



NETSCOUT SYSTEMS, INC.
Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement ("Agreement") is made on _____ ("Effective Date") by and between **NetScout Systems, Inc.**, 310 Littleton Road, Westford, MA 01886, including its subsidiaries, and

with a place of business at _____

The parties are entering into this Agreement to discuss and evaluate a mutually beneficial business relationship ("Purpose"). A party to this Agreement may disclose ("Disclosing Party") to the other party ("Recipient") confidential or proprietary information in accordance with this Agreement.

1. Confidential Information. Confidential Information means proprietary or confidential information including, but not limited to, products, technology, hardware, software, processes, specifications, business and financial information and projections, know-how, designs, improvements, marketing plans and strategies, customer and supplier lists, pricing, personally identifiable and personal health information, as well as other valuable business and technical information that Recipient should reasonably understand to be confidential.

Confidential Information does not include information that is or becomes generally available to the public through no wrongful act of Recipient; is rightfully known by Recipient prior to disclosure; is lawfully obtained by Recipient from a third party without an obligation of confidentiality; or is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information.

2. Obligations. Recipient agrees to use Disclosing Party's Confidential Information only for the Purpose stated and will use the same degree of care it uses to protect its own confidential or proprietary information, but no less than reasonable care. Recipient will disclose Confidential Information to its employees, agents, and consultants only on a need to know basis and will maintain written confidentiality agreements with such parties incorporating obligations at least as protective as those contained in this Agreement. Recipient will remain liable for breach of this Agreement by its employees, agents, and consultants.

3. Legally Required Disclosures. If Recipient is required by law to disclose Confidential Information, Recipient will provide prompt written notice to and cooperate with Disclosing Party, at Disclosing Party's expense, in Disclosing Party's efforts to obtain a protective order or injunction. If Disclosing Party is unable to obtain such protective order or injunction, Recipient agrees to limit the disclosure of Confidential Information to the minimum amount required to comply with the required disclosure.

4. Term. Notwithstanding termination or expiration of the Agreement, confidentiality obligations will remain in effect for five years from the date of disclosure of the applicable Confidential Information except with regard to any trade secret which will remain subject to the terms of this Agreement until no longer considered a trade secret under applicable law.

5. Ownership. Ownership of, and title to, Confidential Information will remain with the Disclosing Party. The Disclosing Party does not grant any right in or to the Confidential Information. Recipient will not remove any proprietary, copyright, trade secret, or other legend from the Confidential Information or make copies of the Confidential Information without the Disclosing Party's prior written consent.

6. Warranty Disclaimer. Confidential Information is provided "as is." The Disclosing Party makes no warranties, express or implied, regarding the accuracy, adequacy, or reliability of the Confidential Information.

7. Independent Parties. This Agreement does not create any agency, partnership, joint venture, license, employment, or other joint relationship between the parties.

8. Return/Destruction of Confidential Information. Upon Disclosing Party's written request, Recipient will, within five days, return all of Confidential Information to Disclosing Party, or, at Disclosing Party's option, delete or destroy all Confidential Information, and, in either case, certify in writing the return, destruction, or deletion of all Confidential Information.

9. Injunctive Relief. In the event of an unauthorized disclosure of Confidential Information, the Disclosing Party will be entitled, without waiving any other rights or remedies, to seek injunctive or other equitable relief in a court of competent jurisdiction.

10. Export Control. The Recipient acknowledges and agrees that the Confidential Information received from the Disclosing Party shall not be exported, re-exported, diverted, transferred or disclosed, directly or indirectly, to any country or to any national or resident thereof, except with the express written permission of the Disclosing Party and as permitted by the laws and regulations of the United States of America ("U.S."), including without limitation the U.S. Export Administration Regulations.

11. General. This Agreement constitutes the entire agreement between the parties and supersedes any previous oral or written understandings, commitments, or agreements pertaining to the subject matter hereof. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, regardless of choice of law rules, and will be subject to the jurisdiction of the courts located in the Commonwealth of Massachusetts. Each party agrees to comply with all applicable laws, including but not limited to those pertaining to data privacy. No waiver of any provision of this Agreement will constitute a waiver of any other provision or of the same provision on another occasion. If any term of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, such term may be reduced in scope by the court to the extent the court deems necessary to render the provision enforceable, provided that the intent of the parties is not substantially impaired. This Agreement will not be modified except in a writing signed by both parties.

Agreed as of the Effective Date.

Company Name

By: _____

Name: _____

Title: _____

Date: _____

NetScout Systems, Inc.

By: _____

Name: _____

Title: _____

Date: _____