

Arbor Managed Services Description and Terms

These Arbor Managed Services Description and Terms (“**Managed Services Description**”) set forth the terms and conditions pursuant to which NetScout Systems, Inc., on behalf of itself and its affiliates (“**Licensor**”) will provide Managed Services to a customer (an “**End User**”) who has purchased Arbor Managed Services. This Managed Services Description is an addendum to, and supplements the terms of, the agreement which governs the End User’s purchase and/or use of the Licensor Products and/or Services (**the “Agreement”**). If there is a conflict between this Managed Services Description and the Agreement, this Managed Services Description shall control with respect to the Arbor Managed Services. Capitalized terms not otherwise defined in this Managed Service Description shall have the meanings ascribed to them in the Agreement.

1. SERVICE DEFINITIONS

The following definitions shall apply to the capitalized terms used herein.

1.1 “**Administrative Access**” means full read and write access on all pages of the Web user interface and the ability to run all command line interface commands.

1.2 “**Console Access**” means a connection to the Managed Product via console port or compatible functionality within a VM environment facilitated by the End User and is used by either the End User or Licensor for configuration or troubleshooting needs.

1.3 “**Content**” shall mean all data, software, and information that End User or its authorized users provides, authorizes access to, or is contained within the traffic that is processed by the Managed Products.

1.4 “**DDoS Incident**” means an event in which malicious traffic (e.g., through what is generally referred to as distributed denial of service or DDoS) is directed to the End User's Network. The determination as to whether traffic is DDoS Incident traffic shall be made solely by Licensor.

1.5 “**End User’s Network**” is the public and private IP address space of all End User sites being managed and/or protected by the Licensor.

1.6 “**Incident**” means a DDoS Incident or a Service Incident.

1.7 “**Managed Product(s)**” means Licensor’s on-premises security products purchased by End-User and designated by End User for Managed Services as identified during Licensor’s then-current process for provisioning of the Managed Services.

1.8 “**Managed Services**” is a comprehensive security solution offered by Licensor to protect End User’s Network against DDoS Incidents and includes management by Licensor of the Managed Products, including monitoring the Managed Product’s system level health, monitoring for DDoS Incidents and management of DDoS Incident response and, where applicable, any supplemental services set forth on the Quotation.

1.9 “**Quotation**” means the document issued by Licensor under which Licensor offers for sale the Managed Services and Support.

1.10 “**Service Incident**” means an event in which Licensor manages the Managed Products (e.g., configuration changes, protection level changes and software upgrades/patches) but which does not

constitute a DDoS Incident. The determination of whether an event constitutes a Service Incident shall be made solely by Licensor.

1.11 “**SLA**” means the Service Level Agreement attached as Exhibit A to this Managed Services Description.

1.12 “**Maintenance**” means post-sales technical support services and return material authorization (“RMA”) support, offered for sale by Licensor via a Quotation, for Managed Products, such services which will be delivered pursuant to Licensor’s then-current standard terms, available upon request and as set forth at <https://www.netscout.com/legal/terms-and-conditions>, such terms which are incorporated herein by reference.

1.13 “**Virtual Machine**” or “**VM**” means a deployment where the Managed Products are running in a Licensor supported VM environment.

2. PROVISION OF THE MANAGED SERVICES

Licensor will provide the Managed Services in the manner set forth in this Managed Services Description and the Service Level Agreement attached hereto as **Exhibit A**.

3. END USER OBLIGATIONS

3.1 End User acknowledges that utilization of the Managed Services is for internal purposes only unless otherwise mutually agreed upon with Licensor and indicated on the applicable Quotation.

3.2 End User agrees that the successful and timely performance of the Managed Services requires End User’s good faith cooperation and participation. Accordingly, End User agrees to fully cooperate with Licensor by providing relevant information reasonably requested by Licensor, make a reasonable effort to inform Licensor of any changes to such information, and take such actions that Licensor determines is reasonably necessary to enable Licensor to perform the Managed Service.

3.3 End User shall provide for initial setup of the Managed Product(s) (e.g., “rack and stack”), which shall include completing all tasks outlined in the applicable generally available applicable documentation, establishing remote access capabilities for TCP Port 22 (“**SSH**”) and TCP Port 443 (“**HTTPS**”) and providing Licensor resources access to the Managed Product(s).

3.4 End User shall provide Licensor with such access to End User’s Network as is reasonably necessary in order to perform the Managed Services, which shall include, without limitation, providing internet connectivity so that Licensor may connect with the Managed Products on End-User’s premises.

3.5 End User shall provide Licensor with Administrative Access to the ethernet management port of the Managed Products via HTTPS and SSH. Licensor will supply End User with the IP ranges that will be required to allow access to End User’s Network. End User shall either (a) provide Licensor with console access to the console port of the Managed Products or (b) if End User does not provide Licensor with console access, End User shall maintain an End User contact person who can locally bring the Managed Products back on the End User’s Network.

3.6 End User shall purchase and maintain Maintenance from Licensor for the Managed Products at all times during the Term, as defined in **Section 4** below, of the Managed Services. If End User does not maintain such Maintenance from Licensor, then the Managed Services provided to such End User shall only include security monitoring, DDoS Incident management and configuration changes.

Notwithstanding the foregoing, such End User will not receive any Maintenance and End User will not be entitled to any Credits on account of any Service Misses as defined in and in accordance with the SLA if Maintenance is not purchased or is terminated. If End User does not purchase Maintenance, Licensor reserves the right to terminate Managed Services as per this Managed Services Description.

3.7 End User acknowledges that operation and performance of the Managed Services involves Licensor having access to End User's Network and End User expressly consents to the same. End User hereby grants Licensor, for the Term, a non-exclusive, non-transferable, and royalty-free license to access End User's Network and the internet traffic flowing thereto and any applications contained therein.

3.8 End User shall have a technical contact available during the entirety of an Incident that speaks English to enable End User to interact with Licensor's support team and such other contacts as are reasonably necessary to provide the Managed Services.

3.9 End User is responsible for returning to Licensor any defective Managed Product in accordance with Licensor's RMA procedure, which shall include both management of the return and physical installation of the replacement Managed Product by End User.

3.10 End User shall (a) work with Licensor to document internal emergency/incident response procedures for DDoS Incidents, including responsibility matrix and communication plan, (b) provide feedback on application and network performance during DDoS Incidents and (c) be responsible for assisting Licensor to define the network and policy requirements to ensure proper configuration.

3.11 End User shall take all such action as is reasonably necessary to enable Licensor to perform the Managed Services.

3.12 End User shall comply with the following Acceptable Use Policy for Arbor Managed Services ("**AUP**"), as may be updated pursuant to **Section 9** herein. End User shall not use, or allow use of, the Arbor Managed Services in violation of this AUP, including any of the following types of abuses ("**Abuses**"): use of the Arbor Managed Services in (a) an unlawful manner or for an unlawful purpose, and (b) a manner that, in Licensor's reasonable discretion, directly or indirectly produces or threatens to produce a negative effect on the ability for Licensor to effectively provide the Arbor Managed Services to its customer base.

3.13 Only End User is authorized to provide Content to Licensor for provision of the Managed Services, and End User is responsible for such Content (whether such Content actually belongs to End User or to End User's customers). End User will be deemed to have taken any action that End User permits, assists or facilitates any person or entity to take related to the Agreement and this Managed Services Description, the Content or the Managed Services.

3.14 End User shall provide appropriate maintenance windows and support needed to comply with Licensor's product lifecycle policies.

4. TERM, SUSPENSION AND TERMINATION

Licensor will provide the Managed Services for the number of months purchased ("**Term**") and only for those Managed Products for which Managed Services have been purchased. Licensor may suspend the Managed Services provided to End User if, in Licensor's reasonable determination, an Abuse has occurred or is occurring. Licensor may terminate the Managed Services, this Managed Service Description and/or the Agreement, at Licensor's sole discretion, for End User's failure to correct any Abuse within thirty (30) days after receipt of notice.

5. FEES AND PAYMENTS

5.1 Fees for Managed Services are set forth in the Quotation (“**Service Package Fee**”). Licensor has no obligation to perform the Managed Services until it receives a valid and acceptable purchase order for such services. Additional options may be purchased for an additional fee which will be set forth in a Quotation issued by Licensor at the time such additional services are requested. For purchases of Managed Services made directly from Licensor, invoicing will be on annual recurring basis unless otherwise specified on the applicable Quotation.

5.2 Unless otherwise set forth in a master agreement between the parties, payment for Managed Services and other items included in the same Quotation are set forth in such Quotation. All payments to Licensor are non-cancelable and non-refundable, unless otherwise specifically set forth herein.

6. REPRESENTATIONS AND WARRANTIES

6.1 Licensor represents and warrants that Licensor will perform the Managed Services in a professional and workmanlike manner and in accordance with the attached SLA Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS **SECTION 6.1**, LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE MANAGED SERVICES. FURTHER, LICENSOR EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR CONTENT OR INFORMATION CONTAINED IN THE TRAFFIC DIRECTED TO THE MANAGED SERVICES. A breach of this **Section 6.1** or the SLA shall not constitute a breach of the Agreement but shall give rights solely to the remedies and credits set forth in the SLA notwithstanding anything to the contrary in the Agreement.

6.2 End User represents and warrants that End User: (a) has all right, title and interest or is the licensee with the right to use and/or access all of the applications and/or Content provided to Licensor for Licensor to perform the Managed Services; (b) shall not use the Managed Services for any unlawful purpose; and (c) shall comply with its obligations under this Managed Services Description. End User further represents that neither the U.S. Bureau of Industry and Security nor any other governmental agency has issued sanctions against End User or otherwise suspended, revoked or denied End User’s export privileges.

7. INDEMNITY

End User will defend at its own expense any action brought against Licensor, its directors, officers, or employees by a third party to the extent that the action is based on a claim, suit, or proceeding arising from or relating to: (a) the breach of any representation or warranty set forth in **Section 6.2**; or (b) Content, including without limitation, any claim involving alleged infringement or misappropriation of any patent, copyright, trademark, trade secret or other intellectual property rights. This **Section 7** shall survive termination of the Agreement.

8. EXPORT REGULATION

In addition to the export controls provisions contained in the Agreement, End User will not use the Managed Services to export or re-export any technical data or software in violation of applicable export laws. End User is solely responsible for ensuring that all users of End User’s account are not “Denied Parties” under applicable export laws.

9. CHANGES TO THE MANAGED SERVICES DESCRIPTION

Licensor may make changes to this Managed Services Description (including the AUP and/or the SLA) at any time by posting a revised version at <https://www.netscout.com/legal/terms-and-conditions> and any successor site designated by Licensor. Licensor shall provide prior notice of material changes to this Managed Services Description (including the AUP and/or the SLA) by email notification sent to the technical contact email address provided by End User with respect to the individual having access to the Managed Services portal. Except with respect to changes in the AUP, such changes shall apply only to purchase orders placed for the applicable Managed Services after the updated Managed Services Description has been posted. All changes to the AUP shall become effective immediately.

EXHIBIT A TO ARBOR MANAGED SERVICES DESCRIPTION AND TERMS
SERVICE LEVEL AGREEMENT FOR MANAGED SERVICE

This Service Level Agreement (“SLA”) for the Managed Services is attached to and made a part of the Arbor Managed Services Description and Terms (the “**Managed Services Description**”). Capitalized terms not otherwise defined in this SLA shall have the meaning ascribed to them in the Managed Services Description. If there is a conflict between the terms of the Agreement or the Managed Services Description and the terms of this SLA, this SLA shall control. All sections referred to herein shall refer to sections in this SLA unless otherwise stated.

1. Definitions

The following definitions shall apply to this SLA.

1.1 “**Alert**” means an event that occurs on End User’s monitored system outside of defined thresholds.

1.2 “**ATAC**” means Arbor Technical Assistance Center, Licensor’s 24x7x365 technical support center.

1.3 “**Credit**” means a credit issued for a Service Miss and shall be the value of one (1) day of Service Package Fees determined by dividing the Service Package Fees for the month in which the Service Miss occurs by the number of days in the calendar month in which the Service Miss occurs.

1.4 “**Event Classification Time**” means, with respect to an Alert, the time at which such Alert is classified as a DDoS Incident or a Service Incident in accordance with **Section 2.2.b.** of this SLA.

1.5 “**Hardware Appliance(s)**” means Licensor software running on Licensor certified hardware that has been purchased from Licensor or an authorized channel partner.

1.6 “**Managed Service Monitoring System**” means a software platform that receives and processes information from software agents installed in Managed Products for the purpose of system health monitoring, threat detection, alerting, and notification.

1.7 “**Mitigation**” means the use of intelligent countermeasures in the Managed Product to drop undesirable traffic while allowing desirable traffic to pass.

1.8 “**Priority 1 Event**” means (a) any DDoS Incident or (b) any Service Incident that constitutes an emergency event in which the entire solution is experiencing a complete loss of connectivity with all Managed Products (i.e., a “hard down”).

1.9 “**Priority 2 Event**” means an event in which a single Managed Product is down and causing significant business impact to the End User’s service, or in which multiple Managed Products are experiencing degraded performance.

1.10 “**Priority 3 Event**” means an event in which a single Managed Product is experiencing degraded service, a minor bug or intermittent problems (i.e., intermittent connectivity with a single Managed Product or non-business affecting issue with the Web-based interface for the Managed Services).

1.11 “**Priority 4 Event**” means a request for support, consultation or information (i.e., maintenance activity tracking, informational request or End User configuration change request), which, in any event, has limited or no impact on the End User’s business operations.

1.12 “**Scheduled Maintenance**” means pre-defined periods of time where the Managed Services may be unavailable or have degraded capacity due to the occurrence of planned system changes.

1.13 “**Service Miss**” means an event where Licensor has failed to meet any of the SLAs in **Section 2.2** below and no exception in **Section 4.2** applies.

1.14 “**Software Appliance(s)**” means Licensor software running on virtual and/or non-Licensor certified hardware that has been purchased from a third-party.

1.15 “**System Level Issue(s)**” means issues that both (a) are categorized as either a Priority 1 Event or a Priority 2 Event and (b) impact Licensor’s performance of the Managed Services generally and affect substantially all of Licensor’s customers and are not specific to End User, which issues may include, without limitation, system-wide faults, software patches, upgrades and other similar events.

2. Service Levels

2.1 If the End User is running a VM environment for the Managed Product and the VM environment resides on an End User platform which is not under the direct control or management of Managed Services, then Licensor cannot provide the same service level agreements that are available on Licensor approved hardware platforms. Within these deployments, Licensor will provide SLOs, as set forth in **Section 2.3** below, for the components under Licensor’s control and management.

2.2 A Service Miss shall, subject to **Section 4.2** below, be deemed to occur in the event that the following service levels are not met within the specified timeframes (provided that, for the avoidance of doubt, a Service Miss shall not commence until immediately following the expiration of the applicable timeframe specified below):

a. Managed Service Monitoring Availability: 99.5% Availability. The Managed Service Monitoring System shall not be unavailable for more than three hours and thirty-six (3:36) minutes in any calendar month.

b. Event Classification Response: 15 Minutes. Licensor will acknowledge the applicable Alert and classify the Alert from the Managed Product as either a DDoS Incident or a Service Incident. Those Alerts classified as Service Incidents will be prioritized by Licensor as a Priority 1 Event, Priority 2 Event, Priority 3 Event or Priority 4 Event.

c. Notification of Mitigation Incident Response: 15 Minutes. Licensor will notify End User of the status of its response to an attack within fifteen (15) minutes of the Event Classification Time for an Alert that is classified as a DDoS Incident.

d. Notification of System Level Issue(s). Licensor will notify End User of the existence of a System Level Issue(s) within fifteen (15) minutes of the Event Classification Time relating to such System Level Issue(s).

e. Time to Resolve – Priority 1 Events for Managed Products which are Hardware Appliances. Licensor will resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s business operations for each Priority 1 Event within four (4) hours of the applicable Event Classification Time.

f. Time to Resolve – Priority 2 Events for Managed Products which are Hardware Appliances. Licensor will resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s

business operations for each Priority 2 Event within eight (8) hours of the applicable Event Classification Time.

2.3 The following are time to resolve service level objectives (**each, an “SLO”**), which Licensor will seek to achieve, but will be under no obligation to achieve, and no Credits or other damages, reimbursement or compensation of any kind whatsoever shall be issued or payable if Licensor fails to achieve an SLO:

a. Priority 3 Events for Managed Products which are Hardware Appliances. Licensor will seek to resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s business operations for each Priority 3 Event within forty-eight (48) hours of the applicable Event Classification Time.

b. Priority 4 Events for Managed Products which are Hardware Appliances. Licensor will seek to resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s business operations for each Priority 4 Event within seventy-two (72) hours of the applicable Event Classification Time.

c. Priority 1 Events for Managed Products which are Software Appliances. Licensor will seek to resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s business operations for each Priority 1 Event with a goal of four (4) hours of the applicable Event Classification Time. The resolution time goal is dependent on the support provided by the End-User of the third-party hardware or virtual environment.

d. Priority 2 Events for Managed Products which are Software Appliances. Licensor will seek to resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s business operations for each Priority 2 Event with a goal of eight (8) hours of the applicable Event Classification Time. The resolution time goal is dependent on the support provided by the End-User of the third-party hardware or virtual environment.

e. Priority 3 Events for Managed Products which are Software Appliances. Licensor will seek to resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s business operations for each Priority 3 Event with a goal of forty-eight (48) hours of the applicable Event Classification Time. The resolution time goal is dependent on the support provided by the End-User of the third-party hardware or virtual environment.

f. Priority 4 Events for Managed Products which are Software Appliances. Licensor will seek to resolve or provide a temporary fix or workaround that corrects the issue that can be used by the End User with minimal inconvenience and minimal impact on End User’s business operations for each Priority 4 Event with a goal seventy-two (72) hours of the applicable Event Classification Time. The resolution time goal is dependent on the support provided by the End-User of the third-party hardware or virtual environment.

3. Scheduled Maintenance

Licensor may perform Scheduled Maintenance on its systems at any time but will be limited to a maximum of six (6) hours of Scheduled Maintenance during any calendar week. Scheduled Maintenance may result in the End User's inability to access (a) client-side web-based and mobile user interfaces, and (b) applications programming interfaces, or other End User accessible software. Licensor will maintain a standard maintenance window on Sunday beginning at 0400 AM Greenwich Mean Time but may initiate an additional maintenance window during a weekday at a time period that is communicated to the End User at least forty-eight (48) hours in advance. Additionally, Licensor may take an emergency maintenance outage of no more than four (4) hours once per month with four (4) hours advanced notice. Notice of Scheduled Maintenance will be provided to End User's designated point of contact by email or by a notification in the Managed Services web based user interface.

4. Remedies for Service Misses; Conditions; Claiming Credits

4.1 Calculation of Credits. Licensor shall, in good faith, determine whether a Service Miss occurred based on Licensor's records and data. In the event of a Service Miss, the following Credits will apply:

a. For a Service Miss occurring with respect to the SLA provided in Section 2.2.a.: one (1) Credit shall apply for each one (1) hour period (or portion thereof) during which the Service Miss persists after the Service Miss has commenced, up to a maximum of ten (10) Credits.

b. For any Service Miss occurring with respect to the SLAs provided in Sections 2.2.b., 2.2.c., and 2.2.d.: If, after the Service Miss has commenced, the Service Miss is

- less than or equal to fifteen (15) minutes, one (1) Credit shall apply;

- greater than fifteen (15) minutes, but less than or equal to forty-five (45) minutes, two (2) Credits shall apply;

- greater than forty-five (45) minutes, but less than or equal to three hours and forty-five minutes (3:45), five (5) Credits shall apply; and

- greater than three hours and forty-five minutes (3:45), ten (10) Credits shall apply.

c. For any Service Miss occurring with respect to the SLAs provided in Section 2.2.e.: one (1) Credit shall apply for each four (4) hour period (or portion thereof) during which the Service Miss persists after the Service Miss has commenced, up to a maximum of ten (10) Credits.

d. For any Service Miss occurring with respect to the SLAs provided in Section 2.2.f.: one (1) Credit shall apply for each eight (8) hour period (or portion thereof) during which the Service Miss persists after the Service Miss has commenced, up to a maximum of ten (10) Credits.

4.2 Conditions. A Service Miss shall not be deemed to have occurred when such Service Miss is due to any of the following: (a) an End User's failure to follow all procedures for ATAC access that have been provided to such End User by Licensor; (b) End User's failure to reasonably implement Licensor's recommendations regarding software updates, design changes, or operational systems or methods and procedures that impact the operation of the Managed Products; (c) End User's failure to allow console access to a Managed Product or an alternative available End User point of contact who can locally access the Managed Product; (d) End User's disruption of access to the Managed Product such that it can no longer be accessed remotely; (e) defects or failures identified in Licensor product release notes; (f) network changes by End User that would adversely affect Licensor's deployment of

the Managed Services; (g) internet access is disrupted through no fault of Licensor; (h) instructions, authorizations, approvals or other information provided by End User to Licensor; (i) inaccurate and/or insufficient information or configuration information provided by End User; (j) negligent or unlawful acts or failure to take any required act by End User or its agents or suppliers; (k) lack of End User participation in DDoS Incident mitigation efforts, including Licensor's inability to reach End User by phone or End User's lack of English-speaking representatives available to coordinate and communicate with Licensor during a DDoS Incident; (l) an End User provisioning request is not accepted by Licensor; (m) acts of God or Force Majeure events, including without limitation, government mandated shutdowns and those described in the Agreement; (n) scheduled or emergency maintenance; (o) suspension or termination of the Managed Services by Licensor in accordance with the terms of the Agreement; (p) End User's failure to perform its obligations as set forth in the Managed Services Description; (q) acts or omissions of End User or any third party engaged by End User; or (r) problems arising from or related to software, equipment or network components for which Licensor is not operationally responsible.

4.3 Claiming Credits. If End User believes a Service Miss has occurred, End User will provide to Licensor all relevant details and documentation supporting End User's claims of a Service Miss. Any claims for a Credit must be made by End User within seven (7) days after the alleged Service Miss and will be made to Licensor's Customer Support organization in writing using the customer support ticketing system or by emailing support@arbor.net. Claims made more than seven (7) days after the event will not be eligible for any of the remedies described herein. Licensor will investigate the claim and will respond back to End User within ten (10) business days of receipt of the notification of a claim from End User, either (a) accepting End User's Service Miss claim, or (b) with all relevant details and documentation supporting a dispute of End User's Service Miss claim, in which case the parties shall resolve any such dispute promptly in good faith. Notwithstanding anything to the contrary set forth herein, End User may not accumulate more than fifteen (15) Credits in any calendar month and will not be entitled to any Credits if End User is in breach of the Managed Services Description at the time of the Service Miss until End User has cured the breach. In addition, End User will not be entitled to a Credit if the event giving rise to the Credit would not have occurred but for End User's breach of the Managed Services Description or misuse of the Managed Services. Credits obtained by End User shall have no cash value, and unless an alternative arrangement is reached between Licensor and Customer, Licensor will reflect Credits on the next invoice provided after the occurrence of the Service Miss. Credits shall only apply to Managed Services provided pursuant to the Service Package Fee set forth in the Quotation and will not apply to any other Licensor services or any other form of custom development services provided by Licensor. End User's sole and exclusive remedy, and Licensor's sole and exclusive liability, for Licensor's failure to meet any of the service levels set forth in **Section 2.2** of this SLA shall be to receive a Credit in accordance with the terms of this **Section 4**.