



NetScout Systems, Inc.
NetCare Basic Maintenance and Support Services Terms for Products

These NetCare Basic Maintenance and Support Services Terms for certain NetScout affiliate products (“**Maintenance Description**”) state the terms under which NetScout Systems, Inc. on behalf of itself and its subsidiaries and affiliates (**collectively, “NETSCOUT”**) or a NETSCOUT-authorized third party will deliver NetCare Basic technical support services (“**Maintenance**”) for certain software products, including firmware (“**Software**”) that have been licensed and/or certain hardware products (“**Hardware**” **and together with Software hereafter “Products**”) that have been purchased from NETSCOUT or a NETSCOUT authorized reseller or distributor and for which NETSCOUT makes Maintenance available, upon expiration of the Products’ warranty and end user’s (“**Customer**”) purchase of the same. If there is a conflict between the terms under which the Software was originally licensed or Hardware was originally purchased (“**Agreement**”) and this Maintenance Description, the terms in this Maintenance Description will govern. NETSCOUT reserves the right to change or discontinue Maintenance offerings without notice, subject to the terms in this Maintenance Description and 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. Questions regarding this Maintenance Description may be sent to legalservices@NETSCOUT.com.

1. Maintenance Description.

Subject to the terms herein, Maintenance services are accessible Monday through Friday, excluding local public holidays, 9:00 a.m. – 5:00 p.m. of the nearest NETSCOUT technical support center (e.g. Americas Region: Central Time Zone) (“**Normal Business Hours**”). Pursuant to the purchase of a valid Maintenance contract, Maintenance includes critical bug fixes, patches which will be applied during Normal Business Hours, and other defect corrections (**collectively referred to as “Updates”**) for covered Products; access to electronic incident submission and applicable technical documentation such as release notes via the web portal located at <https://My.NETSCOUT.com>. Software upgrades are not included as part of Maintenance but can be purchased separately. The level, availability and coverage period of Hardware support varies by Product family and is provided only for Products that have not reached the End of Life / End of Support milestone. For details, please email support@NETSCOUT.com. NETSCOUT requires remote access to the Products for which Maintenance has been purchased and Customer’s associated systems, networks, and equipment in order to perform the Maintenance services.

The following service levels apply and are valid for Customers with secure VPN access connections and excludes system access approval time by Customer:

| | |
|--|-------------------------|
| Service Team Response & Acknowledgment * | 1 Business Hour or less |
| Advance Replacement Hardware Dispatch ** | Next Working Day |

* Within Normal Business Hours.

** Resolution time complete when advance replacement Hardware is dispatched for NETSCOUT Hardware (excludes third party elements supplied by OEM vendors e.g. servers).

2. Term and Renewal. Unless otherwise agreed to by the parties in writing, the initial term for Maintenance will be the number of months specified in NETSCOUT's Quote. Maintenance may not be cancelled during the applicable term, and renewal notice will be provided at least sixty (60) days prior to the expiration of the then-current term.

3. Invoicing, Fees and Pricing. Fees for Maintenance are set forth in the applicable NetScout Quote and, unless otherwise agreed to by the parties in writing, are due and payable net thirty (30) days from the invoice date or the terms set forth in the master agreement between the parties, if applicable. Payments are non-refundable. Unless otherwise agreed to by the parties, Maintenance may be renewed for additional terms upon payment of the applicable fees and terms of the applicable NETSCOUT Quote(s).

4. Expired Maintenance. A purchase order for Maintenance must be received in full prior to the Maintenance start date set forth in the applicable Quote or such Maintenance will expire, resulting in a lapse in service. NetScout's Quote will reflect Maintenance fees for the lapsed period. In addition, expired Maintenance may be subject to a reinstatement fee.

5. Continuing Availability. If NETSCOUT discontinues a Product, NETSCOUT will continue to make Maintenance available in accordance with NetScout's then-current Product Life Cycle Policy, available on the myNetScout Portal.

6. Substitutions; Software Updates. NETSCOUT reserves the right to substitute functionally compatible hardware not affecting network configurations. Notwithstanding the foregoing, Hardware components not updated after four (4) years may not be eligible for repair or replacement. Updates include bug fixes which become elements of the standard Product.

7. Warranty. NETSCOUT warrants that Maintenance will be performed in a good and workmanlike manner. Customer's sole and exclusive remedy for breach of this warranty will be for NETSCOUT to re-perform Maintenance at no expense to Customer provided Customer notifies NETSCOUT in writing of such breach within thirty (30) days of its occurrence. EXCEPT FOR THE FOREGOING WARRANTY, NETSCOUT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. NETSCOUT EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

8. Limitations and Exclusions. Unless otherwise agreed to in writing by NETSCOUT, Product is eligible for Maintenance provided such Product remains in the location to which such Product was originally shipped, and with respect to Hardware, provided such Hardware is within the applicable Hardware coverage period. If Customer moves the Product from one location to another ("**Product Relocation**"), Customer (a) does so at Customer's own risk, loss and expense, (b) is responsible for obtaining all necessary licenses to export, re-export or import the Product, and (c) will indemnify, defend and hold NETSCOUT harmless from and against any and all claims, demands, suits, actions, damages, liabilities, fines, penalties, losses, and expenses including without limitation attorneys' fees and disbursements and court costs (**collectively, "Claims"**) arising from Product Relocation. Failure to notify NETSCOUT of Product Relocation may result in an inability for NETSCOUT to perform its warranty obligations or deliver Maintenance in accordance with this Maintenance Description, and NETSCOUT will not be liable for any Claims resulting from Product Relocation. Professional services for Product Relocation may be purchased separately, such services which will be performed in accordance with NETSCOUT's then-current applicable terms located at <https://www.netscout.com/legal/terms-and-conditions>.

NETSCOUT is not obligated to provide (y) Updates containing anything other than defect corrections, or to provide Maintenance on Software beyond two (2) releases back from the current version (e.g. current release is 17.3 so support is provided for 17.3, plus 17.2 and 17.1 releases) or (z) Maintenance on Products in combination with equipment or software not supplied by NETSCOUT or recommended in the Product installation and reference guides, operation manuals, and release notes provided with the Product in printed, electronic, or online form ("**Documentation**") and where such equipment or software causes the Product to malfunction. 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. For an additional fee, onsite repair may be provided by a third party and is subject to parts/spares availability, but same day service is not available in all areas. If Customer has a party other than NETSCOUT make repairs to the Products, such acts will void any warranty related to the Products. NETSCOUT is not obligated to provide Maintenance with respect to claims resulting from the fault or negligence of Customer or a third party; improper or unauthorized use of the Products; 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 Maintenance and are separately chargeable at NETSCOUT'S then-current list price.

9. Repairs. A Return Material Authorization ("**RMA**") number must be obtained prior to the return of defective Products for repair or replacement and is subject to NETSCOUT's then-current advanced replacement policy located on the My NETSCOUT Portal. 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 Maintenance with respect to such Products. 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. Unless otherwise agreed to by NETSCOUT, (a) NETSCOUT reserves the right to invoice Customer the full list price of the replacement unit for Customer's failure to return Products under an RMA, and (b) such invoice will be due and payable in accordance with **Section 3** above.

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. 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.

11. Indemnification. Customer will defend, indemnify, and hold harmless NETSCOUT from all Claims incurred by NETSCOUT caused by the willful misconduct, or negligent act or omission of Customer's employees, contractors, or consultants.

12. 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 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 GIVING RISE TO THE CLAIM.

13. Network Data. Customer may provide to NETSCOUT Customer 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 hereunder as well as for purposes compatible with providing such Maintenance including, but not limited to, error analysis and correction, and Product, Maintenance and other services 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 Products, Maintenance, and/or other services, and (b) share Network Data but only in de-identified aggregated form to create statistical analysis and for research and development purposes (**"Product and Service Analyses"**). NETSCOUT will use Network Data solely for the purposes stated herein. Within thirty (30) days of Customer's written request NETSCOUT shall delete such Network Data (other than in de-identified aggregated form contained in the Product and Service Analyses) it receives pursuant to this section. NETSCOUT retains all intellectual property rights in Product and Service Analyses, excluding any Network Data contained therein.

14. Personal Data. **"Personal Data"** means any Customer information received or accessed by NETSCOUT in connection with the provision of Maintenance under this Maintenance Description, where such information relates to an individual and is sufficient to cause such person to be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity, including personal or financial information. Customer is responsible for safeguarding the security of their Personal Data from loss, disclosure, or unauthorized access, however, to the extent NETSCOUT receives or accesses Personal Data, NETSCOUT agrees to comply with all applicable requirements contained in NETSCOUT's Privacy Policy located at <http://www.netscout.com/legal/privacy-policy/> or as otherwise provided in writing by Licensor.