



**NetScout Systems, Inc.**  
**Gold Support Services Terms**

These Gold Support Services Terms ("Maintenance Description") state the terms and conditions under which NetScout will deliver technical support services for the following NetScout products OneTouch™, LinkRunner™, AirCheck™ and AirMagnet Mobile which includes firmware ("Software") and hardware ("Hardware" and together with Software collectively referred to as "Product") that have been purchased from NetScout or a NetScout authorized reseller or distributor. The Products are subject to the terms of the agreement under which the Product was originally purchased ("Agreement"). 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 the offerings described in this Maintenance Description 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.

**1. Gold Maintenance Description.**

**A. General**

1. Subject to the terms herein, Gold support services includes: 24x7 access via <https://enterprise.netscout.com/support> to maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to NetScout customers generally as part of these Gold support services (collectively referred to as "Updates") for covered Products; access to technical documentation such as user guides, knowledge base articles, frequently asked questions, and release notes;. The Gold technical support team is staffed during normal business hours, Monday through Friday from 3:00 a.m. – 8:00 p.m. ET and is closed during NetScout holidays.

**B. Hardware/Accessory Repair or Replacement**

1. When Hardware has been pre-qualified as defective or faulty by NetScout's technical assistance center, NetScout at its sole discretion will either repair or replace the unit. Replacement units will be the same or higher model and may be refurbished. Accessories that were originally shipped with the Hardware or Software may be entitled to repair or replacement in accordance with these terms at NetScout's sole discretion; commercial off the shelf accessories including but not limited to WiFi network adaptors and general-purpose batteries are expressly excluded.

2. Any service repair must be performed by a NetScout authorized service representative. Requests for service must be submitted via the internet or by phone and will be pre-qualified by NetScout's Technical Assistance Center (TAC).

3. Damage attributable to natural depreciation ("ordinary wear and tear") or due to abuse of the Hardware does not qualify for Gold support services. NetScout reserves the right to determine if the cause of failure or out of specification performance is due to abuse of the Product. Should NetScout determine that the Product failure is due to abuse, any applicable warranty or Gold support service coverage will be immediately voided for that Product. Abuse includes damage resulting from dropping the instrument. Future coverage will be denied to such Product unless it has undergone repair and is deemed suitable for coverage by an authorized NetScout service repair facility.

4. A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. 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 Gold Support with respect to such Products. NetScout will pay shipping charges for Hardware replacements under Gold support services. Shipping from NetScout is by common carrier, "2 day" unless circumstances require later shipment. Shipping back to NetScout and any return shipping will be "second day" ship. 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. 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.

5. Repair/exchange (with pre-paid shipping) for primary Hardware/Accessories are not available in certain countries worldwide. Contact NetScout's Technical Assistance Center to see if these services are available in your area.

#### C. Hardware Loaner Units

1. Upon Customer's request, NetScout will provide Customer with a refurbished loaner unit ("Loaner Unit") while Hardware is being repaired/serviced by NetScout, provided such request is during the period in which Hardware is covered by Gold support services. Loaner Units only apply to OneTouch, LinkRunner and AirCheck units. Loaner Units are the property of NetScout and must be returned within five (5) business days of receipt of the repaired/serviced Hardware. In the event a Loaner Unit is not returned within 5 business days after receipt of the repaired/serviced Hardware, NetScout will invoice and Customer will pay NetScout's then-current rates for such Loaner Unit. Failure to return a Loaner Unit is grounds for termination of the Gold support services. Loaner Units are not provided during a voluntary Enhancement to the product.

2. NetScout will pay shipping charges for loaner and exchange Hardware under a valid Gold support services. Shipping from NetScout is by common carrier, "next day" unless circumstances require later shipment. Return shipping to NetScout is "second day" ship.

3. Loaner units (with pre-paid shipping) for primary Hardware/Accessories are not available in certain countries worldwide. Contact NetScout's Technical Assistance Center to see if these services are available in your area.

#### D. Eligibility

1. Gold Support services are non-transferable.

**2. Term and Renewal.** Unless otherwise agreed to by the parties in writing, the initial term for Gold Support will be for twelve (12) months. Maintenance support services may not be cancelled during the applicable term.

**3. Invoicing, Fees and Pricing.** Fees for Gold Support services are due and payable net 30 days from the invoice date and are as set forth in the applicable NetScout quotation or price list if purchased directly from NetScout. If Gold Support services have been purchased via an authorized NetScout channel partner, fees and payment terms for Gold Support services will be as negotiated between such channel partner and Customer. Payments are non-refundable.

**4. Continuing Availability.** If NetScout discontinues a Product, NetScout will continue to make Gold Support

available for no less than two years from the date of discontinuation of sale. Gold support on a discontinued software product will be limited to technical support. Bug fixes will only be identified for the then-current Software release. Repair of hardware products will be restricted to parts availability.

**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. Limitations and Exclusions.** NetScout is not obligated to provide troubleshooting or updates containing additional features and enhancements other than defect corrections, or to provide 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. 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; fault in third party hardware or programs used in conjunction with the Software; improper or unauthorized use of the Products; modifications or 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 Gold Support and are separately chargeable at the then-current list price.

**7. 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.

**8. 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.

**9. Termination.** NetScout may terminate Gold Support services for cause in the event of an occurrence of any of the following:(a) Customer fails to return Loaner Unit or Advanced Replacement Unit in accordance with the terms of this Maintenance Description; (b) Customer fails or is delinquent in the payment of fees (c) Customer resides in a country on the US Department of Commerce embargo list (d) Customer is found to be falsifying any claims on mainframes or accessories (e) Customer knowingly uses Gold Support services to take advantage of services and entitlements for products not covered.