

NetScout Systems, Inc.
310 Littleton Road
Westford, MA 01886

**DLT Solutions, LLC Rider to Product Specific License Terms and
Conditions (for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **NetScout Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling **DLT Solutions, LLC** ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under Contractor's GSA MAS IT70 contract number GS-35F-267DA (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and Contractor agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that Contractor as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** Contractor agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

r) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

NETSCOUT SYSTEMS, INC.

NETSCOUT SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Definitions

"APIs" mean the software application interfaces and workflow methods made generally available by Contractor through NetScout in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

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

"Enterprise" means an entity that has been assigned a Maintenance account number. In the event an entity has multiple Maintenance account numbers, each Maintenance account is a separate Enterprise and requires a separate Enterprise License.

"Enterprise License" means the Software identified in the Quotation as an Enterprise License.

"Evaluation Product" shall have the meaning set forth below in Section 8.

"Hardware" means hardware products generally available on the schedule price list.

"Maintenance" means technical support services for the Products that Contractor through NetScout makes available upon purchase in accordance with the support services terms described herein.

"Managed Services" means your use of Products to perform network management and monitoring services for Service Provider Customers. Title to the Hardware and licenses to Software remain with you and are not resold to Service Provider Customers.

"Outsourcer" means a third party facility manager or outsourcer who has entered into a then-current services agreement with you in which you may permit access to and operation of the Products at your authorized data center and access to Maintenance for Outsourcer solely to perform Outsourcing Services.

"Outsourcing Services" means network management and monitoring services performed by Outsourcer strictly for you and as described in Section 6.

"Pre-Released Products" shall have the meaning set forth below in Section 8.

"Product" means Software and Hardware provided by Contractor through NetScout.

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

"Service Provider" means Ordering Activity when acting in the capacity of providing Managed Services to Service Provider Customers.

"Service Provider Customer" means a third party, who has an agreement with You for Managed Services, provided that such Managed Services would not be a violation of United States ("U.S.") export restrictions.

"Software" means NetScout proprietary programs in object code and the firmware contained on the Hardware. The term Software does not include APIs.

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"Software Development Kit" or "SDK" means the NetScout API, together with applicable documentation, any sample code, and any sample applications provided with the API.

"Unsupported Products" shall have the meaning set forth below in Section 8.

"Updates" means maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid Maintenance contract.

"You" or "Your" means Ordering Activity.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Attachment A, Contractor grants You a limited, non-exclusive, non-transferable license to use the Software and the Documentation for Your own internal business purposes. Such usage is limited to the number of licenses for which You paid the applicable license fee and is subject to the limitations set forth in the Documentation. You may make a copy of the Software for archival or backup purposes only ("Copy"). The Copy may not be used to implement fault tolerant, redundant, or contingency environments (collectively "Redundant Environments").

If You are purchasing an Enterprise License, the foregoing license grant is hereby extended to allow You to install, copy, and use an Enterprise License throughout your Enterprise for Your internal use only, subject to the terms and limitations set forth in this Attachment A and the Documentation.

2. License Restrictions.

(a) Without limiting this Attachment A, Contractor retains all right, title, and interest in and to the Software, including without limitation the Enterprise License, and all Updates, Documentation, and Copies, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. Contractor retains all rights to the intellectual property associated with the Hardware except as expressly granted in this Attachment A, and the above Software restrictions will apply to Hardware to the extent applicable. The Software, Documentation, and Copies are protected under copyright laws, and any permitted Copies must include all copyright, government-restricted rights, and other proprietary notices or legends included on the Software when it was shipped or first provided to You.

Without limiting the generality of the foregoing, You, Your employees, and Your consultants will not and will not authorize or permit any third party to:

- i. copy or reproduce any part of the Software or Documentation, except as permitted above;
- ii. transfer the Software without Contractor's prior written authorization. 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;
- iii. sell, market, distribute, sublicense, lease, provide timeshares, rent, or grant other rights in the Software to others or permit third parties to access the Software, without the written consent of Contractor; or
- iv. modify, develop, port, translate, localize, reverse engineer, de-compile, disassemble, or create derivative works based on the Software, except to the extent expressly permitted by applicable law and solely to extent the parties shall not be permitted by that applicable law to exclude or limit such rights.

(b) In the event You are purchasing an Enterprise License and if You use the Enterprise License Software on or with hardware that does not meet the technical specifications set forth in the Documentation, then: (i) Contractor will not warrant the performance or results obtained by using the Enterprise License Software and Contractor disclaims all liability with respect to the foregoing, (ii) You assume the risk as to the results and performance of the Enterprise License Software, and (iii) Your rights and Contractor's obligations with respect to Maintenance, warranty, and indemnification for the Enterprise License Software are waived. The Enterprise License is strictly limited to the NetScout Software identified in a Quotation as an Enterprise License and does not apply to any other NetScout Software. An Enterprise License may not be deployed for government entities, for which the scope of the license must be separately determined in each case.

(c) For Service Providers, the Software License may be used for Service Provider's internal business purposes only, including for monitoring and managing Service Provider's own networks and to perform Managed Services for Service Provider Customers. Separate Enterprise Licenses must be purchased for deployment and use for each end user customer of such Service Provider. Service Provider will maintain MasterCare Maintenance for Products associated with the Managed Services on behalf of its Service Provider Customers and, if Service Provider has signed a Partner Enabled Support addendum, will provide directly to Service Provider Customer technical telephone support, Updates identified for such Service Provider Customer and received under a valid Maintenance contract, return material authorization, Maintenance, and shipping and telephone logistical support. Service Provider will provide the name and address of the Service Provider Customer for whom Service Provider is purchasing Hardware or licenses to Software for Managed Services.

Service Provider will not replace or make repairs or modifications to (collectively "Repairs") the Hardware or any of its components. Transfers of Products from an identified location to a different location will require Contractor's prior written consent, and Service Provider will notify Contractor of the name and new address the Service Provider Customer associated with such transfer.

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 Contractor that all of the foregoing have been destroyed.

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4. Limited Warranty. Contractor 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"). Contractor 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 when first made available to You for download, will substantially conform to the Documentation. If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to Contractor, the media may be returned to Contractor, and Contractor will replace the media without charge to You, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to Contractor, Contractor, 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 Contractor prompt written notice of the material defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware to Contractor in accordance with Contractor's return process.

5. Warranty Limit. The warranty set forth in Section 4 does not apply to any failure of the Software or Hardware caused by (a) Your failure to follow NetScout's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) unauthorized modifications or repairs; (d) use of the Products in combination with equipment or software not supplied by Contractor or authorized in the Product Documentation; and (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Contractor's reasonable control. Contractor cannot and does not warrant the performance or results that may be obtained by using the Products, nor does Contractor warrant that Products are appropriate for Your purposes or error-free.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 4, THE WARRANTY SET FORTH IN SECTION 4 IS YOUR REMEDY AND CONTRACTOR'S LIABILITY FOR DEFECTIVE MEDIA OR NONCONFORMING 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. Outsourcing. Outsourcer may perform Outsourcing Services, provided that (a) Outsourcer accesses such Products and Maintenance to process Your data solely for Your internal business purposes and does not use such Products and Maintenance to perform any services for customers other than You, (b) Outsourcer uses the Products and Maintenance in accordance with the terms of this Attachment A, and (c) You provide written notification to Contractor of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance. In any event, You will remain responsible for all payment and other obligations hereunder, which will remain in full force.

If You want to relocate any Products from Your own site(s) to the data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited by You and Outsourcer to computer processors exclusively dedicated for access, use and benefit solely for You and as to which access, use or benefit for any other person or entity is precluded. You acknowledge and agree that the Software cannot, at any time, be (a) simultaneously operating on more than a single computer, unless otherwise indicated in Section 1, or (b) copied to implement a Redundant Environment without collective payment of the applicable GSA fee.

7. U.S. Government Restricted Rights. All NetScout Software, including the Documentation and technical data, sold or delivered pursuant to this Attachment A for Government use are commercial as defined in Federal Acquisition Regulation ("FAR") 2.101 and any supplement and further is provided with RESTRICTED RIGHTS. All Software was fully developed at private expense. Use, duplication, release, modification, transfer, or disclosure (for purposes of this section, "Use") of the Software is restricted by the terms of this Attachment A and further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulations Supplement ("DFARS") for military Government agency purposes, or the similar acquisition regulations of other applicable Government organizations, as applicable and amended. The Use of the Product is restricted by the terms of this Attachment A, in accordance with DFARS Section 227.7202 and FAR Section 12.212. All other Use is prohibited except as described herein.

8. Additional Terms and Limitations for Unsupported Products.

(a) Evaluation Products. Prior to You making a decision to purchase Products, Contractor through NetScout may distribute Product for testing, evaluation, or demonstration purposes ("Evaluation Product"). Subject to the terms of this Attachment A, if NetScout provides You with an Evaluation Product, then NetScout grants You a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the applicable NetScout Evaluation Request Form and the Documentation solely for testing, evaluation, or demonstration purposes ("Purpose"). Evaluation Product that is Software contains a license key that disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable. If, after using the Evaluation Product, you wish to continue such use, you must purchase the Product.

(b) Pre-Released Product. Subject to the terms of this Attachment A, if the product You have received with this license is not yet commercially available ("Pre-Released Product"), then Contractor grants you a temporary, revocable, nonexclusive, non-transferable license to use the Pre-Released Product as provided to You by Contractor and the associated Documentation, if any, solely for testing purposes at the direction of Contractor. Additionally, You acknowledge that (i) Contractor has not promised or guaranteed to You that the Pre-Released Product will be announced or made available to anyone in the future; (ii) Contractor has no express or implied obligation to You to announce or introduce the Pre-Released Product; and (iii) You understand that Contractor may not introduce a

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product similar to or compatible with the Pre-Released Product. Accordingly, You acknowledge that any use of the Pre-Released Product or any product associated with the Pre-Released Product is done entirely at Your own risk. During the term of this Attachment A, if requested by Contractor, You will provide feedback to Contractor regarding use of the Pre-Released Product, including error or bug reports. 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. Upon receipt of a later, unreleased version of the Pre-Released Product or release by Contractor 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 all copies of earlier Pre-Released Product received from Contractor and to abide by the terms of this Attachment A for any such later versions of the Pre-Released Product.

(c) APIs. Contractor through NetScout may make APIs generally available. You may use the SDK to design, develop, and test software programs; make a single copy of the SDK for back-up purposes only; copy the runtime components of the SDK ("Runtime Component") into software code created through your use of the SDK; and reproduce and distribute such Runtime Component solely as a component of Your software code. You may not use the SDK to develop a product or service that competes with products or services offered by NetScout, or incorporate the Runtime Component in a product that competes with the products offered by NetScout.

(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 acknowledge and agree that You will take all precautions and safeguards necessary to protect Your data and systems from loss or damage. Additionally, to the extent that any provision in this section is in conflict with any other term or condition in this Attachment A, this section shall supersede such other term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Furthermore, You acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to You "AS-IS" and Contractor disclaims any warranty obligations to You of any kind. Maintenance is not available for the Unsupported Products. Contractor through NetScout 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. Your Use of the Evaluation or Pre-Release Product is limited to 30 days unless otherwise agreed to in writing by Contractor. The restrictions in Section 2 herein, apply to Your use of Unsupported Products.

(e) Contractor's ownership rights in Section 2 apply to Unsupported Products, including any output such as the Runtime Component, but do not include any original software code you may develop. The inclusion of the Runtime Components in Your original code created through your use of the SDK in no way alters Contractor's ownership rights in the Runtime Component. Contractor 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.

9. Product Returns. Prior to returning Evaluation Products or Pre-released Products to Contractor through NetScout, You must remove any (i) 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, including without limitation, in the U.S., the Gramm-Leach-Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) removable media such as floppy disks, CDs, or PC Cards. In addition, You are responsible for backing up Your data on the Evaluation Products or Pre-Released Products. NetScout is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

EXHIBIT A – MAINTENANCE AND SUPPORT SERVICES

1. **Maintenance Descriptions.** Contractor through 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. 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 Hardware Coverage Period.

A. **MasterCare Support.** Subject to the terms herein, MasterCare Support services includes: 24x7 access to technical support engineers; 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 Ordering Activities 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 MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; discount on unlimited registrations to NetScout's user forum conference; and registered access to the MasterCare portal. 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 http://www.netscout.com/library/Support/NetScout_mc_Mastercare_Support.pdf.

B. **Gold Support.** Subject to the terms herein and for existing Ordering Activities 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 MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare

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newsletter; and registered access to the MasterCare portal. 72-hour return repair on Hardware means the time from which the Hardware is received at Contractor through NetScout to the time the repairs are completed. It does not include the shipping time back to the Ordering Activity. 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.

C. **Supplemental Maintenance Offerings.** Ordering Activities purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings. If an engineer or technical account manager is not available due to a holiday, paid time off, or training, a Contractor through NetScout remote back-up support engineer or technical account manager will provide remote back-up coverage during that time and to the extent practicable.

➤ **OnSite Engineer Services.** Onsite Engineer Services ("OSE Services") are provided by a Contractor through NetScout technical support engineer located at customer's designated site 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: (i) installation of operating system and Software upgrades; (ii) Hardware maintenance, Software patches, and service pack installation, and (iii) 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 NetScout Products; beta testing new NetScout Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed 40 hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Ordering Activity holidays and paid time off, provided the number of Ordering Activity holidays is at least equal to the number of holidays NetScout provides to its employees in the applicable territory. For a maximum period of two weeks during the initial term and renewal terms, the onsite engineer will not be at Ordering Activity's designated site performing the OSE Services due to training at NetScout's corporate headquarters.

➤ **Remote Site Engineer Services.** Remote Site Engineer Services ("RSE Services") is an annual service available to Ordering Activities, provided by a Contractor through 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, 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 NetScout Products; facilitation of beta testing of new Products and features when requested; and annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed 20 hours per week, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts, and excluding NetScout holidays and paid time off.

➤ **Technical Account Manager Services.** Technical Account Manager Services ("TAM Services") are provided by a Contractor through NetScout shared remote technical account manager located at a NetScout facility as the point of contact for all technical issues regarding NetScout Products and includes the following: 24x7 remote assistance; support for five Ordering Activity contacts; escalation of technical service requests as required; ownership of all client Ordering Activity care issues; acting as a direct liaison to NetScout engineers, quality assurance and other technical support experts; communication and knowledge transfer on product introductions, updates, new features, filters, and patches; provide a conduit for networking and sharing best practices; managing weekly status calls to discuss open issues, upcoming rollouts, or other projects affecting Ordering Activity's NetScout environment; providing monthly NetScout server "health checks" to ensure products are stable and running efficiently; unlimited free registration for NetScout User Forum events.

2. **Term and Renewal.** Unless otherwise agreed to by the parties in writing, the initial term for (i) MasterCare Support will be 12 months commencing on the date specified in Contractor's quote, (ii) OSE Services will be 12 months commencing on the date the engineer arrives at Ordering Activity's designated site, and (iii) RSE and TAM Services will be 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.

3. **Continuing Availability.** If Contractor through NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available for no less than two years from the date of discontinuation of sale. For Software, such MasterCare or Gold Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release.

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

5. **Warranty.** Contractor warrants that Maintenance support services will be performed in a good and workmanlike manner. Ordering Activity's remedy for breach of this warranty will be for Contractor to re-perform the Maintenance support services at no expense to Ordering Activity. NetScout Products are warranted in accordance with these Attachment A terms. EXCEPT FOR THE FOREGOING WARRANTY, CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

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6. **Limitations and Exclusions.** Contractor through 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 one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. If Ordering Activity 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 Ordering Activity 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 GSA price.

7. **Repairs.** A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If Contractor through 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 MasterCare or Gold Support with respect to such Products. Prior to returning defective Products to NetScout for repair or replacement, Ordering Activity 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, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. In addition, Ordering Activity is responsible for backing up Ordering Activity's data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of Ordering Activity's confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

8. **Ordering Activity Obligations.**

A. **Access to Products.** Ordering Activity will grant the Contractor through 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, Ordering Activity will (i) make available to the engineer a dedicated office space, telephone, and telephone line in a location that is within a reasonable proximity of the Products ("Office Area"), and (ii) designate an employee of Ordering Activity 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, RSE and TAM Services are an extension of MasterCare Support, therefore, Ordering Activity must purchase and continuously maintain throughout the OSE, RSE or TAM Services term MasterCare Support coverage on all NetScout Products it has provisioned from Contractor through NetScout. Contractor will not be obligated to provide OSE, RSE or TAM 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 Ordering Activity.