

**NETSCOUT SYSTEMS, INC. DEPARTMENT OF DEFENSE
SOFTWARE LICENSE AGREEMENT**

This document sets forth the Department of the Defense (“DoD”) Software License Requirements. Licensor’s Software License Agreement (otherwise referred to herein as “End User License Agreement” or “EULA”) is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the Software License Agreement attached as Exhibit A, Publisher Support Agreement as Exhibit B, and Publisher’s Security Vulnerability Response Policy as Exhibit C (collectively comprising the “DOD ESI License Agreement” or “Agreement”) constitutes the agreement between NetScout Systems, Inc. (“Licensor” or “Publisher”) and the DoD for DoD’s use of Licensor Products and Services.

The terms and conditions set out below in these Software License Requirements, supplement, and, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Exhibit A, Exhibit B and Exhibit C. Capitalized terms used herein shall have the meaning ascribed to them in the applicable Exhibit unless otherwise defined in these Software License Requirements. For clarification in this Agreement, Publisher and Licensor are synonymous.

With regard to any conflict in license terms between the DOD ESI License Agreement and any GSA negotiated license agreement, the Order of Precedence is in the following order: 1) the DOD ESI License Agreement and 2) any GSA negotiated license agreement.

- 1. General:** The parties agree that more than one agency of the DoD may utilize this Agreement for the purpose of establishing the terms and conditions applicable to Licensor’s Products and/or Services, provided that any use of Products or Service by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to order the licensed Product or Service to an authorized Licensor reseller. The parties agree that, if the licensee is a “DoD Department or Agency” as defined by the 48 Code of Federal Regulations, section 202.101, and to include the Intelligence Community (<https://www.dni.gov/index.php/what-we-do/members-of-the-ic>) and the US Coast Guard, the terms and conditions of this Agreement apply to any purchase of Products and/or Services made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor’s published policy or program documentation or customer ordering documents. It is also understood by both parties that any Licensor policies, URLs referencing other terms, conditions or policies or educational documents will not be considered part of this Agreement.
- 2. Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws.
- 3. Indemnification:** The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the

DoD agency and the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.

4. Patent, Copyright, Trademark, and Trade Secret Protection:

- a) The Licensor shall, at its expense, indemnify and hold the DoD harmless from any suit or proceeding which may be brought by a third party against the DoD, its departments, officers or employees that the Product infringes on any United States patents, copyrights, or trademarks of any third party (the "Claim"). For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim. The DoD agrees to give Licensor prompt written notice of any such Claim of which it learns. Notwithstanding anything to the contrary in the foregoing, NetScout's obligations under this Section 4 will not apply to open source software. DoD has the sole authority to represent itself in actions brought against the DoD; Licensor has the sole authority to represent itself in actions brought against Licensor or its Products or Services. Licensor shall not, without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the Product or Service which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the Product or Service which is the subject of the Claim, or (c) requires the DoD to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the DoD. It is expressly agreed by the Licensor that, in the event it makes an appropriate request that the DoD provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the DoD for all necessary and reasonable expenses (including reasonable attorneys' fees, if such are made necessary by the Licensor's request) incurred by the DoD for such support.
- b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all Software provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any third parties.
- c) If, in the Licensor's opinion, the Software furnished hereunder are likely to or do become subject to a claim of infringement of a valid United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, either (a) procure, at no cost to DoD, the right for DoD to continue using the Product; (b) replace or modify the Product to render it non-infringing, provided there is no material loss of functionality; or (c) if, in NetScout's reasonable opinion, neither (a) or (b) is commercially feasible, terminate the license and refund the amounts DoD paid for such Product, depreciated on a straight-line sixty (60) month basis, upon return of the Product to NetScout.
- d) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.
- e) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:

- (1) Modification of any Software provided by the DoD or a third party acting under the direction of the DoD;
 - (2) any material provided by the DoD to the Licensor and incorporated into, or used to prepare the Software;
 - (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement;
 - (4) use of the Software in manner inconsistent with the documentation provided by Licensor;
 - (5) the combination, operation, or use of the Software with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (6) infringement of a non-Licensor product alone;
 - (7) the DoD's use of the Software beyond the scope contemplated by the Agreement;
 - or
 - (8) the DoD's failure to use corrections or enhancements made available to the DoD by the Licensor.
- f) The obligation to indemnify the DoD, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. Virus, Malicious, Mischievous or Destructive Programming:

Licensor warrants that the licensed product at the time of shipment does not contain any known viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the Software (each a "Virus"). However, the Software may contain a key limiting use to the scope, quantity and duration of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

The DoD's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty is set forth in Licensor's Security Vulnerability Response Policy, a copy of which is attached hereto as Exhibit C, provided that:

- the Software have been installed and used by the DoD in accordance with the Licensor's documentation provided with the Software;
- the Software have not been modified by any party other than Licensor;
- The DoD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the Software and has used a generally accepted antivirus software to screen the Software prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DoD for loss of the DoD's data arising from the failure of the Software to conform to the warranty stated above.

6. Delivery: To the extent available, Publisher will make the Software available via electronic download.

7. Program Warranty: Licensor warrants for ninety (90) days from the date on which the Software specified in a Delivery Order Document is made available by Licensor ("Warranty Period") that the

Software will perform in all material respects the functions described in the Documentation when operated in accordance with the Documentation on a Supported Platform.

- a) **Noncomplying Product:** In the event DOD determines that the Product is a Noncomplying Product, during the Warranty Period, DOD will notify Licensor and Licensor will repair or replace the Noncomplying Product.
- b) **Publisher Remedies:** Licensee must report to Licensor in writing any breach of the warranties during the relevant Warranty Period. Licensor shall use commercially reasonable efforts to correct or provide a workaround for reproducible Software errors that cause a breach of this warranty.
- c) **Discontinuance of Support:** Licensor will give DOD one hundred eighty (180) days advance written notice before Licensor discontinue Maintenance of any Product.

8. Limitation of Liability: The Licensor's liability to the DoD under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to direct damages resulting from Licensor's for:

- a) Bodily injury;
- b) death;
- c) intentional injury;
- d) damage to real property or tangible personal property for which the Licensor is legally liable; or
- e) Licensor's indemnity of the DoD for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages. Licensor will not be liable for damages due to lost records or data.

9. Termination: Licensor may not terminate this Agreement for non-payment from reseller. The DoD may terminate this Agreement without cause by giving Licensor thirty (30) calendar day's prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience).

10. Background Checks: This term will be applicable if required by local command policy and prior to the commencement of on-site professional services by Licensee employee who is proposed for assignment to perform services at your site or via remote access in or from the United States and only if the Licensor employee does NOT possess a Department of Defense ("DoD") performed National Agency Check with Inquiries ("NACI") or a DoD security clearance of SECRET or higher, Licensor, or its agent, will complete a criminal background check, or confirm that such a background check has been completed, on such employee. The criminal background check shall consist of a check of public records, to the extent available at the county level, where the employee has established credit in the United States as determined by a social security trace. The check is for felony and misdemeanor convictions within the seven (7) years preceding the date of the check. To the extent not prohibited by law, Licensor shall not assign any employee to perform such services for whom a criminal background check, at the time of its completion, uncovered conviction of a felony or conviction of a misdemeanor. In the event that DoD requires on-site support outside the United States, Licensor will make reasonable efforts to work with DoD in order to address its security concerns.

11. **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.
12. **Publicity/Advertisement:** The parties must obtain written approval prior to mentioning the other party in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
13. **Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.
14. **Backup for User Documentation:** Licensor grants DoD to make a reasonable number of copies of the Documentation solely for DoD's internal business purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Licensor if DoD learns of the misuse or mishandling of Documentation, including but not limited to misuse by DoD personnel, contractors or Government employees.
15. **Transfers and Assignments:** Licensee is authorized to transfer or assign the Software or Licensee's rights in the Software as follows:
 - a) Transfers: within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected Software licenses to a successor.
 - b) Assignments: Licensee is authorized to assign ownership of licenses when Licensee intends to designate an outsourcer, contractor (in support of the DoD mission), DoD Agency or other, as determined, to assume ownership of the license along Licensor written concurrence. All activities by such Assignee shall be subject to the Licensor's Software License Agreement. Any deviation shall be subject to a separate agreement between Licensor and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Licensor's Software License Agreement. The assignment of licenses will be without cost to any party involved in the assignment of licenses. It is further understood that Assignee will be responsible for all future Software Maintenance costs of any assigned licenses.
 - c) Licensee shall complete any required Licensor documentation required to facilitate the transfer or assignment of license and continuation of support for the transferee or assignee. All license transfers or assignments will be without cost to the Licensee, provided that the licenses are current with regard to Licensor annual Maintenance, and the Licensee does not re-market or otherwise intend to resell the licenses to be transferred. It is inherently understood Licensee and the successor transferee or assignee agree to be bound to this Software License Agreement.
16. **Functionality Replacement and Extended Support.** Provided DoD has and continues to purchase Maintenance on the Software, and subject to Licensor's end-of-life policy, the terms set forth in this Section 16 shall apply: If Licensor removes any or all of the material features or functionality to which DoD is being granted access hereunder from the Software without introducing

replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Licensor subsequently offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DoD the License will be deemed to include (i) the portion of those new or different Software applications that contain the original features, or (ii) another reasonable substitute as determined by Licensor will be provided to DoD under the terms of this Agreement at no additional charge to DoD. If the Software provided to DoD is updated as replacement, renamed or re-branded applications or products for any reason, then DoD shall be entitled to the same license to use the replacement, renamed or re-branded Software as DoD had with respect to the Software that DoD had immediately prior to such replacement, renaming or re-branding, at no additional charge to DoD so long as (a) the new Software application is functionally equivalent, at a minimum, and the same conditions of use apply as to the original Software application and (b) Licensor ceased or has advised DoD that Licensor intends to cease supporting the initial Software while DoD was still purchasing Maintenance for such Software. If the form, fit, or functionality contained in any Software application acquired hereunder is substantially reduced or if the Software application is replaced, and/or the Licensor provides the same or substantially similar functionality as a separate or renamed Software application, then the DoD is entitled to license such Software application without any additional license requirements or additional maintenance fees. However, throughout the term of this Agreement, the Licensor will provide support services for at least a period of one year after the Publisher declares an “end-of life” to the Software.

17. Rights of Survivorship of the Agreement. This Agreement shall survive unto Licensor, its successor, rights and assigns, in perpetuity, notwithstanding the acquisition or merger of Licensor by or with another entity.

18. Audit Responsibilities: This Section sets out the sole audit right under this Agreement

- a) DOD will maintain, and promptly provide to Publisher upon its request, but no more frequently than once in a twelve (12) month period, accurate records regarding use of the Software by or for DOD. If DOD becomes aware of any unlicensed use of the software, DOD will notify Contractor and Publisher within 15 calendar days, providing reasonable details. The remedy for any unlicensed use of the Software by any Users employed by or performing services for DOD is the requirement that DOD purchase additional licenses for the product through Contractor without any penalty or promptly stop using the software and delete any unauthorized copies.
- b) DOD will perform a self-audit, upon the request of the Publisher, but no more frequently than once in a twelve (12) month period, and report Software program use. The Publisher may make such a request of an individual agency of the DOD and will notify the DOD in the event of such a request. If the Publisher requests a self-audit from a DOD agency, a will not make another request of that agency for at least 12 months. Any self-audit, which shall be certified by a DOD employee authorized to do so, shall include, but not be limited to, the number of copies of the Software programs installed and/or in use by the DOD, the designated system(s) on which the Software programs are installed and/or running, and if applicable, the number of users of the Software programs. DOD shall notify Contractor and Publisher of the number of licenses in use no later than 90 calendar days after completion of the self-audit. If the self-audit finds that DOD is under-licensed, DOD will either 1) cease use of the quantity in excess of the DoD licensed quantity and work with the Publisher and Contractor in good faith to account for such excess use or 2) make an additional purchase of the Software product through Contractor, wherein such pricing is in accordance with

any current ESI pricing. The procurement of additional licenses, if required, will transpire no later than 60 days after DOD's aforementioned notification. There will be no penalties involved in the procurement of the additional licenses.

- 19. US Government Configuration Baseline:** To the extent applicable to the Software, the Publisher shall comply with the requirements of the US Government Configuration Baseline (USGCB) as specified at <http://usgcb.nist.gov> to ensure applications are fully functional and operate correctly as intended. The standard installation, operation, maintenance, updates, and/or patching of the Software shall not alter the configuration settings from the approved USGCB configuration without DOD consent.

 - a) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.
 - b) Publisher shall also certify that any product/module is/are fully functional and operate correctly on systems using USGCB prior to any product/module revisions being made available for Government use. Further, the Publisher shall endeavor to maintain operability with USGCB standards as they evolve.
 - c) DoD buyers may require compliance with additional baseline configuration requirements.

- 20. Net-Centricity:** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at: http://DoDcio.defense.gov/Portals/0/Documents/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services. Software products offered to and purchased by the DoD and Intelligence Community shall be licensed by the software publisher without restriction to information sharing among the DoD and IC in performing their missions.

- 21. Section 508 of the Rehabilitation Act Compliance:** All products and services provided under this Agreement must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site www.section508.gov. The Publisher's Section 508 compliancy information must be readily available at the Publisher's website.

- 22. Orders:** Any term or condition in an order that will expressly supersede a term or condition of this Agreement must be approved in writing between Licensor and the ESI contracting officer

- 23. Temporary Use of Software During Times of Conflict and/or Natural Disaster:** As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, upon request, Licensor will grant DoD a reasonable number of temporary licenses to the impacted Software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally,

the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces.

After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.

- 24. Software Asset Management & ISO-IEC 19770:2015 Series:** The Licensor shall endeavor to comply with the applicable principles of ISO 19770:2015 Series Standards for all installable or distributable Software products governed by this Agreement to the extent practicable. If any part of the ISO-IEC 19770:2015 standard is not approved by the ISO International Standards Committee at the time of contract execution, the Licensor shall make commercially reasonable efforts to comply with the standard upon approval by ISO.
- 25. Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions who have purchased a license to use the Licensor's Software. Authorized Users may choose to provide results, reports or other information generated using Licensor's Software with its consumers at its discretion.
- 26. Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments. This license provides the DoD all rights concerning data sharing, data access, data transfer and data manipulation for Authorized Users associated with the DoD missions. The parties agree that as long as one party has a valid license, the transfer of data or the sharing of data is unrestricted. This license also provides for the ability of Authorized Users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.
- 27. INTENTIONALLY DELETED**
- 28. Shelf Ware:** It is recognized, that in some instances, DoD may have excess Licensor software licenses that are not currently being used or needed by DoD. These licenses are commonly called Shelf Ware. At DoD's sole discretion, the DoD may transfer these licenses as described in Section 13 of this document or DoD may terminate the license grant, as it deems necessary. The termination or transfer of licenses may result in a reduced license count and, DoD may elect to terminate Maintenance on such terminated or transferred licenses from its next annual maintenance order. In no event, when a subset of licenses is terminated or if the level of support is reduced, support for the remaining licenses will not change in services or result in any type of fee recalculation.
- 29. Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.

- 30. Additional Functionality:** Provided the Government has purchased Maintenance for the applicable Licensor Software, any additional functionality provided on such Licensor Products as part of Licensor Maintenance offering shall not impose additional license restrictions and/or fees on the Government unless otherwise agreed.
- 31. License copies for evaluation.**
During the term of this Agreement (including any renewal term), an agency (as defined locally) may, pursuant to a mutually agreed upon evaluation request form, run up to 50 complimentary copies of any additional product for the evaluation period identified in the applicable evaluation request form. .
- 32. Finality of Terms:** This Agreement and any attachments to this Agreement will be the sole document governing the granting of licenses between DoD and Licensor. There shall be no changes to this license Agreement unless agreed to by both parties in writing.
- 33. Software Titles Incorporated by this License Agreement:** This Agreement will govern the provision and use of any Software offered by Licensor as of the effective date of this Agreement as well as any new Software offerings made available by Licensor during the effective term of this Agreement.
- 34. Use of this Agreement by the Federal Government:** The parties agree that, if a federal agency implements another contracting vehicle for Licensor's Software products and/or Services, and if the licensee is an agency of the Federal Government, then, the terms and conditions of this Agreement can apply to such purchase of the Software products and/or Services by that agency, and that the terms and conditions of this Agreement become part of the purchase document provided however that such agency expressly agrees in writing to be bound by the terms and conditions of this Agreement in the purchase document. In the event an agency references this Agreement in its purchase document, this Agreement will be the sole and exclusive terms governing the Software and/or Services identified in the purchase document.
- 35. DoD Enterprise License:** The parties agree, that in the spirit of cooperation, there may be an instance, during the course of this Agreement, where DoD desires an enterprise agreement with the Publisher. The parties agree that all will work towards implementation of a DoD enterprise license agreement, that all terms contained in this Agreement may become part of such enterprise license agreement and the DoD and Publisher will work cooperatively on issues that may hamper such an agreement (legacy licenses and the accompanying support, right-sizing the enterprise and so on).
- 36. Virtualization:** Publisher recognizes virtualization through partitioning. Should DOD desire to implement virtualization for Publisher's Software programs licensed pursuant to this Agreement, partitioning shall be defined and executed as follows:
- a) Soft Partition (also called Software Partition): Soft Partition means to partition the operating system using system resource managers that limit the number of CPUs running Publisher programs. Soft Partitioning creates areas within the same operating system where CPU resources are specifically allocated to respective applications.
 - b) Hard Partition (also called Hardware Partition): Hard Partition means to partition the server by physically separating the processors of a single server into distinct smaller

servers, each of which acts as a physically independent, self-contained server, typically with its own dedicated CPUs, operating system, separate boot area, memory, input/output subsystem, and network resources.

- c) Implementation: If DOD partitions through either Soft Partitioning or Hard Partitioning then DOD is only required to license programs for the partitions on which DOD will be installing and/or running the Software.

37. Deployment and Use of Applicable Perpetual, Subscription or Term Licenses in a Cloud

Computing Environment: Licenses acquired under this Agreement for purpose of use in a cloud computing environment (“Cloud Compatible Software”) will have a perpetual “Cloud Grant”. For purposes of this Agreement, the term “Cloud Grant” means that DOD can deploy and use any quantity of its perpetual or term Publisher licenses to the Cloud Compatible Software in any cloud computing environment (private or public) supported by such Cloud Compatible Software and with any applicable third-party cloud service provider. The use of DOD licenses is limited to the mission and business of the DOD. The DOD retains all ownership responsibilities of the licenses. The DOD will maintain records of license deployment.

DOD can transfer its perpetual and term Publisher licenses to the Cloud Compatible Software between on-premises data centers and third party cloud service providers having cloud computing environments supported by the Cloud Compatible Software without charge, limitation, or change in functionality. The DOD shall have the right to determine the version level for transfers.

For the Cloud Compatible Software licenses for which DOD has purchased Maintenance DOD will have access to upgrades made available under Maintenance without charge.

- 38. Ineffective Provisions:** If any document incorporated by reference into this Agreement, and/or referenced therein, contains a provision (a) allowing for the automatic termination of your license rights or technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law, and/or (d) that otherwise violates applicable Federal law, then, such terms shall not apply and shall have no effect. If any document incorporated by reference into this Agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying the Publisher or any other party.

- 39. Previously Acquired Licenses:** All Publisher licenses, of any versions or releases, that were acquired and/or assigned to any DOD agency prior to the effective date of this Agreement shall be converted and replaced with licenses subject to the End User License Agreement set forth in Exhibit A to this Agreement.

40. INTENTIONALLY OMITTED

- 41. Professional Services:** Publisher may subcontract all or part of the services to be performed, to a qualified third party provided such third parties are compliant with the applicable section 10 of this Agreement.

- 42. Parallel Operations:** For no additional cost, the DOD Authorized User shall have the ability to run Publisher’s Software on parallel systems for up to one hundred and eighty (180) days, or a

longer mutually agreed upon timeframe, for system migrations and/or hardware refreshes. The DOD will ensure the duplicate instances required during the Parallel Operation period are uninstalled and deleted once the Parallel Operation is no longer required. The DOD will only request the ability to run the same number of license instances that are currently licensed by the DOD. If additional licenses are required than the quantity licensed by the DOD agency, the DOD will acquire the necessary licenses.

EXHIBIT A
NetScout Systems, Inc.
End User License Agreement

NETSCOUT SYSTEMS, INC., ON BEHALF OF ITSELF AND ITS SUBSIDIARIES AND AFFILIATES (COLLECTIVELY, "NETSCOUT"), WILL LICENSE PRODUCTS TO YOU ONLY IF YOU ACCEPT THIS END USER LICENSE AGREEMENT ("AGREEMENT"). CAREFULLY READ THIS AGREEMENT BEFORE USING THE PRODUCTS. By clicking the "I accept" button below, or by installing or using the Software, you indicate that you understand this Agreement and accept and agree to comply with all of its terms. If you do not accept all of the terms of this Agreement, then DO NOT INSTALL THE SOFTWARE.

Definitions

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

"Hardware" means hardware products generally available on Licensor's price list.

"Licensor" means either NetScout Systems, Inc. or the NetScout affiliate from whom you are receiving the Product or Services, either directly or via an authorized Licensor reseller.

"Maintenance" means technical support services for the Products that Licensor makes available upon purchase in accordance with Licensor's then-current technical support services terms as applicable.

"Product" means the Software and/or the Hardware.

"Quotation" means the document under which Licensor offers for sale and license its Products, Maintenance, and other services.

"Software" means Licensor proprietary programs in object code and the firmware contained on the Hardware generally available on Licensor's price list. In the event you purchase Maintenance, Software includes any updates (maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Licensor customers generally as part of Maintenance pursuant to a valid Maintenance contract). The term Software does not include APIs (defined in **Section 13.c**).

"Services" means Maintenance as well as any other services offered by Licensor from time to time.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Agreement, the Documentation and the applicable Quotation, Licensor grants you a limited, non-exclusive, non-transferable license to use the Software and the Documentation for your own internal business purposes. Such use is limited to the number of licenses and duration for which you paid the applicable license fee. You may make one copy of the Software for archival or backup purposes only ("**Copy**") as well as copies of the Documentation for internal use only. The Copy may not be used to implement fault tolerant, redundant, or contingency environments. Proprietary rights notices on Software and Documentation must be reproduced and applied to any Copy.

2. License Restrictions.

(a) NetScout and its third-party licensors (such third-party licensors, the "**Suppliers**") retain all right, title, and interest in and to the Software and all copies. No title to the Software, or to any intellectual property or other rights, is transferred to you other than as specified in this Agreement. No right, title or interest in or to any trademarks, service marks, or trade names of Licensor or its Suppliers is granted by this Agreement. Software is copyrighted and contains proprietary information and trade secrets belonging to Licensor and its Suppliers.

Except as required by law, you will not, and will not cause or permit others to, derive the source code of the Software, or reverse engineer, disassemble, or de-compile the Software. In addition, you may not and will not cause or permit others to (i) create derivative works of the Software, (ii) lend, rent, lease, assign, sublicense, and/or make available through timesharing the Software, (iii) disclose the results of any benchmark tests run on the Product without Licensor consent, or (iv) without Licensor's prior written authorization, transfer the Software or provide third party access to the Software. Transfers will only be permitted for products with no more than minimal differences in price, features, and functionality and provided that the transfer does not increase the number of licensed copies. Any violation of these restrictions will be cause for immediate termination by Licensor of this Agreement and any licenses granted.

(b) If you move the Product from one location to another ("**Product Relocation**"), you do so at your own risk, loss and expense. You are responsible for obtaining all necessary licenses to export, re-export or import the Product. You will indemnify, defend and hold Licensor harmless from and against 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 Licensor of Product Relocation may result in an inability for Licensor to perform its warranty obligations or Maintenance in accordance with its Maintenance terms, and Licensor shall not be liable for any claims resulting from Product Relocation.

(c) If you purchase only Software and use such Software on or with hardware that does not meet the technical specifications set forth in the applicable Software-only Product Documentation, then: (i) Licensor will not warrant the performance of or results obtained by using the Software-only Product and Licensor disclaims all liability with respect to the foregoing, (ii) you assume the risk as to the results and performance of the Software-only Product, and (iii) you hereby acknowledge and agree that your rights and Licensor's obligations with respect to Maintenance and warranty are waived.

(d) The Product may contain third-party technology. Such third-party technology and documentation ("**Third-Party Materials**") is licensed for use with the Product only. If the Product contains Third-Party Materials, or if you have the option to use the Product in conjunction with Third-Party Materials (as identified by the Documentation), then such Third-Party Materials are provided or accessible subject to the applicable third-party terms contained either in an electronic file located in the Software, or in a document, application CD or appendix to the Product Documentation. You agree to abide by the terms of said licenses and to obtain any additional licenses that may be required to use the Third-Party Materials, including but not limited to patent licenses. Your use of Third- Party Materials in conjunction with the Product and in a manner consistent with the terms of this Agreement is permitted, provided, however, that you may have broader rights

under the applicable Third-Party Materials license and nothing in this Agreement is intended to impose further restrictions on your use of such Third-Party Materials. You agree to indemnify, defend and hold Licensor harmless from and against all Claims arising from failure to obtain, or breach of, Third-Party Materials licenses. To the extent Products include Third-Party Materials licensed to Licensor by third parties, those third parties are third party beneficiaries of, and may enforce, the applicable provisions of this Agreement as well as the Third-Party Materials terms and conditions.

(e) If you are using the Product to perform network management and monitoring services for third parties ("**Managed Services**"), the following terms apply, unless you have a signed agreement with NetScout, in which case the terms of the signed agreement will govern your use of the Product in support of your Managed Services activity. Title to the Hardware and licenses to Software remain with you and may not be resold or sublicensed to your Managed Services customer. You are hereby granted the right to use the Software for monitoring and managing the networks of your Managed Services customers. In addition to needing a Software license for use of the Software in support of your internal business operations, you will need to purchase a separate Software license for deployment and use of the Software by each of your Managed Services customers. You will maintain Maintenance for Products associated with your Managed Services on behalf of your customers. You will not replace or make repairs or modifications (collectively, "**Repairs**") to the Hardware or any of its components. Notwithstanding anything to the contrary in **Section 2(b)**, transfers of Products from an identified location to a different location will require Licensor's prior written consent, and you will notify Licensor of the name and new address of your Managed Services customer associated with such transfer. You will indemnify, defend, and hold Licensor harmless from and against all Claims, incurred by Licensor arising from (i) Repairs made by you or any third party, (ii) misrepresentations made by you to your Managed Services customer related to the Products or Maintenance, (iii) your performance of Managed Services, (iv) use of Products in violation of applicable country export restrictions, or (v) your infringement of Licensor or its Suppliers' intellectual property rights. You may permit your Managed Services customer access to Products located on premises owned or under the control of such customer, provided that (vi) the customer accesses such Products for its own internal business purposes, (vii) the customer executes a written confidentiality agreement with you that incorporates terms at least as protective of the Products and Services as provided in this Agreement, and (viii) you remain responsible for breach of such confidentiality agreement or any of the terms and conditions of this Agreement by your Managed Services customers.

(f) If you use the services of a third party to perform network management and monitoring services on your behalf (such third party an "**Outsourcer**" and such services, "**Outsourcing Services**"), then the following terms apply. Subject to the terms of this Agreement, (i) Outsourcer may access the Products and Maintenance solely for purposes of performing Outsourcing Services, (ii) Outsourcer must use the Products and Maintenance in accordance with the terms of this Agreement, (iii) you remain liable for and will indemnify, defend, and hold harmless NetScout from and against any and all Claims associated with (1) all actions, demands, and suits brought against Licensor arising from Outsourcer's use of the Products and Maintenance in a manner not permitted hereunder or in the Documentation, or repairs to the Hardware or replacements or modifications to components thereto, or (2) breach of the license grant, license restrictions, Licensor's intellectual property rights, or confidentiality obligations hereunder by you or Outsourcer, (iv) Outsourcer executes a written confidentiality agreement with you that incorporates terms at least as protective of Licensor's Confidential Information, as provided herein, (v) you provide written notification to NetScout of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance, and (vi) if the Products are relocated to a data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited to computer processors exclusively dedicated for your sole access, use and benefit. Any violation of the foregoing will be cause for immediate termination by NetScout of this Agreement and any licenses granted as a result. In any event, you will remain responsible for all payment and other obligations which will remain in full force.

3. License Term. The license is effective until terminated. You may terminate the license at any time by destroying the Software, Documentation, and Copies, and providing written certification to Licensor that all of the foregoing has been destroyed. The license will also terminate if you or your employees or third-party agents fail to comply with any terms of this Agreement. Upon such termination, you will either return the Software, Documentation, and Copies or, with Licensor's prior consent, destroy the Software, Documentation, and Copies.

4. Confidentiality. The Product (including Copies and Unsupported Products, defined in **Sections 1 and 13**, respectively) contains valuable trade secrets of NetScout and constitutes Confidential Information of NetScout and its licensors. Additionally, "Confidential Information" includes non-public NetScout technical, financial, commercial or other confidential or proprietary information, Services, Product roadmaps, pricing, software code, Documentation, techniques and systems. You will not disclose Confidential Information to any third party except to the extent such disclosure is necessary for performance of this Agreement, or it can be documented that any such Confidential Information is in the public domain and generally available to the general public without any restriction. You will use the same degree of care to protect Confidential Information as you use to protect your own confidential information but in no event less than reasonable care. Accordingly, you will not provide access to or disclose Confidential Information to any third party without the prior written consent of a duly authorized U.S. NetScout corporate officer. In addition, you may not disclose or otherwise publish the results of any benchmark tests run on the Products to any third party without NetScout's prior written approval. Confidential Information will, at all times, remain the property of NetScout.

5. Warranty.

(a) Limited Warranty. Licensor warrants that the media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the original date of shipment of the Software ("**Media Warranty Period**"). Licensor warrants that the Software for a period of 90 days ("**Software Warranty Period**") and the Hardware for a period of 12 months ("**Hardware Warranty Period**"), in either case from its original date of shipment or, in the case of Software, when first made available to you for download, will substantially conform to the Documentation. If, during (i) the Media Warranty Period, a defect in the media occurs and is reported to Licensor, the media may be returned to Licensor, and Licensor will replace the media without charge to you, or (ii) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to Licensor, Licensor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware. The foregoing warranties will apply provided you give Licensor prompt written notice of any such defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware, as the case may be, to Licensor in accordance with Licensor's return process.

(b) Warranty Exclusions. The warranty set forth in **Section 5** does not apply to any failure of the Software or Hardware caused by (i) your failure to follow Licensor's installation, operation, or Maintenance instructions, procedures, or Documentation; (ii) your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (iii) modifications or repairs not authorized by Licensor in writing; (iv) use of the Products in combination with equipment or software not supplied by Licensor or authorized in the Documentation; and (v) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Licensor's reasonable control. Licensor cannot and does not warrant the performance or results that may be obtained by using the Products, nor does Licensor warrant that the Products are appropriate for your purposes or error-free.

THE WARRANTY SET FORTH IN SECTION 5 IS YOUR SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S ENTIRE LIABILITY FOR DEFECTIVE MEDIA OR NON-CONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

6. Liability Limit. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL LICENSOR OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR 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. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE CUMULATIVE LIABILITY OF LICENSOR EXCEED THE AMOUNTS PAID OR PAYABLE TO LICENSOR FOR THE APPLICABLE PRODUCT OR SERVICE THAT GAVE 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.

7. Audit Rights. Licensor may conduct, during normal business hours, an audit of your use of the Software, including any Third-Party Materials contained therein, as well as applicable records and computers, to verify your compliance with the terms and conditions of this Agreement. Licensor may provide the results of any such audit to Suppliers of Third-Party Materials.

8. Export Controls. You will comply, at your own expense, with all laws, regulations, rules, and ordinances of any governmental body, department, or agency that apply to or result from your obligations under this Agreement. You hereby represent and warrant that neither the Products, nor any related technical information, data, documents, and materials, nor any derivatives, will be exported, re-exported, diverted, transferred, or disclosed, directly or indirectly, to any country or to any national or resident thereof, except as authorized and permitted by all applicable laws and regulations. You will cooperate with Licensor in executing documents or licenses necessary to comply with these laws and regulations and with any related audit or inspection. Certain Products contain encryption and therefore may be subject to import and use restrictions in other countries. You are responsible for complying with the import, export, and use restrictions of other applicable countries, including those that relate to Products that contain, use, or perform encryption. You shall indemnify, defend, and hold Licensor harmless from and against all Claims arising from your failure to comply with this **Section 8**.

9. Survival. The following sections will survive any termination of this Agreement: 2 (License Restrictions), 4 (Confidentiality), 6 (Liability Limit), 7 (Audit Rights), 8 (Export Controls), 10 (Assignment), 11 (U.S. Government Restricted Rights), 12 (High Risk Activities), 14 (Personal Data and EU Export Compliance) and 15 (Feedback; Aggregate Data; Threat Intelligence).

10. Assignment. You will not directly or indirectly sell, transfer, assign, or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, to any third party, including to any affiliated entity, without the prior written consent of Licensor.

11. U.S. Government Restricted Rights. If You are licensing Software and Documentation on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), it is classified as "**Commercial Computer Product**" and "**Commercial Computer Documentation**" developed at private expense, contains confidential information and trade secrets of NetScout and its Suppliers, and is subject to "Restricted Rights" as that term is defined in the Federal Acquisition Regulations. The Government's rights in the Software and Documentation shall be only those set forth in this Agreement.

12. High Risk Activities. The Product is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or aircraft communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High Risk Activities**"). Licensor expressly disclaims any express or implied warranty of fitness for High Risk Activities.

13. Additional Terms and Limitations for Unsupported Products.

(a) **Evaluation Products.** If you have received a temporary right to use the Product for testing, evaluation, or demonstration purposes ("**Evaluation Product**"), then, subject to the terms of this Agreement and Documentation, Licensor hereby grants you a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the applicable Licensor Evaluation Request Form or other Licensor documentation solely for testing, evaluation, or demonstration purposes.

Evaluation Product that is Software contains a license key which disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable.

If, upon conclusion of the evaluation period, you wish to continue to use the Evaluation Product, you must purchase such Product. If you choose not to purchase the Evaluation Product, any installed Software-only Evaluation Product must be removed from your system(s) and all permitted copies of such Evaluation Product immediately destroyed. A Return Materials Authorization number ("**RMA #**") for any Hardware Evaluation Product must be obtained prior to return of such Product. Upon completion of the evaluation period and before you ship Hardware Evaluation Products to Licensor you must comply with **Section 14**.

(b) **Pre-Released Product.** If the Product you have received with this license is not yet commercially available ("**Pre-Released Product**"), then Licensor grants you a temporary, revocable, non-exclusive, non-transferable license to use the Pre-Released Product

and the associated Documentation, if any, as provided to you by Licensor solely for internal (i) laboratory, (ii) demonstration, and (iii) evaluation purposes. If you have been provided the Pre-Released Product pursuant to a separate written agreement, your use of the Pre-Released Product is also governed by such agreement. Licensor may terminate your right to use the Pre-Released Product at any time at Licensor's discretion.

Your Use of the Pre-Released Product is limited to 30 days unless otherwise agreed to in writing by Licensor.

You acknowledge and agree that (iv) Licensor has not promised or guaranteed to you that the Pre-Released Product will be announced or made available to anyone in the future; (v) Licensor has no express or implied obligation to you to announce or introduce the Pre-Released Product; (vi) Licensor may not introduce a product similar to or compatible with the Pre-Released Product; and (vii) any use of the Pre-Released Product or any product associated with the Pre-Released Product is entirely at your own risk.

During the term of this Agreement, if requested by Licensor, you will (viii) provide feedback to Licensor regarding use of the Pre-Released Product, including error or bug reports, (ix) promptly report to NetScout any problems that may arise in evaluating and using the Pre-Released Product, (x) prepare a report evaluating the Pre-Released Product as part of a test plan or describing problems encountered and any resolutions developed for those problems, and (xi) provide VPN or on site access to the Pre-Released Product as necessary. Additionally, during the term of your use of the Pre-Released Product, you may provide Licensor with certain electronic data capture or survey files ("**Project Files**"). You hereby grant to Licensor a worldwide, nonexclusive, nontransferable, non-assignable, perpetual right and license to reproduce, use, display, modify, manipulate and analyze the Project Files for the purposes of enabling Licensor to support, maintain, develop, test and enhance Products and Services. By providing Project Files to Licensor, you represent and warrant to Licensor that you have sufficient rights to the Project Files to grant such rights to Licensor.

If it becomes necessary for you to withdraw from the Pre-Released Product testing for a particular Pre-Released Product, you will withdraw, at your own cost, according to the following procedure: You will de-install the Pre-Released Software and return to Licensor all materials provided by Licensor to you as part of the Pre-Released Product process, including all temporary server platform(s) or Hardware provided, if any. Upon receipt of a later, unreleased version of the Pre-Released Product or release by Licensor of a publicly released commercial version of the Pre-Released Product, whether as a stand-alone product or as part of a larger product, you agree to return or destroy, within 10 days, all copies of earlier Pre-Released Product received from Licensor and to comply with the terms of the applicable End User License Agreement for any such later versions of the Product. You will not disclose any features or functions of any Pre-Released Product until Licensor makes the Pre-Released Product publicly available.

(c) **APIs.** "**APIs**" means the software application interfaces and workflow methods made generally available by Licensor in certain Products to enable integration, implementation, and interoperability with third party hardware and software. If Licensor makes APIs for a given Product generally available, then the following terms will apply. You may use the API, together with applicable documentation, any sample code, and any sample applications provided with the API and that may be included as part of a Software Development Kit ("**SDK**") to design, develop, and test software programs. You may (i) make a single copy of the SDK for back-up purposes only (ii) copy the runtime components of the SDK ("**Runtime Component**") into software code created through your use of the SDK, and (iii) reproduce and distribute such Runtime Component solely as a component of your software code. You may not use the SDK to develop, or incorporate the Runtime Component in, a product or service that competes with Products or Services. Licensor's ownership rights in **Section 2** apply to any output such as the Runtime Component. The inclusion of the Runtime Components in your original code created through your use of the SDK in no way alters Licensor's ownership rights in the Runtime Component. Licensor may develop software programs substantially similar or identical to those developed by you through your use of the SDK and reserves the right to sell and distribute those software programs.

(d) **Unsupported Products.** If the Product you have received with this license is or includes (i) Evaluation Products, (ii) Pre-Released Products, or (iii) SDKs (collectively, "**Unsupported Products**"), then you will pay for repair of damages to, or the list price of, the Unsupported Products, as applicable, due to theft, or loss of or damage to Unsupported Products from the time you receive such Products until Licensor receives the Unsupported Products back upon conclusion of your applicable use. To the extent that any provision in this Section conflicts with any other term in this Agreement, this Section will supersede such other term(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Unsupported Products are provided to you "AS-IS" and Licensor disclaims any warranty or liability obligations to you of any kind. Maintenance is not available for the Unsupported Products. Licensor may change, suspend, or discontinue any aspect of the Unsupported Products at any time, including the availability of any Unsupported Product, and impose limits on certain features and services or restrict your access to parts or all of Pre-Released and SDK Products. Licensor's ownership rights and the restrictions in **Section 2**, apply to Unsupported Products.

To the maximum extent permitted by applicable law, you hereby (iv) release Licensor and its subsidiaries, affiliates, officers, agents, licensors, and employees (collectively, "**Indemnitees**") from liability for Claims, and waive all Claims against Indemnitees, arising from or in any way related to your use of the Unsupported Products; and (v) agree to hold harmless, indemnify and defend Indemnitees from and against any and all Claims arising from or related to your use of the Unsupported Products.

14. Personal Data and EU Export Compliance. You are responsible for taking precautions and safeguards necessary to protect your data and systems from loss. Prior to giving Licensor access to the Products, Evaluation Products, or Pre-released Products, including for RMA purposes in connection with Maintenance or return of any Evaluation Products or Pre-released Products, you must remove: (a) personal data and information, including without limitation, personal health information or personally identifiable information (collectively, "**Personal Data**") (as such is defined under applicable local law, regulation or directive), and confidential or proprietary information, and (b) removable media such as floppy disks, CDs, or PC Cards. In addition, you are responsible for backing up your data on the Products, Evaluation Products, and Pre-Released Products and in the networks and systems in which they are deployed. You are responsible for the safeguarding of your Personal Data and confidential and proprietary information, and Licensor is not responsible for any such information or its removal; lost or corrupted data; or damaged or lost removable media.

You may submit Personal Data to Licensor (including as part of Network Data as such term is described in **Section 15**), and Licensor may have access to Personal Data in the course of providing services. Licensor will not review, share, distribute, or refer to any such Personal Data, except as provided in this Agreement or any contract between Licensor and you, or as may be required by law. Licensor will take appropriate procedural, technical and organizational measures to protect against unlawful or unauthorized use of the Personal

Data and against accidental loss or destruction of, or damage to, Personal Data. Licensor may access Personal Data only for the purposes of providing the services, preventing or addressing service or technical problems, at your request in connection with services, as expressly permitted by the Agreement, or as may be required by law. NetScout's Privacy Policy located at <https://www.netscout.com/legal/terms-and-conditions> applies to Licensor's collection, use, disclosure, transfer or other processing of your Personal Data, as applicable, and the terms of such Policy are incorporated herein by this reference.

In the course of performing services, Licensor may transfer Personal Data to the United States. If you have information originating from the European Union, NetScout's Data Processing Addendum located at <https://www.netscout.com/legal/terms-and-conditions> ("DPA") will govern the transfer, access and use of the Personal Data and is incorporated herein by reference. If you would like a signed hard copy of the DPA for your files, you may download, sign and return the DPA to legalservices@netscout.com.

Notwithstanding anything to the contrary set forth in this Agreement, Licensor's only obligation with respect to your Personal Data shall be as set forth in the Privacy Policy and the DPA, if applicable.

15. Feedback; Aggregate Data; Threat Intelligence.

(a) **Feedback.** During the term of this Agreement, you may provide feedback (which may be oral or written) to Licensor, including on the functions, operation and utility of the Product, reports of any issues, bugs or service errors, feature suggestions and corrections to problems in the Product or any portion thereof (collectively, "**Feedback**"). You hereby agree that Feedback provided by you to Licensor becomes the property of, and upon creation, shall be deemed to be assigned to, Licensor and that Licensor may use or exploit the same without any accounting or payment to you. You will not include in Feedback any third party proprietary or confidential information.

(b) **Aggregate Data.** Notwithstanding anything to the contrary set forth herein, Licensor may receive and use aggregated and/or anonymized data from certain Products ("**Intelligence Feed Products**") for Licensor's business purposes provided that Licensor shall not identify you to any unaffiliated third party as the source of such data. Upon creation, Licensor will be the owner of such aggregated and/or anonymized data and may copy, commingle, and use such data, in Licensor's sole discretion, for any lawful purpose. You may disable or modify the export of aggregated data through the applicable Intelligence Feed Products' settings menu as described in the applicable Documentation. In addition, you may provide Licensor 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 ("**Network Data**"). Network Data may be used by Licensor to provide services as well as for purposes compatible with providing services including, but not limited to, error analysis and correction, and Product and/or Services adjustment, configuration, improvement, and development. Licensor may also: (a) compile statistical and other information related to the performance, operation and use of the Products and/or Services, and (b) use and share data from the Products and/or Services, including Network Data, in aggregated form to create statistical analysis and for research and development purposes (hereafter "**Product and Service Analyses**"). Licensor retains all intellectual property rights in Product and Service Analyses.

(c) **Threat Intelligence.** The Threat Intelligence (defined below) that may be provided as part of the Intelligence Feed Products shall not be used by you other than for your own internal business purposes and shall not be used for any other purpose or provided to any other party without Licensor's prior written consent. As used herein, "**Threat Intelligence**" shall mean information and policies developed by Licensor on tactics, techniques and procedures used by third parties to compromise a potential target, which may include actionable data to remediate threats to the availability and integrity of networks and services. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE THREAT INTELLIGENCE PROVIDED TO YOU AS PART OF THE INTELLIGENCE FEED PRODUCTS IS PROVIDED BY LICENSOR ON AN "AS IS" BASIS AND THE LIMITED WARRANTY AND INDEMNITY WILL NOT APPLY WITH RESPECT TO THREAT INTELLIGENCE.

16. General. This Agreement and the Quotation(s) issued by Licensor constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, arrangements, and understandings between the parties regarding such subject matter, except where the parties have a signed master purchase agreement or similar contract ("**Contract**"), in which case such Contract will govern. Any conflicting or additional terms in your purchase orders or other documentation are expressly rejected. This Agreement may be modified only in writing, signed by authorized representatives of both parties. No course of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. No failure of either party to exercise any power or right hereunder or to insist upon strict compliance with the terms of this Agreement, and no custom or practice of the parties at variance with the terms hereof, will constitute a waiver of either party's right to demand compliance with the terms of this Agreement. If any of the provisions of this Agreement are determined to be invalid, illegal, or unenforceable, such provisions will be severed from this Agreement, and the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law, provided that the intent of the parties is not materially impaired. The parties will use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by law, achieves the purposes intended under the invalid or unenforceable provision. This Agreement is governed by the laws of the Commonwealth of Massachusetts without regard to choice of law rules, and you hereby submit to the jurisdiction of the federal and state courts located in said Commonwealth and the applicable service of process. The parties agree that the United Nations Convention on International Sale of Goods Acts will not apply to this Agreement. Except for the obligation to make payments, non-performance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, acts of God, governmental acts or orders or restrictions, act of terrorism, war, or any other reason where failure to perform is beyond the reasonable control of the non-performing party and not due to its fault or negligence.



EXHIBIT B
NetScout Systems, Inc.
Maintenance and Support Services Terms for Products

These Maintenance and Support Services Terms ("Maintenance Description") state the terms under which NetScout Systems, Inc. ("NetScout") or a NetScout-authorized third party will deliver technical support services for certain software products, including firmware ("Software") that have been licensed and/or certain hardware products ("Hardware") that have been purchased from NetScout or a NetScout authorized reseller or distributor and for which NetScout's makes technical support services available (Hardware and Software collectively referred to as "Product(s)") ("Maintenance") for Products on its enterprise and service provider price lists, upon customer's 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 Descriptions. NetScout offers the following Maintenance support services. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Normal Business Hours" are Monday through Friday, 8:00 a.m. – 8:00 p.m. EST for North America and 8:00 a.m. – 5:00 p.m. local time for all other regions.

A. MasterCare Support. Subject to the terms herein, MasterCare Support services include: 24x7 access to technical support; one hour priority response on severity 1 technical support calls; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to NetScout customers generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as "Updates") for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; advanced replacement or onsite repair of Hardware during the coverage period; 24x7 access to self-help on the My NetScout's Maintenance portal located at <https://My.NetScout.com> ("My NetScout Portal") for technical answers; and knowledge transfer through NetScout's online learning center. Live technical telephone support is provided 24x7 for severity 1 issues received by telephone and non-severity 1 issues received by telephone during Normal Business Hours. All non-severity 1 issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. NetScout's service level guidelines are located at <https://www.netscout.com/support-services>. The level, availability and coverage period of Hardware support varies by Product family. For details, please email customercare@netscout.com. Service timing is dependent upon the time of day that NetScout initiates a call to the third party providing the onsite repair, which is dependent upon the time of day that NetScout receives customer's call.

Customers purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings for an additional fee. Supplemental Maintenance Offerings not requiring separate signed terms will be delivered pursuant to this Maintenance Description.

i. OnSite Engineer Services. Onsite Engineer Services ("OSE Services") are provided by a NetScout technical support engineer located at customer's designated site that is within reasonable proximity to the Products ("Office Area") and may include any one or more of the following, as agreed to by the parties: local assistance with day-to-day administration of customer's network performance management environment, including: installation of operating system and Software upgrades for NetScout appliances only; Hardware maintenance, Software patches, and service pack installation, and oversight of monitored element changes; backup maintenance such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports and workspaces, discovering and configuring complex, custom or unknown applications, and integrating third-party tools; implementation assistance for installing and configuring new Products; beta testing new Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed forty (40) hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Customer holidays and paid time off, provided the number of Customer holidays is at least equal to the number of holidays NetScout provides to its employees in the applicable territory. Additionally, for a maximum period of two weeks during the initial term and any renewal term, the onsite technical support engineer will not be at customer's designated site performing the OSE Services due to training at NetScout's corporate headquarters. If customer requests that the engineer travel to a site other than the Office Area to perform OSE Services, customer is responsible for all reasonable travel and other expenses associated with such travel.

ii. Remote Site Engineer Services. Remote Site Engineer Services ("RSE Services") is an annual service available to customers, provided by a NetScout shared remote technical support engineer located at a NetScout facility, and may include any one or more of the following, as agreed to by the parties: daily health and stability check on both devices and data; remote assistance with day-to-day administration of customer's NetScout performance management environment, including operating system and Software upgrades for NetScout appliances only, Hardware maintenance, Software patches and service pack installation, and oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and off-site storage of the data required during disaster recovery efforts; customization assistance for designing new reports, defining targeted workspaces, discovering and configuring complex, custom and unknown applications, and integrating third-party tools; implementation assistance installing and configuring new Products; facilitation of beta testing of new Products and features when requested; and an annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed for the number of hours per week as set forth in the Quotation, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts; Pune, India; or Shanghai, China, as applicable, and excluding NetScout holidays and paid time off. Additionally, for a maximum period of two weeks during the initial term and any renewal term, the remote technical support engineer will not be performing the RSE Services due to training at NetScout's corporate headquarters.

B. Gold Support. Subject to the terms herein and for existing NetScout customers who wish to renew previously purchased legacy Gold Support services, Gold Support services include: live telephone technical support during Normal Business Hours; Updates for covered Products; 72-hour return repair or onsite repair of Hardware, depending on the Product family; 24x7 access to self-help on

the My NetScout Portal for technical answers; and knowledge transfer through NetScout's online learning center. 72-hour return repair on Hardware means the time from which the Hardware is received at NetScout to the time the repairs are completed. It does not include the shipping time back to the customer. 72-hour return repair on Hardware is on a per Hardware unit basis. If multiple Hardware units are returned for repair, additional time may be required.

2. Term and Renewal. Unless otherwise agreed to by the parties in writing, the initial term for (a) MasterCare Support will be the number of months specified in NetScout's Quotation, (b) OSE Services will be twelve (12) months commencing on the date the engineer arrives at customer's designated site, and (c) RSE Services will be twelve (12) months commencing on the date that the account becomes active, or as agreed to by the parties. MasterCare or Gold Support may be renewed for up to two years after discontinuation of sale of the applicable Product. Maintenance support services and Supplemental Maintenance Offerings 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 all Maintenance support services are due and payable net thirty (30) days from the invoice date. Payments are non-refundable. Expired MasterCare and Gold Support coverages may be subject to a reinstatement fee. Fees for Maintenance support services and Supplemental Maintenance Offerings are set forth in the applicable NetScout Quotation. Unless otherwise agreed to by the parties, Maintenance support services and Supplemental Maintenance Offerings may be renewed for additional terms upon payment of the applicable fees. Upon payment of the applicable fee, Customers purchasing RSE Services may convert to OSE Services.

4. Continuing Availability. If NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available in accordance with NetScout's then-current Product Life Cycle Policy, available on the My NetScout Portal.

5. Substitutions; Software Updates. NetScout reserves the right to substitute functionally compatible hardware not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product.

6. Warranty. NetScout warrants that Maintenance support services 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 the Maintenance support services 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.

7. Limitations and Exclusions. Unless otherwise agreed to in writing by NetScout, Product is eligible for Maintenance support services 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 Maintenance in accordance with this Maintenance Description, and NetScout will not be liable for any Claims resulting from Product Relocation. NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare or Gold Support on Software beyond two (2) releases 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. Onsite repair may be provided by a third party and subject to parts availability. 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 support services 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 under MasterCare or Gold Support and are separately chargeable at the then-current list price.

8. 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, which customer may find 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 support services 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 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.

9. 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.

10. **Incidental Use of Data.** Customer may provide to NetScout 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 ("Customer Data"). NetScout may use Customer Data to provide the services hereunder as well as for purposes compatible with providing the services including, but not limited to, error analysis and correction, and product and services adjustment, configuration, improvement, and development. In addition, NetScout may: (a) compile statistical and other information related to the performance, operation and use of the Products, and (b) use and share Customer Data in aggregated form to create statistical analysis and for research and development purposes (hereafter "Product and Service Analyses"). NetScout retains all intellectual property rights in Product and Service Analyses. Customer retains all intellectual property rights in the Customer Data. NetScout's Privacy Policy located at <http://www.netscout.com/legal/privacy-policy/> applies to NetScout's collection, use, disclosure, transfer or other processing of Customer Data, and the terms of such Policy are incorporated herein by this reference.

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 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.

13. **Customer Obligations.**

a. **Access to Products.** Customer 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 MasterCare or Gold Support. Additionally, during any OSE Services term, customer will (i) make available to the engineer a dedicated office space, telephone, and telephone line at the Office Area and (ii) designate an employee of customer to act as a central point of contact for the engineer to coordinate the performance of OSE Services.

b. **MasterCare Support Coverage for Products.** OSE and RSE Services are an extension of MasterCare Support, therefore, customer must purchase and continuously maintain throughout the OSE or RSE Services term MasterCare Support coverage on all NetScout Products it has provisioned from NetScout or an authorized reseller or distributor of NetScout Products. NetScout will not be obligated to provide OSE or RSE Services if customer does not fulfill its payment obligations, or procure and continuously maintain MasterCare Support coverage on all NetScout Products owned or in the possession of customer.

c. **Non-Solicitation.** During the OSE or RSE Services term and for two years after termination or expiration thereof, customer will not directly or indirectly solicit, encourage or attempt to hire or engage any employee of NetScout to become employed by customer, or to become engaged as a contractor or subcontractor except through NetScout, without NetScout's prior written consent. In cases where customer is an authorized NetScout Reseller, customer agrees to use the same standards to prevent End User, as defined in the agreement between the parties, from directly or indirectly soliciting, hiring or accepting any services from NetScout employees, agents or contractors associated with providing Supplemental Maintenance Offerings or Consulting Services, as applicable, that it uses to prevent solicitation of its own employees, contractors, and subcontractors. Customer will provide NetScout with prompt written notice in the event customer becomes aware of any solicitation or intent to solicit such NetScout employees, agents or contractors by End User. 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 (3) months.

Security Vulnerability Policy

NETSCOUT designs and builds trusted products that our customers rely on in the most critical operations of their networks. We recognize that unless our products meet the highest industry standards for security, customers cannot confidently deploy and operate them.

This policy documents our commitment to resolve potential vulnerabilities in our products to ensure supported customers that security vulnerabilities are corrected in a timely manner.

Security Vulnerability Response Process

NETSCOUT understands that security is not static, but is an ongoing process that evolves over time. Within NETSCOUT, there are defined processes to address vulnerabilities for all appliances. As these vulnerabilities are announced or discovered, NETSCOUT reviews each individual Common Vulnerabilities and Exposures (CVE) to determine impact (if any) and responds, within a clearly defined timeframe, to those that are most critical to the individual product.

In addition, before and after every release, NETSCOUT performs vulnerability scans of the appliances using third-party scanners. This is a continuous process. At times, when application vulnerabilities are addressed, there may be modifications made to the operating system and/or application to further secure the appliance.

Customers with active MasterCare contracts are provided the ability to access security vulnerability information relevant to their product. My NETSCOUT.com provides the capability to search and review CVEs and effect on the product(s) by

accessing: <https://my.NETSCOUT.com/mcp/active/Pages/security.aspx>

The following graphic illustrates NETSCOUT's process at a high level and provides an overview of the vulnerability lifecycle, investigate, analyze, and resolve those security incidents that warrant an update.



The following are steps in the process:

- Awareness: NETSCOUT is made aware of the vulnerability through multiple resources.
- Collaboration and Assessment: NETSCOUT internal teams investigate, assess impact to the product, prioritize and identify resources.
- Communication: NETSCOUT provides guidance to customers and sets timeframe for resolution.
- Resolution: NETSCOUT releases a fix for the reported and verified vulnerability. The fix can be:
 - A new patch
 - A new maintenance release
 - A new major or minor release
 - Instructions to download and install an update for a third-party software component that is part of the NETSCOUT product.
 - A corrective procedure or workaround that instructs users in adjusting the NetScout product configuration to mitigate the vulnerability.
- Notification: NETSCOUT continues communication and notifies the customer. In some cases a Knowledge Base entry may be created. Additional reference: <https://my.netscout.com/mcp/active/Pages/security.aspx>

Assessing Security Risk and Timeframes

Severity category codes (referred to as CAT) are a measure of vulnerabilities used to assess a system security posture. NETSCOUT categorizes vulnerabilities based on Department of Defense (DoD) Information Assurance Vulnerability Management (IAVM) alerts.

Category I: Critical vulnerabilities that can be exploited by an unauthenticated attacker.

This exploitation can result in the compromise of confidentiality, integrity, and availability of user data and/or processing resources without user interaction. Exploitation could be leveraged to propagate an Internet worm or execute arbitrary code.

Category II: Vulnerabilities that are not rated as critical.

This exploitation can result in the compromise of confidentiality and/or integrity of user data and/or processing resources through user assistance or by an authenticated attacker. Category II also applies to those vulnerabilities which could lead to the complete compromise of availability when exploitation is by a remote unauthenticated attacker.

Categories III and IV: Vulnerabilities that have a security impact, but where exploitation is believed to be extremely difficult, or where successful exploitation would have minimal impact.

Vulnerabilities where the ability to exploit is mitigated to a significant degree by configuration or difficulty of exploitation, but in certain deployment scenarios could still lead to the compromise of confidentiality, integrity, or availability of user data and/or processing resources.

A review of the vulnerability is immediate. If a NETSCOUT product is vulnerable, Table1 provides committed timeframes to a resolution associated with each category level.

Table 1

Severity Category Codes	Timeframe to resolution
CAT I – Critical	Within 30 business days
CAT II – High	Within 45 business days
CAT III – Medium	Within 90 business days
CAT IV – Informational	Considered for Future Version

Discovery and Notification of Security Vulnerabilities

NETSCOUT is committed in providing a secure appliance to customers. NETSCOUT uses the industry's most mature and effective vulnerability and code validation scanning technology to proactively identifying security vulnerabilities of the product in order to determine if and where the product can be exploited and/or threatened. While use of these tools provides valuable information, NETSCOUT understands that one technique is not enough. Within NETSCOUT there are several methods of vulnerability discovery.

Notification from Internal Security Scans

NETSCOUT scans during various stages of the development lifecycle in an effort to detect and eliminate, and later avoid, vulnerabilities before the product is released. These scanning technologies provide security risk assessments on the application and operating system, code violations and enable security best practices, policy enforcement, and regulatory audits.

Notification from Customer Inquiries

NETSCOUT often receives private scan and PEN reports from customers. In addition, NETSCOUT also monitors public repositories of software security vulnerabilities to identify newly discovered vulnerabilities that may affect one or more of the products.

Notification Published by the Federal Government

US Cyber Command, subordinate to the United States Strategic Command (STRATCOM), and the Defense Information Systems Agency (DISA) jointly manage the IAVM (Information Assurance Vulnerability Management) and Computer Network Directives. Both identify and publish vulnerabilities or directives. Through partnerships, NETSCOUT is notified of an IAVA announcement. When NETSCOUT receives the IAVA notifications NETSCOUT begins their research and address applicable vulnerabilities.

Conclusion

NETSCOUT solutions are used by 92 percent of Fortune 100 organizations and more than 165 service providers worldwide. NETSCOUT's technology helps these organizations proactively manage service delivery and identify emerging performance problems, helping to quickly resolve issues that cause business disruptions or negatively impact users of information technology.

NETSCOUT attained its position of industry leadership due to its commitment to security of its customer's services and networks. Security was an active consideration during the development of the nGenius product line, and helped to influence design decisions throughout the product. From its foundation upon a hardened operating system, through

Attachment 3 to Blanket Purchase Agreement
DoD Software License Agreement

a secure hierarchical usage model, to security certifications and standards compliance, NETSCOUT and the nGenius family of products have a proven track record of safety, and are deployed confidently across networks in a secure and trusted manner.