a limited, non-exclusive, non-transferable license to use the Software and the Documentation for your own internal business purposes. Such usage is limited to the number of licenses for which you paid the applicable license fee and is subject to the limitations set forth in the Documentation. You may make a copy of the Software for archival or backup purposes only ("Copy"). The Copy may not be used to implement fault tolerant, redundant, or contingency environments (collectively "Redundant Environments").

If you are purchasing an Enterprise License, the foregoing license grant is hereby extended to allow you to install, copy, and use an Enterprise License throughout your Enterprise for your internal use only, subject to the terms and limitations set forth in this Agreement and the Documentation. Notwithstanding anything to the contrary in the foregoing, in cases of authorized resale under a Reseller Agreement, with respect to Resellers, the above Enterprise License is limited to allow Reseller to sublicense the Enterprise License to one end user customer on the license terms set forth herein.

2. License Restrictions.

(a) Without limiting this Agreement, NetScout Texas retains all right, title, and interest in and to the Software, including without limitation the Enterprise License, and all Updates, Documentation, and Copies, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. NetScout Texas retains all rights to the intellectual property associated with the Hardware except as expressly granted in this Agreement, and the above Software restrictions will apply to Hardware to the extent applicable. The Software, Documentation, and Copies are protected under copyright laws, and any permitted Copies must include all copyright, government-restricted rights, and other proprietary notices or legends included on the Software when it was shipped or first provided to you.

The Software may contain third party technology. NetScout Texas may license such third party technology and documentation ("Third Party Materials") for use with the Software only. In the event that the Software contains Third Party Materials, or in the event you have the option to use the Software in conjunction with Third Party Materials (as identified by NetScout Texas in the applicable Documentation), then such Third Party Materials are provided or accessible subject to a third-party license. Third Party Materials license terms are contained in the application CD provided with the Product. You agree to abide by the terms of said licenses and to obtain any additional licenses that may be required to use the Third Party Materials, including but not limited to patent licenses. Your use of the Third Party Materials in conjunction with the Software in a manner consistent with the terms of this Agreement is permitted, however, you may have broader rights under the applicable Third Party Materials license and nothing in this Agreement is intended to impose further restrictions on your use of such Third Party Materials. You agree to indemnify, defend and hold NetScout Texas harmless against any action arising from failure to obtain, or breach of, such Third Party Material licenses. To the extent the Software includes Third Party Materials licensed to NetScout Texas by third parties, those third parties are third party beneficiaries of, and may enforce, the applicable provisions of this Agreement.

Without limiting the generality of the foregoing, you, your employees, and your consultants will not and will not authorize or permit any third party to:

- i. copy or reproduce any part of the Software or Documentation, except as permitted above;

- ii. transfer the Software without NetScout Texas's prior written authorization. Transfers will only be permitted for products with no more than minimal differences in price, features and functionality and provided that the transfer does not increase the number of licensed copies;
- iii. sell, market, distribute, sublicense, lease, provide timeshares, rent, or grant other rights in the Software to others or permit third parties to access the Software, without the written consent of NetScout Texas; or
- iv. modify, develop, port, translate, localize, reverse engineer, de-compile, disassemble, or create derivative works based on the Software, except to the extent expressly permitted by applicable law and solely to extent the parties shall not be permitted by that applicable law to exclude or limit such rights.

(b) In the event you are purchasing an Enterprise License and if you use the Enterprise License Software on or with hardware that does not meet the technical specifications set forth in the Documentation, then: (i) NetScout Texas will not warrant the performance or results obtained by using the Enterprise License Software and NetScout Texas disclaims all liability with respect to the foregoing, (ii) you assume the risk as to the results and performance of the Enterprise License Software, and (iii) your rights and NetScout Texas's obligations with respect to Maintenance, warranty, and indemnification for the Enterprise License Software are waived. The Enterprise License is strictly limited to the NetScout Texas Software identified in a Quotation as an Enterprise License and does not apply to any other NetScout Texas Software. An Enterprise License may not be deployed for government entities, for which the scope of the license must be separately determined in each case.

(c) Resellers must purchase separate Software Licenses, including separate Enterprise Licenses, for each end user customer. The license terms of this Agreement applicable to end user customers are hereby included as part of the obligations in the Reseller Agreement regarding flow down or pass-through terms to end user customers. Further, Reseller will not remove this Agreement from the Documentation included with the Product.

(d) For Service Providers, the Software License may be used for Service Provider's internal business purposes only, including for monitoring and managing Service Provider's own networks and to perform Managed Services for Service Provider Customers. Separate Enterprise Licenses must be purchased for deployment and use for each end user customer of such Service Provider.

Service Provider will maintain MasterCare Maintenance for Products associated with the Managed Services on behalf of its Service Provider Customers and, if Service Provider has signed a Partner Enabled Support addendum, will provide directly to Service Provider Customer technical telephone support, Updates identified for such Service Provider Customer and received under a valid Maintenance contract, return material authorization, Maintenance, and shipping and telephone logistical support. Service Provider will provide the name and address of the Service Provider Customer for whom Service Provider is purchasing Hardware or licenses to Software for Managed Services.

Service Provider will not replace or make repairs or modifications to (collectively "Repairs") the Hardware or any of its components. Transfers of Products from an identified location to a different location will require NetScout Texas's prior written consent, and Service Provider will notify NetScout Texas of the name and new address the Service Provider Customer associated with such transfer. Service Provider will indemnify, defend, and hold NetScout Texas harmless from actions, claims, suits, damages, awards, liabilities, costs, and fees (including reasonable attorneys' fees) incurred by NetScout Texas arising from (i) Repairs made by Service Provider, (ii) misrepresentations made by Service Provider to a Service Provider Customer related to the Products or Maintenance, (iii) Service Provider's performance of Managed Services, (iv) use of Products in violation of U.S. export restrictions, or (v) Service Provider's infringement of NetScout Texas's intellectual property. Service Provider may permit a Service Provider Customer access to Products located on premises owned or under the control of such Service Provider Customer, provided that the applicable Service Provider Customer accesses such Products for internal business purposes, Service Provider Customer executes a written confidentiality agreement with Service Provider that incorporates terms at least as protective of the Products as provided in this Agreement, and Service Provider is responsible for breach of such confidentiality agreement and the license restrictions set forth herein.

3. License Term. The license is effective until terminated. You may terminate the license at any time by destroying the Software, Documentation, and Copies, and providing written certification to NetScout Texas that all of the foregoing have been destroyed. The license will also terminate if you or your employees or consultants fail to comply with any terms of this Agreement. You agree that upon such termination you will either return the Software, Documentation, and Copies or, with NetScout Texas's prior consent, destroy the Software, Documentation, and Copies.

4. Confidentiality. The Product contains valuable trade secrets of NetScout Texas and constitutes confidential information of NetScout Texas and its licensors. You agree to protect the confidentiality of the Product with the same degree of care by which you protect your own such confidential information, but no less than reasonable care. Accordingly, you will not provide access to or disclose the Product or Copy to any third party without the prior written consent of a duly authorized U.S. NetScout Texas corporate officer. In addition, you may not disclose or otherwise publish the results of any benchmark tests run on the Products to any third party without NetScout Texas's prior written approval.

5. Limited Warranty. NetScout Texas warrants that the media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of 12 months from the original date of shipment of the Software ("Media Warranty Period"). NetScout Texas warrants that the Software for a period of 12 months ("Software Warranty Period") and the Hardware for a period of 12 months ("Hardware Warranty Period"), in either case from its original date of shipment or when first made available to you for download, will substantially conform to the Documentation.

If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to NetScout Texas, the media may be returned to NetScout Texas, and NetScout Texas will replace the media without charge to you, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to NetScout Texas, NetScout Texas, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware.

The foregoing warranties will apply provided you give NetScout Texas prompt written notice of the material defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware to NetScout Texas in accordance with NetScout Texas's return process.

6. Warranty Limit. The warranty set forth in **Section 5** does not apply to any failure of the Software or Hardware caused by (a) your failure to follow NetScout Texas's installation, operation, or maintenance instructions, procedures, or Documentation; (b) your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) unauthorized modifications or repairs; (d) use of the Products in combination with equipment or software not supplied by NetScout Texas or authorized in the Product Documentation; and (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside NetScout Texas's reasonable control.

NetScout Texas cannot and does not warrant the performance or results that may be obtained by using the Products, nor does NetScout Texas warrant that Products are appropriate for your purposes or error-free.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 5, THE WARRANTY SET FORTH IN SECTION 5 IS YOUR SOLE AND EXCLUSIVE REMEDY AND NETSCOUT TEXAS'S ENTIRE LIABILITY FOR DEFECTIVE MEDIA OR NON-CONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

7. Liability Limit. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT IN THE EVENT OF YOUR (A) INFRINGEMENT OF NETSCOUT TEXAS'S INTELLECTUAL PROPERTY RIGHTS, OR (B) BREACH OF CONFIDENTIALITY, IN NO EVENT WILL EITHER PARTY OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS

OF DATA, BUSINESS INTERRUPTION, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE CUMULATIVE LIABILITY OF NETSCOUT TEXAS EXCEED THE AMOUNTS PAID TO NETSCOUT TEXAS FOR THE APPLICABLE PRODUCT, MAINTENANCE, OR OTHER SERVICE THAT GAVE RISE TO SUCH CLAIM.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, IN THE CASE OF UNSUPPORTED PRODUCTS, NETSCOUT TEXAS'S CUMULATIVE LIABILITY WILL NOT EXCEED ONE HUNDRED U.S. DOLLARS.

THE FOREGOING LIMITS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE CUMULATIVE AND ARE INTENDED AND ACKNOWLEDGED BY END USER TO BENEFIT NETSCOUT TEXAS AND ITS THIRD PARTY SUPPLIERS.

NetScout Texas is acting on behalf of its suppliers for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this Agreement.

8. Outsourcing. Outsourcer may perform Outsourcing Services, provided that (a) Outsourcer accesses such Products and Maintenance to process your data solely for your internal business purposes and does not use such Products and Maintenance to perform any services for customers other than you, (b) Outsourcer uses the Products and Maintenance in accordance with the terms of this Agreement, (c) you remain liable for and indemnify, defend, and hold harmless NetScout Texas from, and pay all damages, awards, and expenses (including reasonable attorneys' fees) associated with (i) all actions, claims, and suits brought against NetScout Texas arising from Outsourcer's use of the Products and Maintenance in a manner not otherwise permitted hereunder, or repairs to the Hardware or replacements or modifications to components thereto, or (ii) breach of the license grant, license restrictions, NetScout Texas's intellectual property rights, or confidentiality obligations hereunder by you or Outsourcer, (d) Outsourcer executes a written confidentiality agreement with you that incorporates terms at least as protective of the Products and Maintenance as provided herein, and you agree to be jointly and severally liable for any breach of such confidentiality agreement by such Outsourcer, and (e) you provide written notification to NetScout Texas of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance. In any event, you will remain responsible for all payment and other obligations hereunder, which will remain in full force.

If you want to relocate any Products from your own site(s) to the data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited by you and Outsourcer to computer processors exclusively dedicated for access, use and benefit solely for you and as to which access, use or benefit for any other person or entity is precluded. You acknowledge and agree that the Software cannot, at any time, be (a) simultaneously operating on more than a single computer, unless otherwise indicated in **Section 1**, or (b) copied to implement a Redundant Environment without collective payment of the applicable fee. Any violation of the foregoing will be cause for immediate termination by NetScout Texas of this Agreement and any licenses granted as a result thereof.

9. Audit Rights. NetScout Texas may conduct, during normal business hours, an audit of your applicable records and computers to verify the number of copies of the Software in use and the host processors on which such copies are installed.

10. Export Controls. You agree to comply, at your own expense, with all laws, regulations, rules, and ordinances of any governmental body, department, or agency that apply to or result from your obligations under this Agreement. You acknowledge and agree that neither the Products, nor any related technical information, data, documents, and materials, nor the direct product thereof, will be exported, re-exported, diverted, transferred, or disclosed, directly or indirectly, to any country or to any national or resident thereof, except as authorized and permitted by the laws and regulations of the U.S. including without limitation U.S. Export Administration Regulations. You will cooperate fully with NetScout Texas in executing documents or licenses necessary to comply with these laws and regulations and with any related audit or inspection. You are responsible for complying with the import, export, and use restrictions of other applicable countries, including those that relate to Products that contain, use, or perform encryption. You shall indemnify and hold NetScout Texas harmless for all claims, demands,

damages, costs, fines, penalties, attorney's fees, and all other expenses arising from your failure to comply with this **Section 10**.

11. Survival. Sections 2 (a) and (b), 4-16, 18 and your indemnification obligations will survive termination of this Agreement.

12. Assignment. You will not directly or indirectly sell, transfer, assign, or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, to any third party, including to any affiliated entity, without the prior written consent of NetScout Texas.

13. U.S. Government Restricted Rights. All NetScout Texas Software, including the Documentation and technical data, sold or delivered pursuant to this Agreement for Government use are commercial as defined in Federal Acquisition Regulation ("FAR") 2.101 and any supplement and further is provided with RESTRICTED RIGHTS. All Software was fully developed at private expense. Use, duplication, release, modification, transfer, or disclosure (for purposes of this section, "Use") of the Software is restricted by the terms of this Agreement and further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulations Supplement ("DFARS") for military Government agency purposes, or the similar acquisition regulations of other applicable Government organizations, as applicable and amended. The Use of the Product is restricted by the terms of this Agreement, in accordance with DFARS Section 227.7202 and FAR Section 12.212. All other Use is prohibited except as described herein.

14. High Risk Activities. The Product is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). NetScout Texas expressly disclaims any express or implied warranty of fitness for High Risk Activities.

15. Additional Terms and Limitations for Unsupported Products.

(a) **Evaluation Products.** Prior to you making a decision to purchase Products, NetScout Texas may distribute Product for testing, evaluation, or demonstration purposes ("Evaluation Product"). Subject to the terms of this Agreement, if NetScout Texas provides you with an Evaluation Product, then NetScout Texas grants you a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the applicable NetScout Texas Evaluation Request Form and the Documentation solely for testing, evaluation, or demonstration purposes ("Purpose"). Evaluation Product that is Software contains a license key that disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable. If, after using the Evaluation Product, you wish to continue such use, you must purchase the Product.

(b) **Pre-Released Product.** Subject to the terms of this Agreement, if the product you have received with this license is not yet commercially available ("Pre-Released Product"), then NetScout Texas grants you a temporary, revocable, non-exclusive, non-transferable license to use the Pre-Released Product as provided to you by NetScout Texas and the associated Documentation, if any, solely for testing purposes at the direction of NetScout Texas. Additionally, you acknowledge that (i) NetScout Texas has not promised or guaranteed to you that the Pre-Released Product will be announced or made available to anyone in the future; (ii) NetScout Texas has no express or implied obligation to you to announce or introduce the Pre-Released Product; and (iii) you understand that NetScout Texas may not introduce a product similar to or compatible with the Pre-Released Product. Accordingly, you acknowledge that any use of the Pre-Released Product or any product associated with the Pre-Released Product is done entirely at your own risk. During the term of this Agreement, if requested by NetScout Texas, you will provide feedback to NetScout Texas regarding use of the Pre-Released Product, including error or bug reports. If you have been provided the Pre-Released Product pursuant to a separate written agreement, your use of the Pre-Released Product is also governed by such agreement. Upon receipt of a later, unreleased version of the Pre-Released Product or release by NetScout Texas of a publicly released commercial version of the Pre-Released Product, whether as a stand-alone product or as part of a larger product, you agree to return or destroy

all copies of earlier Pre-Released Product received from NetScout Texas and to abide by the terms of the applicable End User License Agreement for any such later versions of the Pre-Released Product. You hereby agree that the features and functions of Pre-Released Products are confidential, and you will not disclose any such features and functions until such time as the Pre-Released is publicly available.

(c) **APIs.** NetScout Texas may make APIs generally available. You may use the SDK to design, develop, and test software programs; make a single copy of the SDK for back-up purposes only; copy the runtime components of the SDK ("Runtime Component") into software code created through your use of the SDK; and reproduce and distribute such Runtime Component solely as a component of your software code. You may not use the SDK to develop a product or service that competes with products or services offered by NetScout Texas, or incorporate the Runtime Component in a product that competes with the products offered by NetScout Texas.

(d) **Unsupported Products.** If the product you have received with this license is or includes (i) Evaluation Products, (ii) Pre-Released Products, or (iii) SDKs (collectively "Unsupported Products"), then you acknowledge and agree that you will take all precautions and safeguards necessary to protect your data and systems from loss or damage. Additionally, to the extent that any provision in this section is in conflict with any other term or condition in this Agreement, this section shall supersede such other term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Furthermore, you acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to you "AS-IS" and NetScout Texas disclaims any warranty or liability obligations to you of any kind. Maintenance is not available for the Unsupported Products. NetScout Texas may change, suspend, or discontinue any aspect of the Unsupported Products at any time, including the availability of any Unsupported Product, and impose limits on certain features and services or restrict your access to parts or all of Pre-Released and SDK Products. Your Use of the Evaluation or Pre-Release Product is limited to 30 days unless otherwise agreed to in writing by NetScout Texas. The restrictions in **Section 2** herein, apply to your use of Unsupported Products.

To the maximum extent permitted by applicable law, you hereby (a) release and waive all claims against NetScout Texas and its subsidiaries, affiliates, officers, agents, licensors, and employees (collectively "Indemnitees") from liability for claims, damages (actual and consequential), and expenses (including litigation costs and attorneys' fees) arising from or in any way related to your use of the Unsupported Products; and (b) agree to hold harmless and indemnify Indemnitees from and against any third party claims arising from or in any way related to your use of the Unsupported Products, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs, and attorneys' fees.

(e) NetScout Texas's ownership rights in **Section 2** apply to Unsupported Products, including any output such as the Runtime Component, but do not include any original software code you may develop. The inclusion of the Runtime Components in your original code created through your use of the SDK in no way alters NetScout Texas's ownership rights in the Runtime Component. NetScout Texas may develop software programs substantially similar or identical to those developed by you through your use of the SDK and reserves the right to sell and distribute those software programs.

16. Product Returns. Prior to returning Evaluation Products or Pre-released Products to NetScout Texas, you must remove any (i) 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 U.S., the Gramm-Leach-Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) removable media such as floppy disks, CDs, or PC Cards. In addition, you are responsible for backing up your data on the Evaluation Products or Pre-Released Products. NetScout Texas is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

17. European Safe Harbor Compliance.

If applicable,

(a) You represent and warrant that you comply, and shall comply throughout the duration of the Agreement, with all applicable privacy and protection laws with respect to personal data about your consumers and other end users located in the European Union and Switzerland ("**European End User Data**") that NetScout Texas may access or process in connection with performing Maintenance for you under this Agreement. You represent and warrant that you are the owner and data controller of all such European End User Data.

(b) NetScout Texas shall act pursuant to your instructions with respect to the incidental access to and processing of European End User Data in the course of performing services on your behalf. NetScout Texas shall also maintain physical, administrative, and technical safeguards to protect European End User Data from unauthorized access.

NetScout Texas shall maintain a current self-certification to the European Safe Harbor Framework ("**European Safe Harbor**") with respect to European End User Data that NetScout Texas incidentally accesses or processes in the United States. To learn more about NetScout Texas's privacy policy see <http://www.netscout.com/company/pages/privacy.aspx>.

18. General. This Agreement and the Quotation(s) issued by NetScout Texas constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, and understandings between the parties regarding such subject matter, except where the parties have a signed, written master purchase agreement or similar contract. Any conflicting or additional terms in your purchase orders or other documentation are expressly rejected. This Agreement may be modified only in writing, signed by authorized representatives of both parties. No use of trade or other regular practice or course of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. No failure of either party to exercise any power or right hereunder or to insist upon strict compliance with the terms of this Agreement, and no custom or practice of the parties at variance with the terms hereof, will constitute a waiver of either party's right to demand compliance with the terms of this Agreement. If any of the provisions of this Agreement are determined to be invalid, illegal, or unenforceable, such provisions will be severed from the Agreement, and the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law, provided that the intent of the parties is not materially impaired. The parties will use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by law, achieves the purposes intended under the invalid or unenforceable provision. This Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to choice of law rules, and you hereby submit to the jurisdiction of the federal and state courts located in said Commonwealth and the applicable service of process. The parties agree that the United Nations Convention on International Sale of Goods Acts will not apply to this Agreement. Except for the obligation to make payments, non-performance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, acts of God, governmental acts or orders or restrictions, act of terrorism, war, or any other reason where failure to perform is beyond the reasonable control of the non-performing party and not due to its fault or negligence.