

Visibility as a Service Description and Terms

These Visibility as a Service Terms (“**VaaS Terms**”) state the terms under which NetScout Systems, Inc. (“**NetScout**”) will deliver Services, as defined below. If there is a conflict between the terms under which the Software was originally licensed or NetScout hardware was originally purchased (“**Agreement**”) and these VaaS Terms, these VaaS Terms will govern for the delivery of the Services. NetScout reserves the right to change or discontinue the Services without notice, subject to the terms herein and provided the Services do not change for the remainder of the then-current Services term as identified in NetScout’s order fulfillment acknowledgement (“**OFA**”). Terms not defined herein are as defined in the Agreement. Questions regarding these VaaS Terms may be sent to legal.services@netscout.com.

1. **Definitions.**

For purposes of these VaaS Terms, the following definitions apply:

“**Design Gathering Form**” means the NetScout form to be completed by end user and NetScout that sets forth key information, including without limitation, the Monitored System.

“**Key Application**” means each specific application within the Monitored System which will be monitored by NetScout as part of the Services and is identified as such in the applicable Design Gathering Form.

“**Monitored System**” means end user’s Platform, equipment, Key Applications and Network, the applicable Design Gathering Form, and covered Products as identified in NetScout’s OFA and including the public and private IP address space of all sites being monitored.

“**Network**” means end user’s network infrastructure that is part of the Monitored System, as identified in the applicable Design Gathering Form.

“**Platform**” means end user’s on-premises deployment of the Software on NetScout or third-party hardware and which is deployed within the Monitored System.

“**Software**” means NetScout’s proprietary programs in object code as identified in the NetScout Quote.

2. **Services.**

Services can be purchased as nVaaS, VaaS or Omnis VaaS Services. nVaaS Services include MasterCare Support as a bundle, while end users purchasing VaaS or Omnis VaaS Services are required to purchase MasterCare Support separately. MasterCare Support will be provided subject to the then current Maintenance and Support Services Terms for Products located at <https://www.netscout.com/legal/terms-and-conditions> (“**Maintenance Terms**”). For purposes of these VaaS Terms, the term “**Services**” will mean the VaaS Service purchased by the end user.

3. **Description of Services.**

NetScout will provide the Services only for the Monitored System. The Services are performed 24x7, 365 days a year and includes the following activities:

- a. Work with end user to finalize the Design Gathering Form.

- b. Day-to-day administration of the NetScout hardware and/or Software which are part of the Monitored System including:
 - i. Implementation of Updates as defined in the Maintenance Terms;
 - ii. Implementation of operating system updates, and management of maintenance for NetScout and NetScout approved (certified) third-party hardware;
 - iii. Implementation assistance for installing and configuring add-on Software;
 - iv. Backup maintenance for the Software such as regular configuration, password and community string backups, and off-sight storage of the data required during disaster recovery efforts; and
 - v. Software configuration customization assistance such as designing new reports, defining targeted services dashboards, discovering and configuring complex custom and unknown applications, and integrating alerting notification functionality utilizing product capability with supported third-party applications.
- c. Operation of the Software to enable a “hands free” monitoring experience including:
 - i. monitoring of the Monitored System;
 - ii. identifying Key Application or Network anomalies detected by the Software;
 - iii. providing recommended next steps; and
 - iv. running available Key Application and Network performance and health reports.
- d. Assist end user with troubleshooting alerts and other Monitored System issues reported by end user.
- e. Provide a monthly analysis report by a NetScout expert analyzing trends and issues within the Monitored System.

4. End User Responsibilities.

Timely performance and successful delivery of the Services is conditioned upon end user’s compliance with the following obligations:

- a. Provide NetScout with all information requested and as is reasonably required or necessary for NetScout to perform the Services and promptly inform NetScout of any changes to such information for the duration of the Services.
- b. Acquire and purchase all hardware, equipment, software, and accessories necessary for proper operation of the Network and Monitored System, whether via NetScout or end user’s third-party vendors.
- c. Purchase and maintain MasterCare on all Products.
- d. Unless otherwise agreed to by the parties in the Design Gathering Form or purchased separately from NetScout, end user is responsible for initial Platform setup (i.e., “rack and stack”).
- e. End User consents to, and will grant, NetScout reasonable access to
 - i. NetScout Products and any related systems, networks, or equipment reasonably necessary to enable NetScout to provide the Services; and

- ii. the Platform which includes, without limitation, (a) providing internet and console connectivity to enable NetScout remote connection to the Platform, (b) administrative access to the ethernet management port of the Platform via SSH, HTTPS and console tools such as PuTTY; (c) access to end user's Network and information regarding end user's Network configuration and any changes thereto; (d) connectivity from the Platform to allow for outgoing e-mail to NetScout's VaaS Network Operations Center; and (e) access to the Network and the internet traffic flowing thereto and any applications contained therein.
- f. End user represents that it has obtained any consents necessary for NetScout's access required to perform the Services and will indemnify, defend, and hold harmless NetScout for all claims arising from end user's failure to obtain such consents.
- g. If end user requires NetScout to use end user's VPN tool for such access, then NetScout is not responsible for the security of such VPN tool.
- h. Take all actions as reasonably necessary to enable NetScout to perform the Services and designate a single point of contact having sufficient authority and technical skills to manage the NetScout relationship.
- i. End user shall
 - i. work with NetScout to document internal emergency/incident response procedures, including a responsibility matrix and communication plan for all incident levels;
 - ii. provide feedback on Key Application and Network performance during incident triage; and
 - iii. assist NetScout to define Network and policy requirements to ensure proper configuration.
- j. The return of any defective hardware is the responsibility of end user and subject to NetScout's then-current Return Material Authorization Policy available at <https://www.netscout.com/support/advanced-replacement-onsite-support-policy>.
- k. Except as expressly stated in these VaaS Terms, end user is responsible for implementing changes and corrections to the non-NetScout elements of the Monitored System, whether as part of routine maintenance or in response to operational or performance problem alerts.
- l. End user shall have all rights necessary to provide NetScout's access to end user's facilities and data in compliance with all applicable laws.

5. Fees, Invoicing and Payment, Acceptance.

The fee for the Services is 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. Additionally, all applicable taxes shall be paid by end user. The Services are not subject to acceptance, and NetScout will have fulfilled its obligations under these VaaS Terms when it has delivered the Services each month.

6. Limitation of Liability.

UNDER NO CIRCUMSTANCES WILL NETSCOUT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF DATA, OR BUSINESS INTERRUPTION, RESULTING FROM THE DELIVERY OF SERVICES HEREUNDER EVEN IF NETSCOUT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT WILL NETSCOUT'S TOTAL LIABILITY FOR ANY OTHER DAMAGES EXCEED THE AMOUNT PAID OR PAYABLE FOR THE SERVICES GIVING RISE TO THE CLAIM.