

Maintenance and Support Services Terms for Products

These Maintenance and Support Services Terms (“**Maintenance Terms**”) state the terms under which NetScout Systems, Inc., on behalf of itself and its affiliates (collectively, “**NetScout**”), will deliver maintenance and technical support services (“**Maintenance**”) for NetScout software products (“**Software**”) and hardware products (“**Hardware,**” and together with **Software, “Products**”) for which NetScout makes such Maintenance services generally available. If there is a conflict between the terms under which the Software was originally licensed or Hardware was originally purchased (“**Agreement**”) and the Maintenance Terms, these Maintenance Terms will govern with respect to the Maintenance. NetScout reserves the right to change or discontinue its offerings described herein without notice, subject to these Maintenance Terms and provided Maintenance does not change for the remainder of the then-current Maintenance term. Terms not defined in these Maintenance Terms are as defined in the Agreement. Questions regarding these Maintenance Terms may be sent to legal.services@netscout.com.

1. **MasterCare Description.** Subject to the terms herein, NetScout’s MasterCare Maintenance offering includes the following:
 - a. 24x7 access to technical support with one hour priority response on Severity 1 technical support calls;
 - b. maintenance releases and enhancements, corrections, bug fixes, and modifications made to, and which become elements of, the standard Software that are provided by NetScout to end users as they are made available as part of Maintenance pursuant to a valid maintenance contract (**collectively referred to as “Updates”**) for covered Products;
 - c. access to electronic incident submission and technical documentation, frequently asked questions, and release notes;
 - d. advanced replacement of Hardware during the coverage period;
 - e. 24x7 access to self-help on the MYNETSCOUT portal located at <https://my.netscout.com> (“**MYNETSCOUT Portal**”) for technical answers; and
 - f. knowledge transfer through NetScout's online learning center.

Live technical telephone support is provided 24x7 for Severity 1 issues reported through NetScout’s telephone hotline. For non-Severity 1 issues, support is available Monday through Friday, excluding local public holidays, 8:00 a.m. to 5:00 p.m. local time of the assigned NetScout technical support center (“**Normal Business Hours**”). All non-Severity 1 issues received outside of Normal Business Hours will be returned next business day. NetScout’s service level guidelines, including severity levels, are in the MasterCare Support Datasheet located at <https://www.netscout.com/support-services>. Maintenance on Software is provided for the current version and at least two releases back.

2. **Premium Services Offerings.** The following premium services (“**Premium Services**”) are also available for an additional fee. Premium Services are an extension of MasterCare therefore, MasterCare coverage must be purchased and continuously maintained throughout the applicable Premium Services term. Upon purchase, such Premium Service will be delivered pursuant to these Maintenance Terms.

- a. **Onsite Engineer Services.** Onsite Engineer Services (“**OSE Services**”) are provided by a NetScout dedicated technical support engineer located at a designated site agreed to by the parties or, if set forth in a Quote or other writing by NetScout, remotely and will be performed 40 hours per week. If the end user (i) requires additional work outside of these hours, compensatory time will be provided per end user’s standard procedures or (ii) requests that the engineer travel to a site other than the office area to perform OSE Services, end user is responsible for all reasonable travel expenses.
- b. **Remote Site Engineer Services.** Remote Site Engineer Services (“**RSE Services**”) are provided by a NetScout remote technical support engineer located at a NetScout-designated facility and will be performed for the number of hours per week as set forth in the applicable Quote.

OSE and RSE Services are normally provided between the hours of 9:00 a.m. and 5:00 p.m. local time, Monday through Friday, excluding end user holidays and paid time off, provided the number of end user holidays is at least equal to the number of holidays NetScout provides to its employees in the applicable territory. OSE and RSE Services may include any one or more of the following, as agreed to by the parties and as they relate to the Products:

- (i) local assistance with day-to-day administration of end user's network performance management environment, including installation of upgrades to operating systems and Updates;
- (ii) Hardware maintenance, service pack installation, and oversight of best practice configuration;
- (iii) implementation assistance for installing and configuring new Products;
- (iv) beta testing new Products and features when requested; and
- (v) resolving technical support issues and escalating service needs.

For a maximum period of two weeks during the OSE or RSE Services term, as applicable, the technical support engineer will not be performing the OSE or RSE Services due to training.

3. **Term and Renewal.** The term for MasterCare will be the number of months specified in NetScout's Quote and, unless otherwise agreed to by the parties in writing, the term of (a) OSE Services will be 12 months commencing on the date the engineer arrives at end user's designated site, and (b) RSE Services will be 12 months commencing on the date that the account becomes active. MasterCare and Premium Services may not be cancelled during the applicable term and may be renewed for additional terms, as agreed to by the parties and set forth in a Quote, upon payment of the applicable fees. Renewal notice will be provided at least 60 days prior to the expiration of the then-current term.
4. **Fees, Invoicing and Payment.** Fees for MasterCare and Premium Services are set forth in the applicable NetScout Quote. Unless otherwise set forth in the applicable Quote or Agreement, or agreed to by the parties in a writing, fees will be invoiced in advance and are due and payable net 30 days from the invoice date. Payments are non-refundable. Standard RSE Services (20 hours/week) may be converted to full-time RSE Services (40 hours/week) or OSE Services subject to payment of an additional fee.
5. **Expired Maintenance.** Reinstatement of expired Maintenance requires the payment of fees for the time that such coverage was expired. In addition to payment of such back-fees, (a) expired

Maintenance may be subject to a reinstatement fee, and (b) NetScout may require that Hardware be inspected by NetScout or an authorized NetScout channel partner before Hardware Maintenance will be reinstated.

6. **Continuing Availability.** If NetScout discontinues a Product, then NetScout will continue to make Maintenance available in accordance with NetScout's then-current Product and Maintenance Life Cycle Policy, available on the MYNETSCOUT Portal, such Policy terms which are incorporated herein by reference.
7. **Hardware Substitutions.** NetScout reserves the right to substitute functionally compatible hardware not affecting network configurations. Notwithstanding the foregoing, Hardware components not updated after four years may not be eligible for repair or replacement.
8. **Limitations and Exclusions.** Unless otherwise agreed to in writing by NetScout, Product is eligible for Maintenance provided such Product (a) remains in the location to which such Product was originally shipped and (b) has not reached end of life. If Product is moved from one location to another ("**Product Relocation**"), such Product Relocation is at end user's own risk, loss and expense, and end user is responsible for compliance and the obtaining of all necessary licenses to export, re-export or import the Product. Failure to notify NetScout of Product Relocation may result in the inability for NetScout to provide Maintenance in accordance with these Maintenance Terms, and NetScout will not be liable for any claims, demands, suits, actions, damages, liabilities, fines, penalties, losses, and expenses including without limitation attorneys' fees and disbursements and court costs resulting from Product Relocation.

Maintenance does not extend to Product for which Maintenance has not been purchased, nor for malfunctions resulting from use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product Documentation. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance described herein and such services may not be available in all areas. If a party other than NetScout make repairs or modifications to the Products without NetScout's written authorization ("**Unauthorized Repairs**"), NetScout is not obligated to provide Maintenance with respect to claims resulting from the Unauthorized Repairs. In addition, NetScout's Maintenance obligations do not extend to improper or unauthorized use of the Products, a force majeure event, or any causes external to the Product such as power failure or electric power surge; or modification to factory default configurations. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under Maintenance and are separately chargeable at the then-current list price.

9. **Return Material Authorization ("RMA").** Defective Hardware that is returned for repair or replacement is governed by NetScout's then-current Hardware Product Return Material Authorization Policy ("**RMA Policy**") located at <https://www.netscout.com/legal/terms-and-conditions>, such RMA Policy which is incorporated herein by reference.
10. **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. End user 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. End user may not provide access to or disclose confidential information to any third party without the prior written consent of NetScout.

11. **Product Feedback.** NetScout may solicit or receive feedback on the functions and operation of the Product, reports of issues, bugs or service errors, or Product feature suggestions (collectively, “**Product Feedback**”). Such Product Feedback is deemed assigned to NetScout and constitutes NetScout property. NetScout may use or exploit Product Feedback without any accounting or payment to the party providing such Product Feedback
12. **Network Data.** NetScout may be provided with 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 (collectively, “**Network Data**”). NetScout may use Network Data to provide Maintenance and other services as well as for purposes compatible with providing such services including, but not limited to, error analysis and correction, and Product and/or service adjustment, configuration, improvement, and development. NetScout may also: (a) use Network Data to compile statistical and other information related to the performance, operation and use of the Products and/or services and (b) share Network Data, but only in de-identified aggregated form to create statistical analysis and for research and development purposes (collectively, the “**Analyses**”). NetScout retains all intellectual property rights in the Analyses, excluding any Network Data contained therein.
13. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL NETSCOUT OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY 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 AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE CUMULATIVE LIABILITY OF NETSCOUT EXCEED THE AMOUNTS PAID OR PAYABLE FOR THE MASTERCARE OR PREMIUM SERVICES THAT GIVES RISE TO SUCH CLAIM.

THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE CUMULATIVE AND ARE INTENDED AND ACKNOWLEDGED BY YOU TO BENEFIT LICENSOR AND ITS SUPPLIERS. Licensor 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.

14. **End User Obligations.**
 - a. **Access to Products.** End user consents to and 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 Maintenance. End user represents that it has obtained any consents necessary for NetScout to perform Maintenance.
 - b. **OSE Services.** During any OSE Services term, end user will (i) make available to the engineer a dedicated office space, telephone, and internet access at the Office Area and (ii) designate an employee of end user to act as a central point of contact for the engineer to coordinate the performance of OSE Services.
 - c. **Non-Solicitation.** End users will not directly or indirectly solicit, encourage, or attempt to

hire or engage any employee of NetScout, or agent or contractor associated with providing Premium Services to become employed by end user or engaged as a consultant, contractor, or subcontractor except through NetScout, without NetScout's prior written consent. 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 months.

15. **MYNETSCOUT Portal Use.** While using the MYNETSCOUT Portal, end user will comply with all applicable statutes, orders, regulations, rules, and other laws and will not
- a. Post, upload, share, transmit, distribute, facilitate distribution of or otherwise make available to or through the MYNETSCOUT Portal any unlawful, infringing, harmful, harassing, defamatory, threatening, intimidating, fraudulent, tortious, vulgar, or otherwise objectionable material of any kind, including unauthorized or unsolicited advertising;
 - b. Reproduce, duplicate, or copy any portion of the MYNETSCOUT Portal, except as authorized by NetScout;
 - c. Sell, resell, or otherwise exploit for any commercial purposes, the use of or access to, or content within, the MYNETSCOUT Portal or any portion thereof without the prior written consent of NetScout;
 - d. Remove any copyright, trademark, or other proprietary rights notice from the MYNETSCOUT Portal or materials originating therefrom;
 - e. Violate or attempt to violate the security of the MYNETSCOUT Portal;
 - f. Disseminate on the MYNETSCOUT Portal any computer code, file, or program, including but not limited to any viruses, worms, spyware, adware or other malicious computer code, file, or program; and/or
 - g. Use any data mining, bots, spiders, automated tools, or similar data gathering and extraction methods, or manual process, directly or indirectly, on the MYNETSCOUT Portal or to collect any information from the MYNETSCOUT Portal or any other user of the MYNETSCOUT Portal. The framing, scraping, data mining, extraction, collection, or mirroring of the content of the MYNETSCOUT Portal in any form and by any means whatsoever is strictly prohibited.

End of Maintenance Description and Terms